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**COMMITTEE ON BIOETHICS (DH-BIO)**

**Draft Additional Protocol concerning the protection of human rights and dignity  
of persons with mental disorder with regard to involuntary placement and  
involuntary treatment**

as revised by the 13<sup>th</sup> DH-BIO (Strasbourg, 23 – 25 May 2018)

1 **Preamble**

2 The member States of the Council of Europe and the other signatories to this Additional Protocol to  
3 the Convention for the Protection of the Human Rights and Dignity of the Human Being with regard  
4 to the Application of Biology and Medicine (hereinafter referred to as “the Convention on Human  
5 Rights and Biomedicine”, ETS No. 164),

6 Considering that the aim of the Council of Europe is the achievement of greater unity between its  
7 members and that one of the methods by which this aim is pursued is the maintenance and further  
8 realisation of human rights and fundamental freedoms;

9 Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms of  
10 4 November 1950 (European Convention on Human Rights, ETS No.005) and in particular Articles  
11 5 and 8 thereof;

12 Taking into account the work carried out at international level on the protection of dignity and rights  
13 of persons with mental disorders, in particular the United Nations Convention on the Rights of  
14 Persons with Disabilities of 30 March 2007;

15 Considering that the aim of the Convention on Human Rights and Biomedicine, as defined in  
16 Article 1, is to protect the dignity and identity of all human beings and guarantee everyone, without  
17 discrimination, respect for their integrity and other rights and fundamental freedoms with regard to  
18 the application of biology and medicine;

19 Bearing in mind Recommendation Rec 2004 (10) of the Committee of Ministers to member States  
20 concerning the protection of the human rights and dignity of persons with mental disorder;

21 Acknowledging the importance of the work of the European Committee for the Prevention of  
22 Torture and Inhuman or Degrading Treatment or Punishment (CPT) and of the relevant Standards  
23 developed by that Committee;

24 Recognising the potential vulnerability of persons with mental disorder;

25 Considering that placement and treatment of persons with mental disorder form an integral part of  
26 the health services offered to the population and recalling the importance of taking appropriate  
27 measures, taking into account health needs and available resources, with a view to providing  
28 equitable access to mental health services of appropriate quality;

29 Recalling that any intervention in the health field must be carried out in accordance with relevant  
30 professional obligations and standards;

31 Stressing the importance of adequate training of staff working with persons with mental disorder;

32 Emphasising that human dignity requires persons to be supported to exercise their autonomy;

33 Stressing the importance of persons being involved in decisions about their treatment and care;

34 Underlining the importance of the principle of free and informed consent to interventions in the  
35 health field;

36 Recalling that the existence of a mental disorder in itself shall in no case justify an involuntary  
37 measure;

38 Recognising that restrictions on the rights set out in the Convention on Human Rights and

39 Biomedicine are permissible only if prescribed by law and are necessary in a democratic society in  
40 the interests of public safety, crime prevention, protection of public health or the protection of the  
41 rights and freedoms of others;

42 Taking into account national and international professional standards in the field of involuntary  
43 placement and involuntary treatment of persons with mental disorders and the previous work of the  
44 Committee of Ministers and the Parliamentary Assembly of the Council of Europe in this field;

45 Considering that involuntary treatment on a person whose ability to decide on treatment is severely  
46 impaired must aim at enabling this person to regain such ability;

47 Emphasising the primary importance of developing alternatives to involuntary measures and the  
48 systematic use of alternative measures;

49 Recognising that the use of involuntary placement and involuntary treatment has the potential to  
50 endanger human dignity and fundamental rights and freedoms and must therefore be minimised  
51 and only be used as a last resort;

52 Stressing the need of ensuring that, if such measures are used, the persons concerned are  
53 appropriately protected and can effectively exercise their rights;

54 Stressing the importance of appropriate monitoring of the use of such measures;

55 Resolving to take such measures as are necessary to safeguard human dignity and ensure respect  
56 for the fundamental rights and freedoms of persons with mental disorder by clarifying the standards  
57 of protection applicable to the use of involuntary placement and of involuntary treatment,

58 Have agreed as follows:

59 **Chapter I – Object and scope**

60 **Article 1 – Object**

61 1. Parties to this Protocol shall protect the dignity and identity of persons with mental disorder  
62 and guarantee, without discrimination, respect for their integrity and other rights and fundamental  
63 freedoms with regard to involuntary placement and involuntary treatment.

64 2. The provisions of this Protocol do not limit or otherwise affect the possibility for a Party to grant  
65 a wider measure of protection than is stipulated in this Protocol.

66 **Article 2 – Scope and definitions**

67 *Scope*

68 1. The provisions of this Protocol apply to involuntary placement and involuntary treatment of  
69 persons with mental disorder.

70 2. The provisions of this Protocol do not apply to minors.

71 3. This Protocol does not apply to placement and treatment ordered in the context of a criminal  
72 law procedure.

73 *Definitions*

74 4. For the purpose of this Protocol, the term:

75 - “mental disorder” is defined in accordance with internationally accepted medical standards;

76 - “involuntary” refers to a placement or treatment applied to a person with mental disorder who  
77 objects to the measure;

78 - “involuntary measure” refers to involuntary placement and/or involuntary treatment;

79 - “placement” refers to placing a person in a specific facility for a particular purpose or  
80 purposes;

81 - “treatment” means an intervention (physical or psychological) on a person that has a  
82 therapeutic purpose in relation to his or her mental disorder irrespective of where this  
83 intervention takes place;

84 - “therapeutic purpose” refers to controlling symptoms, slowing down the rate of deterioration,  
85 rehabilitation and cure of the mental disorder;

86 - “seclusion” refers to the involuntary keeping of a person alone in a room or designated area;

87 - “restraint” refers to the use of physical, mechanical or pharmaceutical means aiming at  
88 holding or immobilising a person or controlling his or her movements;

89 - “representative” means a person provided for by law to represent the interests of, and take  
90 decisions on behalf of, a person who does not have, according to law, the capacity to consent;

91 - “person of trust” refers to a person chosen and expressly designated as such by the person  
92 with mental disorder to assist and support him/her and who has accepted that role;

- 93 - “court” refers to a judicial body;
- 94 - “competent body” means an authority, or a person or body provided for by law to take a  
95 decision on an involuntary measure;
- 96 - “responsible authority” refers to the authority responsible for the facility in which the patient is  
97 placed, or the authority with administrative responsibility for the physicians supervising the  
98 patient's medical care.

99 **Chapter II – Alternative measures**

100 **Article 3 – Alternative measures**

101 Parties to this Protocol shall undertake to ensure the development and primary use of less  
102 restrictive and intrusive measures than involuntary placement and involuntary treatment.

103 **Chapter III – General provisions**

104 **Article 4 – Legality**

105 Involuntary measures shall only be applied in conformity with the provisions set out in domestic  
106 law, and in accordance with the safeguards established in this Protocol.

107 **Article 5 – Proportionality and necessity**

108 Involuntary measures shall only be used in accordance with the principle of proportionality and  
109 necessity. Persons subject to such measures shall be cared for in the least restrictive environment  
110 possible and with the least restrictive or intrusive treatment possible, taking into account their  
111 health needs and the need to protect other persons from harm.

112 **Article 6 – Person of trust**

113 Persons with mental disorder shall have the right to choose a person of trust.

114 **Article 7 – Legal assistance**

- 115 1. The person shall have the right to benefit effectively from legal assistance.
- 116 2. Subject to the conditions provided for by law, legal assistance shall be provided free of charge  
117 for all proceedings as referred to in Articles 12 and 16.

118 **Article 8 – Professional standards**

119 Persons subject to involuntary measures shall receive care delivered in accordance with  
120 professional obligations and standards by staff having the requisite competence and experience.

121 **Article 9 – Appropriate environment**

122 Parties to this Protocol shall take measures to ensure that any involuntary placement and any  
123 involuntary treatment take place in an appropriate environment.

124 **Chapter IV – Criteria for involuntary placement and for involuntary treatment**

125 **Article 10 – Criteria for involuntary placement**

126 Involuntary placement of a person with a mental disorder may only be used if the following criteria  
127 are met:

- 128 i. a) the person’s mental health condition represents a significant risk of serious harm to his or  
129 her health and his or her ability to decide on placement is severely impaired or
- 130 b) the person’s mental health condition represents a significant risk of serious harm to others;
- 131 ii. the placement has a therapeutic purpose; and
- 132 iii. any voluntary measure is insufficient to address the risk(s) referred to in paragraph i).

133 **Article 11 – Criteria for involuntary treatment**

134 Involuntary treatment of a person with a mental disorder may only be used if the following criteria  
135 are met:

- 136 i. a) the person’s mental health condition represents a significant risk of serious harm to his or  
137 her health and his or her ability to decide on treatment is severely impaired or
- 138 b) the person’s mental health condition represents a significant risk of serious harm to others;
- 139 ii. the treatment has a therapeutic purpose; and
- 140 iii. any voluntary measure is insufficient to address the risk(s) referred to in paragraph i).

141 **Chapter V – Procedures concerning involuntary placement and involuntary treatment**

142 **Article 12 – Standard procedures for taking decisions on involuntary placement and on**  
143 **involuntary treatment**

144 1. Involuntary placement and involuntary treatment shall only take place on the basis of an  
145 appropriate examination by at least one physician having the requisite competence and  
146 experience, in accordance with applicable professional obligations and standards.

147 2. The decision to subject a person to involuntary placement or to involuntary treatment shall,  
148 subject to paragraph 3, be taken by a court or another competent body. The court or other  
149 competent body shall:

- 150 i. act on the basis of the medical examination referred to in paragraph 1;
- 151 ii. ensure that the criteria set out in Articles 10 and/or 11, as appropriate to the measure(s)  
152 concerned, are met;
- 153 iii. act in accordance with procedures provided by law based on the principles that the person  
154 concerned shall be heard in person and with the support of his or her person of trust, if any;
- 155 iv. take into account the opinion of the person concerned, and any relevant previously  
156 expressed wishes made by that person; and
- 157 v. consult the representative of the person, if any.

158 3. The law may provide that when a person is subject to involuntary placement the decision to  
159 subject that person to involuntary treatment may be taken by at least two physicians, one of whom  
160 is not involved in the person's care, each having the requisite competence and experience, after  
161 examination of the person concerned, and in accordance with the requirements set out in  
162 paragraph 2 ii, iii, iv and v.

163 4. The decision to subject a person to an involuntary measure shall specify the period of its  
164 validity and shall be documented.

165 5. The law shall specify the maximum period of validity of any decision to subject a person to an  
166 involuntary measure and the arrangements for periodic review.

### 167 **Article 13 – Procedures for taking decisions in emergency situations**

168 1. When there is insufficient time to follow the procedures set out in Article 12 because of the  
169 imminent risk of serious harm, either to the health of the individual concerned, or to others, the  
170 decision to subject a person to involuntary placement and/or to involuntary treatment may be taken  
171 by a competent body, under the following conditions:

172 i. involuntary placement and/or involuntary treatment shall only take place on the basis of a  
173 medical examination appropriate to the measure concerned;

174 ii. the criteria set out in Articles 10 and/or 11, as appropriate to the measure(s) concerned, are  
175 met;

176 iii. paragraph 2 iii, iv and v of Article 12 shall be complied with as far as possible;

177 iv. decisions to subject a person to involuntary placement and/or involuntary treatment shall be  
178 documented.

179 2. The law shall specify the maximum period for which an emergency measure may be applied.

180 3. The duration of the emergency measure shall be as short as possible. It shall neither extend  
181 beyond the emergency situation nor the maximum period under paragraph 2, except where a  
182 procedure under Article 12 has been initiated.

### 183 **Article 14 – Extension of an involuntary measure**

184 The provisions of Article 12 shall also apply to procedures for taking decisions on the extension of  
185 an involuntary measure.

### 186 **Article 15 – Termination of an involuntary measure**

187 1. Involuntary placement or involuntary treatment shall be terminated if any of the criteria set out  
188 in Articles 10 or 11 respectively are no longer met.

189 2. The physician in charge of the person's care shall be responsible for assessing whether any of  
190 the relevant criteria set out in Article 10 in the case of a placement and Article 11 in the case of a  
191 treatment is no longer met.

192 3. The responsible authority shall ensure that the measure's continuing conformity with the legal  
193 requirements is reviewed at regular intervals.

194 4. The physician in charge of the person's care or other health personnel designated by law, and

195 the responsible authority, shall be entitled to take action on the basis of the assessment referred to  
196 in paragraphs 2 and 3, in order to terminate that measure, unless according to law, a court or  
197 another competent body shall be involved in the termination procedure.

## 198 **Article 16 – Appeals and reviews concerning the lawfulness of involuntary measures**

199 1. Parties shall ensure that persons subject to involuntary placement and/or involuntary  
200 treatment, with the support of their person of trust, if any, can effectively exercise the right:

201 i. to appeal to a court against the decision to subject them to the measure, and

202 ii. to request a review by a court that the measure or its continuing application conforms to the  
203 legal requirements.

204 An appeal may also be made and a review requested by the person's representative, if such a  
205 person has been designated.

206 2. Parties shall ensure that any person subject to an involuntary measure can effectively exercise  
207 the right to be heard in person, with the support of his or her person of trust, if any; or through his  
208 or her representative, if such a person has been designated, at such reviews or appeals.

209 3. The person concerned, his or her representative, the person providing legal assistance in the  
210 court proceedings, and, according to law, his or her person of trust shall have access to all the  
211 materials before the court subject to the protection of the confidentiality and safety of others  
212 according to law.

213 4. The court shall deliver its decision promptly.

214 5. In accordance with national law, a procedure to appeal the court's decision referred to in  
215 paragraph 4 shall be in place.

## 216 **Chapter VI – Specific situations**

### 217 **Article 17 – Seclusion and restraint**

218 1. Seclusion and restraint shall only be used to prevent serious imminent harm to the person  
219 concerned or others. Seclusion and restraint shall always take place in an appropriate  
220 environment. In accordance with the principle of proportionality and necessity, seclusion and  
221 restraint shall only be used as a last resort and for a time limited to its strict necessity.

222 2. Any resort to seclusion or restraint shall be expressly ordered by a physician or immediately  
223 brought to the attention of a physician with a view to seeking the latter's approval. The nature of,  
224 reasons for, and duration of, every resort to seclusion or restraint shall be recorded in the person's  
225 medical file as well as specifically registered.

226 3. Persons subject to seclusion or mechanical restraint shall be continuously monitored by an  
227 appropriately trained member of staff.

228 4. Any use of seclusion or restraint may be subject to the complaints procedures provided in  
229 Article 22.



230 **Article 18 – Treatment with the aim of producing irreversible effects**

231 Treatment with the aim of producing irreversible physical effects shall not be used in the context of  
232 involuntary measures.

233 **Chapter VII – Information and communication**

234 **Article 19 – Right to information**

235 1. Appropriate information about their rights in respect to the involuntary measure(s) and of the  
236 remedies open to them shall be promptly given to persons subject to such measures, and to any  
237 person providing them with legal assistance, representative, and person of trust.

238 2. The persons concerned, any representative and any person providing them with legal  
239 assistance, shall be informed regularly and appropriately of the reasons for the measure and the  
240 criteria for its potential extension or termination and shall be provided with copies of all relevant  
241 decisions. The law may provide that the person of trust also receives this information.

242 3. The persons providing the persons concerned with legal assistance, the representative of the  
243 latter and their person of trust shall be informed promptly of any use of seclusion or restraint.

244 **Article 20 – Right to communication**

245 1. In the context of involuntary measures, the persons concerned have the right to communicate  
246 with any person providing them with legal assistance, representative, or official body charged with  
247 the protection of the rights of persons subject to involuntary measures, without restriction.

248 2. The persons concerned also have the right to communicate with their persons of trust and  
249 other persons and bodies than those referred to in paragraph 1. This right may only be restricted to  
250 the extent that is necessary to protect the health and personal security of the person concerned or  
251 of others.

252 **Chapter VIII – Record-keeping, complaints procedures and monitoring**

253 **Article 21 – Record-keeping**

254 Comprehensive medical and administrative records shall be maintained for all persons subject to  
255 involuntary placement and/or involuntary treatment. The conditions governing access to and the  
256 period of storage of that information shall be specified by law.

257 **Article 22 – Complaints procedures**

258 Parties shall ensure that persons subject to an involuntary measure, with the support of their  
259 person of trust, if any, as well as any person providing them with legal assistance and their  
260 representative have access to an effective complaints system, both within the responsible authority  
261 and to an independent outside body, regarding issues related to the implementation of involuntary  
262 measures, which are not covered by the procedures provided for in Article 16.

263 **Article 23 – Monitoring**

264 1. Parties shall ensure that compliance with the provisions of this Protocol is subject to  
265 appropriate independent monitoring.

266 2. Facilities designed for the involuntary placement of persons with mental disorder shall be  
267 registered with an appropriate authority.

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