



COMMISSIONER FOR HUMAN RIGHTS  
COMMISSAIRE AUX DROITS DE L'HOMME



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**Third party intervention  
by the Council of Europe Commissioner for Human Rights**

under Article 36, paragraph 3, of the European Convention on Human Rights

**Application No. 43564/17**

María del Mar Caamaño Valle v. Spain

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## Introduction

1. On 4 May 2018, the Council of Europe Commissioner for Human Rights (hereinafter: 'the Commissioner') informed the European Court of Human Rights (hereinafter: 'the Court') of her decision to intervene as a third party in the Court's proceedings, in accordance with Article 36, paragraph 3 of the European Convention on Human Rights (hereinafter: 'the Convention'), and to submit written observations concerning the case of *María del Mar Caamaño Valle v. Spain*. The case concerns the deprivation of the right to vote of a person with intellectual disabilities.
2. According to her mandate, the Commissioner fosters the effective observance of human rights; assists member states in the implementation of Council of Europe human rights instruments, in particular the Convention; identifies possible shortcomings in the law and practice concerning human rights; and provides advice and information regarding the protection of human rights across the region.<sup>1</sup>
3. The protection of the human rights of persons with disabilities has been a priority issue for the Commissioner's Office and has been addressed extensively in the framework of both country monitoring and thematic work. Successive Commissioners have consistently stressed the need to secure the right to vote of persons with disabilities, and in particular persons with intellectual or psychosocial disabilities, on an equal footing with others.
4. This intervention is based on country monitoring conducted on the right to vote of persons with disabilities by the Commissioner's Office in nine countries, including a report published in 2013 following a visit to Spain which analysed the situation in this regard and included recommendations to the Spanish authorities.<sup>2</sup> It also builds on thematic work carried out by the Commissioner's Office over the years.
5. Section I of the present written submission gives an overview of the evolution of international and European standards concerning the right to vote of persons with intellectual and psychosocial disabilities which have been of significance for the Commissioners' work. Section II summarises the thematic and country work conducted on this issue by the Commissioner's Office, including in the context of Spain. Section III contains the Commissioner's observations regarding substantive aspects of the right to vote as it pertains to persons with intellectual and psychosocial disabilities. It is followed by the Commissioner's conclusions.

### **I. The right to vote of persons with intellectual and psychosocial disabilities: overview of the standards and their evolution**

6. The Commissioner observes that the Court's judgment in the case of *Alajos Kiss v. Hungary* of 20 May 2010, in which the Court held that an automatic disenfranchisement of a person placed under partial guardianship violated Article 3 of Protocol 1 to the Convention, is of particular relevance for the present application. She considers that developments in international and European standards since this judgment are of particular interest in that they point to a consensus which continued to emerge, rejecting disenfranchisement of persons with intellectual and psychosocial disabilities well beyond the case where such disenfranchisement is automatic.
7. In the work of the Commissioner regarding the rights of persons with disabilities, reference is consistently made to the UN Convention on the Rights of Persons with Disabilities (hereinafter: "the CRPD") as the international benchmark and legal reference point in all matters pertaining to disability. This instrument is the most advanced document protecting the rights of persons with disabilities, in large part thanks to the involvement of the representative organisations of persons with disabilities in its negotiation, and represents the culmination of decades of

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<sup>1</sup> [Resolution \(99\)50](#) on the Council of Europe Commissioner for Human Rights, adopted by the Committee of Ministers on 7 May 1999.

<sup>2</sup> [Report](#) by Nils Muižnieks, Commissioner for Human Rights, following his visit to Spain from 3 to 7 June 2013, CommDH(2013)18, 9 October 2013.

advocacy by persons with disabilities. This convention embodies the paradigm shift in attitudes and approaches to persons with disabilities, without which their rights cannot be effectively protected. It requires a move from the medical model to the social model of disability which entails, among others, viewing persons with disabilities as active subjects with equal rights, capable of taking their own decisions and contributing to societies rather than as objects of charity and medical treatment.

8. Whereas in the legislation of most member states the right to vote of people with intellectual and psychosocial disabilities is intimately tied to the assessment and restriction of their legal capacity, the Commissioner observes that the CRPD distinguishes between these two issues. While legal capacity is dealt with under Article 12 of the CRPD, Article 29 enshrines the right and opportunity to vote of persons with disabilities on an equal basis with others. On numerous occasions, including in its concluding observations regarding Spain in which it requested Spain to amend Article 3 of Organic Act 5/1985 at the origin of the present application,<sup>3</sup> the UN Committee on the Rights of Persons with Disabilities reiterated that Article 29 does not provide for any reasonable restriction or exception for any group of persons with disabilities. In a general comment on Article 12 adopted in 2014, the Committee further held that support in decision-making must not be used as justification for limiting other fundamental rights, “especially the right to vote [...]”.<sup>4</sup>
9. Of particular significance in this connection are the views adopted by the Committee on a communication under the Optional Protocol to the CRPD concerning Hungary in 2013,<sup>5</sup> that “an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability, within the meaning of article 2 of the [CRPD]”. The authors of the communication had notably argued that the Court had not held in *Alajos Kiss v. Hungary* that a system providing for individual assessment complied with the European Convention, leaving open the question of the conformity of such a system with the Convention.
10. This consistent and unambiguous interpretation by the UN Committee on the Rights of Persons with Disabilities seems to have had no negative impact on the will of Council of Europe member states to continue with the ratification of the CRPD: the number of ratifications has steadily increased in recent years and all member states have now become parties, with the exception of Liechtenstein.
11. In addition, there have been explicit manifestations of an evolution within the Council of Europe towards affirming the absolute nature of the right to vote of persons with intellectual and psychosocial disabilities and the inadmissibility of individual assessments of their capacity to vote. Apart from the Commissioner’s Office which affirmed this principle in March 2011 (see under Section II), the positions of the Venice Commission, the Committee of Ministers and the Parliamentary Assembly have evolved significantly over this period towards affirming an unconditional right to vote for persons with intellectual and psychosocial disabilities.
12. The Committee of Ministers Recommendation on the participation of persons with disabilities in political and public life adopted in November 2011 is a crucial text in this respect: it states that “all persons with disabilities, whether they have physical, sensory, or intellectual impairments, mental health problems or chronic illnesses, have the right to vote on the same basis as other citizens, and should not be deprived of this right by any law limiting their legal capacity, by any judicial or other decision or by any other measure based on their disability, cognitive functioning

<sup>3</sup> [Concluding observations](#) of the UN Committee on the Rights of Persons with Disabilities on Spain, CRPD/C/ESP/CO/1, 19 October 2011, paras. 47-48.

<sup>4</sup> UN Committee on the Rights of Persons with Disabilities, [General comment No. 1](#) on Article 12 of the UN CRPD, CRPD/C/GC/1, 19 May 2014. Other rights enumerated in this connection are “the right to marry, or establish a civil partnership, and found a family, reproductive rights, parental rights, the right to give consent for intimate relationships and medical treatment, and the right to liberty”.

<sup>5</sup> [Views](#) on Communication No. 4/2011 submitted by Zsolt Bujdosó, Jánosné Ildikó Márkus, Viktória Márton, Sándor Mészáros, Gergely Polk and János Szabó, adopted by the Committee on the Rights of Persons with Disabilities at its tenth session (2-13 September 2013).

or perceived capacity”.<sup>6</sup> In December of the same year, the Venice Commission revised its interpretative declaration to the Code of good practice in electoral matters on the participation of people with disabilities,<sup>7</sup> removing the reference to the possibility of the deprivation of the right to vote “by an individual decision of a court of law” contained in a previous version of the interpretative declaration.

13. As for the Parliamentary Assembly, it had already called on member states in 2009 to guarantee that people placed under guardianship are not deprived of their fundamental rights, including the right to vote, “and where they need external assistance so as to exercise those rights, that they are afforded appropriate support, without their wishes or intentions being superseded”.<sup>8</sup> More recently in a Resolution adopted in 2017, it explicitly called on states to “delink the right to vote from legal capacity”.<sup>9</sup>
14. In the Commissioner’s opinion these documents clearly show that Council of Europe standards have evolved significantly in the period following the *Alajos Kiss v. Hungary* judgment in order to align themselves with the CRPD, displaying a clear consensus as regards the inviolability of the principle of universal suffrage irrespective of disability or cognitive capacity, including in the presence of individualised judicial decisions. However, the legislation and practice in many member states still need to adapt to this development, as also shown in the country monitoring conducted by the Commissioner’s Office.

## **II. Overview of the Commissioners’ work on the right to vote of persons with intellectual and psychosocial disabilities**

15. In a human rights comment published in March 2011, former Commissioner Thomas Hammarberg directly addressed the issue of the right to vote of persons with disabilities. While hailing the *Alajos Kiss v. Hungary* judgment as a landmark case for the right to vote of persons with intellectual and psychosocial disabilities, he nonetheless added that the CRPD “leaves no room for procedures in which judges or medical practitioners would assess the voting competence of a person and then give a green light - or not. As we do not test that capability for someone without disabilities, this would amount to blatant discrimination”.<sup>10</sup> The human rights comment also underlined that the CRPD placed an obligation on governments to ensure that persons with disabilities receive the assistance they require to exercise their right to vote. It further noted that the experience of Austria, the Netherlands and Sweden had shown that any fears that allowing people with intellectual and psychosocial disabilities to vote would cause real problems were unfounded.
16. The Commissioner’s immediate predecessor, Nils Muižnieks, continued to support this approach and touched upon the issue of the right to vote of persons with disabilities in nine country visits and reports during his mandate.<sup>11</sup> The Commissioner considers that these reports provide a representative sample of the situation in Europe from the point of view of the right to vote of persons with intellectual and psychosocial disabilities, both geographically and in terms of the typology of situations they display.

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<sup>6</sup> Recommendation [CM/Rec\(2011\)14](#) of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life and its Appendix, 16 November 2011.

<sup>7</sup> Revised interpretative declaration to the code of good practice in electoral matters on the participation of people with disabilities in elections, Venice Commission, [CDL-AD\(2011\)045](#), 19 December 2011.

<sup>8</sup> Parliamentary Assembly [Resolution 1642 \(2009\)](#), “Access to rights for people with disabilities and their full and active participation in society”, 26 January 2009.

<sup>9</sup> Parliamentary Assembly [Resolution 2155 \(2017\)](#), “The political rights of persons with disabilities: a democratic issue”, 10 March 2017.

<sup>10</sup> Human rights comment, [“Persons with disabilities must not be denied the right to vote”](#), by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, 22 March 2011.

<sup>11</sup> See the reports on: Lithuania (2017), San Marino (2015), Slovakia (2015), Bulgaria (2015), Hungary (2014), Romania (2014), Czech Republic (2013), Spain (2013) and Austria (2012).

17. These reports show that many countries in Europe still restrict the right to vote of persons with intellectual and psychosocial disabilities, contrary to Article 29 of the CRPD and the relevant Recommendation of the Council of Europe Committee of Ministers. In all these cases, the right to vote was linked in domestic legislation (and sometimes the constitution) to the restriction of legal capacity and placement under guardianship, whether plenary or partial. In many member states the process remained automatic, in direct contradiction with the case-law of the Court. In others, like Spain, the decision was individualised and taken by a judge, but with concerns being expressed about the fairness of such procedures. In member states which guarantee the right to vote for this group, such as Austria, practical problems persisted owing to the inadequacy of the support measures to enable persons to exercise this right in practice.
18. The Commissioner considers the report following the visit to Hungary of particular interest in this context. By the time of this visit, Hungary had changed its Constitution in reaction to the *Alajos Kiss v. Hungary* judgment. The new Constitution provided that every adult had the right to vote, but that a court could remove the right to vote and to be elected from a person “with limited mental ability” through a separate decision from that concerning the placement under guardianship. The Commissioner’s predecessor had nonetheless observed that the UN Committee on the Rights of Persons with Disabilities found this new system to be in breach of Article 29 of the CRPD. He called on the Hungarian authorities “to review their legislation to ensure that all persons with disabilities regardless of their impairment, legal status or place of residence have a right to vote, and that they can participate in political and public life on an equal basis with others in line with Article 29 of the UN CRPD. This implies considering repealing the provisions of the Constitution allowing for a court to deprive a person’s right to vote and to be elected on the basis of a disability”.<sup>12</sup>
19. In the report following his visit to Spain in 2013,<sup>13</sup> the Commissioner’s predecessor raised concerns about the frequent deprivation of the right to vote of persons under guardianship. He was especially concerned by reports indicating that courts often automatically deprived these persons of their right to vote. He noted that, at the time of his visit, an estimated 80 000 persons with disabilities could not vote. He was also informed by the authorities that a bill reforming the legal capacity regime was being prepared in order to ensure the alignment of domestic law and practice with Article 12 CRPD concerning “equal recognition before the law”.
20. The Commissioner notes that since that visit the number of persons deprived of their right to vote reached 98 488 in 2016, and no change has been made in the legislation so far in order to ensure that persons with disabilities are not deprived of their right to vote. She understands, however, that a Bill has been introduced before the Spanish Parliament in September 2017,<sup>14</sup> which would abrogate the relevant provisions of the Organic Act 5/1985 providing for the possibility of such deprivation. This promising development shows that there is a serious on-going debate in Spain, as in a number of other member states, about the need to reform the legal framework on the right to vote of persons with disabilities in the light of the UN CRPD.

### **III. General observations on the right to vote of persons with intellectual and psychosocial disabilities**

21. The following observations are based on the abovementioned standards and the country monitoring experience of the Commissioner’s Office regarding the issue of the right to vote of persons with intellectual and psychosocial disabilities. Firstly, the Commissioner comments in more detail on the emerging international and European consensus on this issue. Secondly, she highlights a number of considerations regarding the discriminatory nature of any procedure which would subject a certain category of citizens to an assessment of their “capacity” as electors. Thirdly, she focuses on the question as to whether any restriction of the right to vote

<sup>12</sup> [Report](#) by Nils Muižnieks, Commissioner for Human Rights, following his visit to Hungary from 1 to 4 July 2014, CommDH(2014)21, 16 December 2014.

<sup>13</sup> Report on the Commissioner’s visit to Spain, *op. cit.*

<sup>14</sup> [Bill](#) 125/000016 for the modification of the Organic Act 5/1985, 8 September 2017.

for persons with intellectual and psychosocial disabilities can be compatible with a legitimate aim. Fourthly, the Commissioner addresses the question of whether and to what extent states have a positive obligation to uphold the right to vote of persons with intellectual and psychosocial disabilities.

#### **A. An emerging consensus on the political rights of persons with disabilities**

22. As per the Court's established case-law considering the Convention as a living instrument, "the Court can and must take into account elements of international law other than the Convention"; the consensus emerging from specialised instruments, such as the CRPD, which has been ratified by all Council of Europe member states but one, may constitute a relevant consideration in this respect by showing, in a precise area, that there is common ground in modern societies.<sup>15</sup> The Commissioner considers that the developments within the UN system and the Council of Europe described in Section I demonstrate a clear evolution in terms of the clarification of the international obligations and a consensus among contracting states in the context of commonly agreed international standards to the effect that the withdrawal of political rights on the basis of a disability, including cognitive impairment and mental health status, is unacceptable even when it results from a judicial decision.
23. While the Commissioner acknowledges that the legislation in most member states has been slow to adapt to these common standards, she considers that this situation must be put into perspective. In the Commissioner's opinion, this lack of resolve to reform the legislation in compliance with international standards is explained by two main factors: Firstly, by linking the question of the right to vote to incapacitation procedures and denying them the support and assistance they require to exercise their legal capacity, most national legislations not only deprive persons with intellectual and psychosocial disabilities of the right to vote, but also severely compromise their possibility to challenge such decisions. Incapacitation seriously limits a person's ability to retain counsel and access courts in order to enforce rights enshrined in national constitutions and/or international instruments. The Commissioner's predecessor had already drawn the attention of the Court to the significant discrepancy between the vast scale of human rights violations suffered by persons with intellectual and psychosocial disabilities and the relatively low number of court cases tackling these violations,<sup>16</sup> a situation contributing to the extreme vulnerability of this group and requiring special attention, including by the Court.
24. Secondly, the Commissioner observes that the disenfranchisement of persons with intellectual and psychosocial disabilities contributes *per se* to the fact that these issues are low on the agenda of elected representatives, and results in a lack of incentives to address the obvious gaps between national legislation and accepted international standards.

#### **B. Deprivation of the right to vote of persons with disabilities as discrimination**

25. The Commissioner understands that in the present case the first-instance judge removed the right to vote of the applicant's daughter considering that she did not have a sufficient understanding of the Spanish political system and electoral process, and that she was easy to influence. Regarding the former point, the medical report on which the decision was based stated that she had gaps in her knowledge of the political process (for example, she knew the name of the King, but not the Queen of Spain; she knew the name of the President of the Government of Spain, but not his political party; she knew the name of the President of Galicia but could not explain what elections were or their frequency, etc.).
26. These are considerations similar to those encountered by the Commissioner's Office in comparable cases. They are a good illustration for the fact that, even when judicial decisions are not a mere formality and are based on a reasoned and detailed determination, they rest on

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<sup>15</sup> *Bayatyan v. Armenia*, App. No. 23459/03, judgment of 7 July 2011, para. 102; *Demir and Baykara v. Turkey*, App. No. 34503/97, judgment of 12 November 2008, para. 86.

<sup>16</sup> Third party intervention by the Council of Europe Commissioner for Human Rights in the case *the Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, [CommDH\(2011\)37](#), 14 October 2011.

an inherently discriminatory and arbitrary duty imposed on the judge by the legislator, irrespective of the care and conscientiousness displayed by the judge in exercising it.

27. In a modern European democracy, it would be unthinkable for citizens past the age of majority (a criterion applied to everyone indiscriminately) to have to prove their knowledge of the political system to be able to vote, for example through questions similar to those put to the applicant's daughter. Neither would voters be expected to justify their vote in any way, including whether it was rational or well-informed, which would go against the core of the obligation enshrined in Article 3 Protocol 1 to the Convention of holding elections by secret ballot. Similarly, voters are not expected to prove that their vote is free from "undue influence". Indeed, it is an accepted part of our democracies that politicians and various interest groups influence and convince many to vote in a certain manner, including sometimes against their objective best interests; and all voters are influenced by other persons' opinions to some extent.
28. The only group whose right to vote is restricted based on considerations such as knowledge of the political system or being easy to influence is persons with intellectual and psychosocial disabilities. In the opinion of the Commissioner, this differential treatment cannot be justified by reference to a legitimate aim (see below) and therefore amounts to discrimination, tarnishing respect for the principle of universal suffrage.

**C. Whether depriving the right to vote of persons with intellectual and psychosocial disabilities can be compatible with a legitimate aim**

29. In the experience of the Commissioner, aims advanced by member states to justify measures limiting the right to vote of persons with disabilities broadly fall into two categories: first, the protection of the society and functioning of democracy, which is pursued by shielding the electoral process from persons who are unable to make informed and conscious decisions (for example the aim put forward by the Hungarian Government in the *Alajos Kiss* case); second, the protection of these persons from harm or malicious influence and prevention of their manipulation for electoral purposes. The rationale behind Article 3 of the Organic Act 5/1985 and its implementation by Spanish courts also appear to be informed by a combination of these two motives. In the opinion of the Commissioner, a closer scrutiny of measures depriving persons from their right to vote by reference to their intellectual or psychosocial disability reveals that such measures serve neither of these aims.
30. Modern democracies value pluralism and diversity, ensured through regular free and fair elections based on the principle of universal suffrage. When a large category of persons, such as the nearly 100 000 persons with intellectual and psychosocial disabilities in Spain, is excluded from this process, be it through individual decisions, this has two negative consequences in addition to the damage caused by the discrimination involved in this exclusion: not only are these persons deprived from any possibility of influencing the political process and the chance of shaping the policies and measures directly affecting their lives, but the society as a whole is deprived of a legislature reflecting its full diversity. Therefore, such measures certainly interfere with the free expression of the opinion of the people in the sense of Article 3 of Protocol 1. They also perpetrate age-old stigmas against persons with intellectual and psychosocial disabilities, which are damaging to the whole society. Voting is also an important symbol of empowerment and inclusion, and can affect the motivation of persons with disabilities to participate in public life and contribute to the societies they live in.
31. As the right to vote is often linked to legal capacity in national legislations, the common reasoning of protection of the person from the adverse consequences of their actions is sometimes extended to the right to vote. While issues relating to legal capacity are beyond the scope of the present submission,<sup>17</sup> it is important to highlight the fact that the right to vote is different from some other rights restricted in incapacitation procedures. The exercise of the right to vote cannot be considered as an act potentially resulting in a direct and causally-linked harm to the person voting or to others, such as a financial act or entering into a contract which

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<sup>17</sup> See Commissioner for Human Rights (2012), [Issue Paper](#) on the right to legal capacity for persons with intellectual and psychosocial disabilities.

creates obligations, especially considering that it is an accepted fact in all democratic systems that voters can be misled, come to regret their choices and change their political preferences in future elections. Naturally, when the person in question needs support and assistance to express their will in the voting process (see below), it could be a legitimate concern to avoid conflicts of interest and electoral manipulation in the provision of this support. The Commissioner stresses, however, that this neither necessitates nor justifies the denial of the core of this right.

32. The Commissioner would also like to stress that available research, while limited, points to the fact that voting patterns and political sentiments of persons with intellectual and psychosocial disabilities reflect those of the society at large, and are more defined by factors such as age, socio-economic conditions or political preferences prevalent around them, rather than their disability.<sup>18</sup> Thus, fears that allowing persons with intellectual and psychosocial disabilities to vote would distort the electoral process and potentially cause harm appear to be grounded more in habit and prejudice than in actual fact, whereas the harm caused to the persons in question and to society is clear and tangible. For the Commissioner, this highlights the fact that measures allowing for this right to be stripped from persons with intellectual and psychosocial disabilities, even when these measures are based on individual judicial decisions, are not compatible with any legitimate aim, and therefore constitute discrimination and have no justification in a modern democracy.

**D. Effectiveness of the right to vote requires accessibility, reasonable accommodation and adequate supports**

33. The effective exercise of the rights of persons with disabilities requires a number of measures to remove or neutralise the barriers they constantly face in their interaction with a non-inclusive society, and the right to vote is no exception. The Commissioner considers that in the context of Article 3 of Protocol 1 to the Convention, “conditions which will ensure the free expression of the opinion of the people” would certainly imply a number of positive obligations with respect to persons with disabilities in general, and intellectual and psychosocial disabilities in particular. These must range from general accessibility measures to individualised assistance and support.
34. In terms of general obligations, Article 29 of the CRPD requires, *inter alia*, that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use; that persons with disabilities are protected from intimidation and are able to vote by secret ballot; and that the use of assistive and new technologies are facilitated where appropriate. The aforementioned Recommendation of the Committee of Ministers also specifies, for example, that “member states should take steps to ensure that information on public affairs and political activities (including electoral programmes) are available in various forms (including sign language, Braille, audio, electronic and easy-to-read and understand versions)” and that political parties, broadcasters and other bodies receiving state subsidies should actively ensure that persons with disabilities have access to information on political debates, campaigns and events.
35. Reasonable accommodation is another relevant consideration. It is defined in the CRPD as the necessary and appropriate modification and adjustments to ensure that persons with disabilities can enjoy their rights on an equal footing with others, while not imposing a disproportionate or undue burden. Reasonable accommodation is an individual right, which must be directly implemented without undue delay. In the context of the right to vote, this could be as simple as the extra time and attention given by the ballot-box committee to explain to a person with intellectual disabilities the voting procedure. In practice, this requires the sensitisation of all

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<sup>18</sup> For persons with intellectual disabilities, see, for example, Annette Kjellberg and Helena Hemmingsson “Citizenship and Voting: Experiences of Persons With Intellectual Disabilities in Sweden”, *Journal of Policy and Practice in Intellectual Disabilities*, 10 December 2013; Ian Hood, (2016) ["It's our Scotland just as much as anyone else's"](#), *Tizard Learning Disability Review*, Vol. 21 Issue: 1; Carli Friedman, ["People with intellectual and developmental disabilities: Reactions to Donald Trump winning the 2016 United States presidential election"](#), *International Journal on Disability and Human Development*, March 2018.



relevant actors to the specific needs of persons with disabilities in the context of elections, as well as the existence and validity of alternative means and modes of communication.

36. Finally, the CRPD and the aforementioned Committee of Ministers Recommendation also specify that persons with disabilities should be allowed assistance in voting by a person of their own choice. As the latter document states, “assistance’ here means helping the person with disabilities to express his or her decision, not taking the decision in his or her place”. For example, such support can consist in explaining the political proposals of different parties which are of relevance to the person voting in a way they would understand, or to help them to express their general preferences in terms of an electoral choice. In the case of persons who need support in exercising their legal capacity, Article 12 of the CRPD provides for effective safeguards to prevent abuse and conflicts of interest. The Commissioner considers that these safeguards would apply, *mutatis mutandis*, to supports provided for the exercise of the right to vote and states can, and indeed should, take reasonable measures to ensure that a ballot cast by a person with intellectual or psychosocial disabilities using such supports indeed reflects that person’s will and preferences.

#### IV. Conclusions

37. A number of member states of the Council of Europe still fail to guarantee the right to vote to persons with disabilities in general, and persons with intellectual and psychosocial disabilities in particular. In the Commissioner’s view, the practice of depriving the right to vote on the basis of an assessment of a person’s cognitive capacity or mental health status, even when such a decision is taken by a judge, amounts to discrimination on the basis of disability. It is an arbitrary measure which thwarts the free expression of the opinion of the people and cannot be justified by reference to any legitimate aim in a modern democracy. Crucially, it also goes against the prevailing international and European standards. The Commissioner considers that it is not the cognitive capacity of a person that should determine whether they should be allowed to vote, but simply their will to do so, on an equal basis with other citizens.
38. The situation in Spain is representative of a far more general pattern still prevailing in Europe. A clarification of the obligations of contracting states with respect to persons with disabilities under Article 3 of Protocol 1 to the Convention at this juncture could have a profound positive impact on on-going debates in many countries, including in Spain, and accelerate the necessary changes. In the opinion of the Commissioner, the full participation of persons with intellectual and psychosocial disabilities in political and public life can start a virtuous circle whereby political parties and policy-makers start paying more attention to the urgent needs of this group and prioritising the implementation of international standards their states have already agreed to.
39. In conclusion, the Commissioner is of the opinion that:
- as regards persons with intellectual and psychosocial disabilities, Article 3 of Protocol 1 of the Convention should be interpreted in the light of Article 29 of the CRPD and other international standards which provide that the right to vote of persons with disabilities should be upheld without exception;
  - the practice of depriving persons with intellectual and psychosocial disabilities of their right to vote on the basis of a judicial decision cannot be considered to be compatible with a legitimate aim in a modern democracy and amounts to discrimination. It has serious negative effects on the persons concerned, on society and on democracy, by interfering with the free expression of the opinion of the people;
  - states should be reminded of their positive obligations to ensure that persons with disabilities, including intellectual and psychosocial disabilities, can effectively exercise their right to vote, through general measures relating to accessibility of electoral procedures, reasonable accommodation, and provision of individual support where necessary.