

Dear speakers and participants of the conference in Cyprus, that will be held on 27-28 March 2017 and devoted to the (new) Council of Europe Disability Strategy 2017-2023  
<http://www.coe.int/en/web/disability/cyprus-conference-march-2017>

We would like to bring to your attention that ENUSP has some serious concerns over the new CoE Disability Strategy 2017-2023, especially regarding the paragraph 3.4 on Equal Recognition before the law (page 13-14), in which it is (wrongfully) stated that :

*(point 63) States are required under the UNCRPD, **as far as possible** to replace substituted decision-making with systems of supported decision-making. **Possible limitations on decision-making should be considered on an individual basis, be proportional and be restricted to the extent to which it is absolutely necessary. Limitations should not take place when less interfering means are sufficient in light of the situation, and accessible and effective legal safeguards must be provided to ensure that such measures are not abused.***

This is not in line with the UN CRPD, and shows that the old paradigm is still present at CoE. Guidelines on article 14 issued by the UN CRPD Committee specifically mention Guideline 20 of the “United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court”, adopted by the Working Group on Arbitrary Detention on 29 April 2015 and repeat that “Support in the exercise of legal capacity must respect the rights, will and preferences of persons with disabilities and should never amount to substituted decision-making”. In its General Comment No. 1, the UN CRPD Committee has clarified that States parties should refrain from the practice of denying legal capacity of persons with disabilities. The UN CRPD Committee clarifies several times that denying legal capacity violates article 12 of the UN CRPD, including Guidelines on article 14, para.10: “Involuntary commitment in mental health facilities carries with it the denial of the person’s legal capacity to decide about care, treatment, and admission to a hospital or institution, and therefore violates article 12 in conjunction with article 14.”

As you probably know: Several Council of Europe-standards run contrary to the UN CRPD, and need to be revised. (For more info, you can see the ENUSP shadow report on the EU here: [http://enusp.org/wp-content/uploads/2016/03/EU\\_Shadowreport-ENUSP\\_final\\_submission.pdf](http://enusp.org/wp-content/uploads/2016/03/EU_Shadowreport-ENUSP_final_submission.pdf) and the excerpt below). ENUSP has also addressed the need for a paradigm change at CoE in the public consultation of the CoE Disability Strategy 2017-2023, a summary is available via Youtube: <https://www.youtube.com/watch?v=UIJpFjLbuqI> .

ENUSP thinks that the revision is needed of paragraph 3.4 on Equal Recognition before the law (page 13-14). In addition, there are a number of concrete actions which CoE needs to take for implementing the CRPD, including updating/withdrawing their own guidances and optional protocols, and replacing them with new standards.

ENUSP is not in a position to participate in the conference in Cyprus, yet we do hope that attention will be brought to the problematic paragraph 3.4 on legal capacity.

Therefore, we would kindly like to ask you, if you could possibly address the need for revision of paragraph 3.4 in the meeting. You may refer to ENUSP position.  
In case you would like to have more information, feel free to contact ENUSP.

Best wishes  
ENUSP

Excerpts on CoE from ENUSP shadow report:

Since 1950, the stigmatizing language in this main European treaty (ECHR, art 5.1.e) has laid the basis for a larger sequence of discriminatory policies and practices across the EU, which has been largely implemented in **EU Member States' legislation**.

Also several independent (non-EU) European mechanisms, such as the **European Court on Human Rights (ECtHR)**, the **Committee on the Prevention of Torture (CPT)**, and the **Council of Europe-Convention on Human Rights and Biomedicine (Oviedo Convention)** use, prescribe and enhance these stigmatizing standards that run contrary to the CRPD, and allow for substitute decision making and non-consensual interventions, including acts that amount to torture and ill-treatment on persons with psychosocial disabilities ["mental disorder"].

The discrimination against persons with psychosocial disabilities in EU is widely embedded in practice, legislation, policy, courts and culture throughout the EU, and results in gross and systematic violations of human rights, and additionally prevents access to justice.

Up to today, several developments at the Council of Europe still promote substitute decision-making, forced institutionalization and forced treatments, such as the ***Draft Additional Protocol to the Oviedo Convention*<sup>1</sup>(June 2015)** , which is allowing for forced institutionalization and forced treatments embedded by "safeguards", and runs contrary to the CRPD.

**EU Member States face conflicting obligations between the implementation of the UN CRPD on the one hand, and on the other hand, the still existing standards embedded in several binding Council of Europe Conventions and related jurisprudence by independent (non-EU) mechanisms.**

Recommendation:

**→ ensure that the CRPD standards supersede the outdated Council of Europe standards at conflicting articles, - and either ensure harmonization of the Council of Europe-mechanisms with the CRPD, - or develop a legally binding declaration or a Code of Conduct with regards to the conflicting parts of the Council of Europe-mechanisms, such as on art 5.1.e of the European Convention on Human Rights, the Oviedo Convention (and the Draft Additional Protocol), and the independent (non-EU) European mechanisms which monitor and enforce human rights of people with psychosocial disabilities in EU Member States, such as the European Court on Human Rights (ECtHR) and the Committee on the Prevention of Torture (CPT), to ensure that within Europe, CRPD standards supersede any conflicting standard.**

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<sup>1</sup>In June 2015, the Council of Europe's Committee on Bioethics (DH-BIO) launched a public consultation on the ***Draft Additional Protocol to the Convention on Human Rights and Biomedicine (Oviedo Convention) concerning the protection of human rights and dignity of persons with mental disorders with regard to involuntary placement and involuntary treatment*** (ref: DH-BIO/INF (2015) 7, [www.coe.int/bioethics](http://www.coe.int/bioethics) )