



European Network of (Ex-) Users and Survivors of Psychiatry

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Secretary of the Committee on Bioethics (DH-BIO)
v/Laurence Lwoff
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Subject: Public consultation on the Draft Additional Protocol to the Oviedo Convention on Human Rights and Biomedicine concerning the protection of human rights and dignity of persons with mental disorder with regard to involuntary placement and involuntary treatment

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To the members of the Committee on Bioethics,

The **European Network of (Ex-) Users and Survivors of Psychiatry (ENUSP)**¹ is the grassroots, independent representative organisation of mental health service users, ex-users and survivors of psychiatry at the European level.

The European Network of (Ex-) Users and Survivors of Psychiatry (ENUSP) takes this opportunity to once again provide our comments and state our position with regard to the draft Additional Protocol concerning the protection of human rights and dignity of persons with mental disorder with regard to involuntary placement and involuntary treatment.

During the previous consultations we repeatedly stated that the draft Additional Protocol is not compatible with the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD) and the mere title of the document is enough to discard it as discriminatory in nature and regressive. Our opinion is that the Protocol has only one aim: overriding the standards of the UN CRPD and legitimising the existing status quo in psychiatry.

As (ex-)users and survivors of psychiatry we have experienced ourselves the effect of the legislative provisions similar to those described in the Additional Protocol and we firmly state that it in no way can protect us from harm or ensure our dignity, and that on the contrary, makes this whole range of human rights violations legitimate.

We would like to ask a question: what is the use of all of the available lawyers, complaints systems, court procedures and monitoring if these mechanisms are subject to this legislation legitimising human rights violations? Our members have experience in monitoring psychiatric institutions, including as NPM experts, and we must say that when restraints, isolation and forced treatment are legitimate, we simply cannot help people locked up in institutions without their consent by our reports. But at least we can point out that according to the UN CRPD, these practices constitute human rights violations and that we therefore recommend reforms in line with the UN CRPD. With the potential adoption of the Additional Protocol, Governments would have a formal excuse not to implement the significant reforms required, thus allowing serious human rights violations against persons with psychosocial disabilities to continue and generating conflicts between different legal systems governing human rights throughout the world.

¹ www.enusp.org



The Draft Additional Protocol manages to legitimise almost every form of currently recognized human rights violations in psychiatry, starting with seclusion, restraints and forced treatment and very surprisingly, finishing with less common and easily avoidable violations, including:

- Denial of communication with the person of trust (Article 16)
- Denial of information, including about the decision of the court (Article 19)
- Denial of the right to call people, if the calls are considered “unpleasant” for the family members or acquaintances (paragraph 125).

The reasoning behind these restrictions clearly demonstrates the existing biomedical and highly stigmatizing approach to mental health care. Paragraph 125 of the Additional Protocol, justifying restrictions on phone calls, says: “It is not reasonable to expect the family to unplug their landline in order not to receive calls from the person concerned.” We have a question here, is it not reasonable to try and communicate with relatives and friends when you are in trouble or distress? This is the most logical response under the circumstances, however, the truth is that carers and acquaintances fail to speak with the person concerned openly, due to stigma, fear, belief that he/she will not understand, etc. Many family members are actually responsible for provoking the mental crisis of the person concerned and some of them may be interested in keeping the person in the institution to freely use their property, including living space. Instead of studying the situation and offering support interventions, such as Open Dialogue or Family Counselling, psychiatrists, thanks to the Additional protocol, would be able to simply deny the person the right to call anyone, because you can put any number of reasons under the subjective assessment of what is “unreasonable”.

The other two examples mentioned above regarding the denial of communication with the person of trust and denial of information are also formally subject to restrictions (Article 19 and Article 16 of the Draft Additional Protocol). However, as stated previously, the reasons for such restrictions are not specified, so this could be anything, including the possibility of deterioration of mental health, which is so widely and so universally used as an excuse. Additionally, reasons given as examples (suspicion of the possibility of drug trafficking) are truly surprising and fall under the authority of the police and criminal courts rather than the competence of medical professionals.

Therefore, overall the Draft Additional Protocol would reinforce the role of psychiatry as a security guard of society and would give psychiatrists the right to decide and interfere in such spheres that normally require court decisions and solid proof.

We would like to state that, if adopted, the Protocol will be in contradiction with the UN CRPD and will generate major criticism and protests from the people concerned, their representative organizations and civil society. Ratification of the UN CRPD by the EU and States Parties and the obligation to uphold the highest standard in case of a conflict of standards will mean that the Protocol legally will not override the UN CRPD. However, it is likely to serve as a formal excuse for maintaining the existing status quo in psychiatry and make the work of human rights defenders even more difficult.



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Therefore, we again strongly encourage the Committee on Bioethics to withdraw the draft Protocol and initiate a process of aligning the Oviedo convention Articles 6 and 7 with the CRPD in cooperation with the Steering Committee for Human Rights (CDDH) and other relevant CoE bodies, and with the meaningful consultation and involvement of disabled persons' organizations (DPOs).

On behalf of the ENUSP Board

Olga Kalina

Chair