

Statement of the Committee on the Rights of Persons with Disabilities: time for the Council of Europe to withdraw the draft Additional Protocol to the Convention for “the Protection of Human Rights and Dignity of the Human Being regarding the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (ETS No 164)” .

15 January 2026

The Committee on the Rights of Persons with Disabilities has been calling repeatedly upon the Council of Europe to move towards the end of the use of any form of coercion in the provision of mental health policies and services for persons with disabilities. It has strongly recommended that the Council withdraw the draft Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being regarding the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (ETS No 164).¹

In February 2025 the Council of Europe’s Committee of Ministers requested an Opinion on the draft Additional Protocol from the Council’s Parliamentary Assembly (PACE). The drafting of the Opinion was assigned to the PACE’s Committee on Social Affairs, Health and Sustainable Development (SOC). The Committee addressed the PACE’s SOC on this matter during a hearing called by the SOC in April 2025 and again by a letter in late 2025 (the text of the letter is included as an annex of this statement). The Committee on Social Affairs, Health and Sustainable Development at its meeting of 4 December 2025 unanimously decided to reject the Additional Protocol. The SOC further reiterated “that the Council of Europe, as the leading regional human rights organization, must fully integrate the paradigm initiated by the CRPD shift into its work.”

The CRPD Committee welcomes this decision and calls upon the Parliamentary Assembly of the Council of Europe (PACE) to confirm its previous recommendations rejecting the draft Optional Protocol, at its debate on the 28th of January 2026. The Committee urges that if any amendments are considered that these fully align with the Convention on the Rights of Persons with Disabilities.

¹ 21 September 2018, Statement by the Committee on the Rights of Persons with Disabilities calling States parties to oppose the draft Additional Protocol to the Oviedo Convention

<https://www.ohchr.org/en/treaty-bodies/crpd/statements-declarations-and-observations>

June 2021, Open letter of the Committee on the Rights of Persons with Disabilities and the UN Special Rapporteur on the Rights of Persons with Disabilities

<https://www.ohchr.org/en/treaty-bodies/crpd/statements-declarations-and-observations>

15 January 2025, Open Letter of the Committee on the Rights of Persons with Disabilities, in which the Committee also reiterates its June 2021 statement.

<https://www.ohchr.org/en/treaty-bodies/crpd/statements-declarations-and-observations>

Annex.

Letter of the Committee to the members of the PACE Committee on Social Affairs, Health and Sustainable Development

Distinguished members of PACE-SOC,

The United Nations Committee on the Rights of Persons with Disabilities (hereinafter referred to as the Committee), following the hearing held on April 8, 2025, on the “Draft Additional Protocol to the Convention on Human Rights and Biomedicine concerning the protection of the rights and dignity of persons with disabilities in relation to involuntary detention and treatment in mental health services” (hereinafter referred to as the “draft Additional Protocol”), at which the Committee was represented by one member, wishes to reiterate some points mentioned in the Committee's intervention and address additional issues.

The Committee is the international monitoring body for the United Nations Convention on the Rights of Persons with Disabilities (hereinafter referred to as the Convention), the first international human rights treaty of the 21st century, which has been ratified by 193 United Nations member States (including all member States of the Council of Europe) and one regional integration organization, the European Union. The Committee is the only body empowered to interpret the Convention.

The Committee notes that the draft Additional Protocol, which purports to protect the rights of all persons with “mental disorders” with regard to the use of involuntary detention and involuntary treatment, is in flagrant violation of the human rights of persons with disabilities recognized by the Convention. It is in particular in open contradiction with Article 5 on equality and non-discrimination, Article 12 on the right to equal recognition before the law, Article 14 on the right to liberty and security, Article 15 on freedom from torture and cruel, inhuman or degrading treatment, Article 16 on freedom from exploitation, violence and abuse, Article 17 on the right to physical and mental integrity, Article 19 on the right of persons with disabilities to live independently and participate in community life, and Article 25 on the right to health.

The Committee recalls PACE's long-standing call to “fully integrate into its work the paradigm shift initiated by the CRPD” and to “ensure that all Council of Europe guidelines are fully in line with the CRPD, the guidelines of the United Nations and its bodies, and widely accepted best practices.” It therefore refrains from “endorsing or adopting draft legal texts that hinder the successful and meaningful deinstitutionalization and abolition of coercive practices in mental health settings and that are contrary to the spirit and letter of the CRPD, such as the draft Additional Protocol to the Oviedo Convention.”¹

The Committee recalls that it has addressed the Council of Europe on several occasions since work began on the draft Additional Protocol, first in the public consultation in 2015, then with statements in 2018 and 2021, and again in January 2025.² Throughout the drafting and review process, the Committee has pointed out how the draft Additional Protocol conflicts with the human rights of persons with disabilities recognized by the Convention and the need to withdraw the draft Additional Protocol.

Respect for the rights to autonomy of persons with disabilities is fundamental to the contemporary approach adopted by the Convention. This requires respect for their own decisions, shaped by individual will and preferences, and the promotion of personal autonomy through supported



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decision-making. It requires new models of mental health policies and practices that embrace non-coercion, personal choice, community living, and peer participation.

Non-discrimination as a principle and right must be a central feature of any human rights instrument. The Convention enshrines the rights of persons with disabilities and details how they must be respected on an equal basis with others. It also outlines the measures that States Parties must take to ensure the enjoyment of those rights by persons with disabilities. The Committee would like to remind the incompatibility of the Additional Protocol with these obligations for States Parties that are also members of the Council of Europe. Given the historical marginalization of persons with disabilities, it was necessary to articulate these rights and make it clear that restrictions or denials based on disability constitute human rights violations.

Non-discrimination, which is also included in Article 3 as a general principle, applies to the enjoyment and exercise of all rights, including: the right to liberty and security of person, equal recognition before the law, freedom from torture and cruel, inhuman, and degrading treatment or punishment, protection of personal integrity, the right to live independently and be included in the community, and the right to health. Regardless of intent, any distinction, exclusion, or restriction based on disability that has the purpose or effect of impairing the enjoyment or exercise of rights on an equal basis with others constitutes discrimination.

As the most recent international human rights treaty focusing on the rights of persons with disabilities, the Convention is the most authoritative instrument to guide the formulation of standards, laws, or guidelines relating to the rights of persons with disabilities, including persons with intellectual disabilities and persons with psychosocial disabilities, and fully covers the personal and material scope of application of the draft Additional Protocol.

The draft Additional Protocol ignores both the letter and the spirit of the Convention. Although explicit reference is made to the Convention in the preamble to the draft Additional Protocol, the provisions are insufficient or conflict with the human rights standards for persons with disabilities enshrined in the Convention and developed by the Committee on the Rights of Persons with Disabilities. This has also been raised by the Office of the United Nations High Commissioner for Human Rights – Regional Office for Europe⁷ and by the United Nations Special Rapporteur on Torture.

Similarly, the statement made and adopted on the 7th of November 2011 by the Bioethics Steering Committee (CDBI) "on the United Nations Convention on the Rights of Persons with Disabilities,"⁸ which appears to declare the compatibility between the draft Additional Protocol and the Convention, contradicts the Convention and the jurisprudence of the CRPD Committee. We hereby underscore that the draft Additional Protocol is fundamentally incompatible with the Convention, and in contradiction to this we note repeated assertions to the contrary by the CDBI since 2011. Further, the Committee on the Rights of Persons with Disabilities reiterate that it is the only body that has the competences and expertise to interpret the scope of the Convention.

However, this statement by the Bioethics Committee, of compatibility between the draft Additional Protocol and the Convention, was used by that committee throughout the drafting process to justify its position in formulating the draft Additional Protocol and remains published on its website (now CDBIO) on mental health care. It is particularly troubling that the CDBIO has continued to claim compatibility while the CRPD Committee since 2015 has pointed out that the drafted additional Protocol in the whole is contrary to the spirit and letter of the CRPD. The concern and position of the CRPD Committee has been backed by the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Human Rights – Regional Office for Europe and the UN Special Rapporteur on Torture, the UN Special Rapporteur on the Rights of Persons with



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Disabilities, the UN Special Rapporteur on the right to physical and mental health, the Special Envoy of the UN Secretary General on Disability and Accessibility, and the Council of Europe's Commissioner for Human Rights.

The draft Additional Protocol aims to protect the dignity, respect for the integrity, and fundamental rights and freedoms of "all persons with mental disorders." However, there is a marked disparity between this and the overall objective of the text, which is *involuntary* detention and *involuntary* treatment of "persons with mental disorders."³ By its very nature as "involuntary," the draft Additional Protocol does not take into account individual dignity and integrity, contrary to the Convention. The draft Additional Protocol justifies these practices on the basis of treatment and therapeutic purpose (defined as "the rehabilitation and cure of a mental disorder") or protection against harm to oneself or others. This approach continues to defend and maintain the medical model of disability, which considers that disability resides in the individual and therefore makes them the object of treatment, allowing their decisions and opinions to be disregarded and replaced on the basis of a medical opinion. Additionally, it fails to refer to the obligation of States Parties under the Convention to provide necessary supports, including legal advice for decision-making and independent living with community inclusion.

The Committee wishes to emphasize that the involuntary placement or institutionalization of all persons with disabilities, and in particular of persons with intellectual or psychosocial disabilities, including persons with "mental disorders," is prohibited under international law by article 14 of the Convention and its guidelines and constitutes an arbitrary and discriminatory deprivation of the liberty of persons with disabilities, as it is carried out on the basis of an actual or perceived disability.

The involuntary placement of persons with disabilities in institutions for health reasons contradicts the absolute prohibition of deprivation of liberty on the basis of disability (Article 14, paragraph 1, letter b) and the principle of free and informed consent of the person concerned to receive health care (Article 25). Involuntary placement in mental health facilities entails the denial of the person's legal capacity to decide on care, treatment, and admission to a hospital or institution, and also disregards the obligation to obtain prior informed consent and is therefore not in harmony with Article 12 or Articles 14 and 19 of the Convention.

With regard to the criteria of dangerousness, legal systems are already equipped to deal with persons considered dangerous through general criminal law and criminal procedure. However, persons with disabilities are frequently denied equal protection under these laws; as a category, they may be considered dangerous in advance, without any act or cause, and referred to a separate system for treatment, where they generally remain for long periods without due process or guarantee of review of the circumstances (under mental health laws or related provisions of criminal law). The fact that persons with disabilities are subject to an alternative system, distinct from that applicable to the rest of the population and in which the level of protection of rights is lower than that applicable to others in terms of procedural guarantees, fair trial, and deprivation of liberty, violates the right to non-discrimination, access to justice, and the right to liberty, under Articles 5, 13, and 14 of the Convention. Involuntary confinement, whether in hospitals or institutions, also violates the right to live in the community, enshrined in Article 19 of the Convention.

During the Ad Hoc Committee negotiations that led to the adoption of the CRPD, there was extensive discussion on the need to include a qualifier, such as "only" or "exclusively," in the prohibition of deprivation of liberty on the basis of an actual or perceived disability in the draft text of article 14, paragraph 1(b). States opposed this, arguing that it could lead to misinterpretation and allow deprivation of liberty on the basis of an actual or perceived disability in combination with other conditions, such as danger to oneself or others. In addition, the advisability of including a provision on periodic review of

deprivation of liberty in the text of draft article 14, paragraph 2, was discussed. Civil society also opposed the use of qualifiers and the periodic review approach. Consequently, article 14(1)(b) prohibits deprivation of liberty on the basis of an actual or perceived disability, even if additional factors or criteria are used to justify deprivation of liberty. The issue was resolved at the seventh meeting of the Ad Hoc Committee.

Current mental health laws currently justify detention on the grounds of actual or perceived mental disability, or potential danger to oneself or others. While the criteria are intended to be objective and reasonable, in practice they have the effect of discriminating against persons with disabilities, in particular persons with psychosocial disabilities and persons with intellectual disabilities, who are often considered dangerous and in need of treatment or care. These measures are therefore discriminatory and contrary to the prohibition of deprivation of liberty on the basis of disability and the right to liberty on an equal basis with others, as enshrined in Article 14⁴. States have an obligation to replace the use of coercive psychiatry with support in decision-making on health-related matters and alternative service models that respect the will and preferences of the person.

People with intellectual or psychosocial disabilities are often considered dangerous to themselves and others when they do not consent to or resist medical or therapeutic treatment. All persons, including persons with disabilities, have a duty not to cause harm. Legal systems based on the rule of law have criminal and other laws to address breaches of this obligation. Persons with disabilities are often denied equal protection under these laws by being diverted to a different legal regime, in particular through mental health laws. This situation would be perpetuated by the draft Additional Protocol. These laws and procedures often have a lower level of protection of human rights, in particular the right to due process and a fair trial, and are incompatible with Article 13, in conjunction with Article 14, of the Convention.

Furthermore, the Committee wishes to recall that, in order to ensure that medical treatment is in accordance with the right of persons with disabilities to physical and mental integrity, and in accordance with article 15 (freedom from torture or cruel, inhuman or degrading treatment or punishment), Article 17 (protection of the integrity of the person) and Article 25 of the Convention (right to health), States Parties to the Convention have an obligation to require all health and medical professionals (including psychiatric professionals) to obtain the free and informed consent of persons with disabilities prior to any treatment, so that the rights, autonomy, will, and preferences of persons with disabilities are duly respected. States Parties have an obligation not to allow substitute decision-makers to give consent on behalf of persons with disabilities- Guidelines and training on how to do this exist, which is transformative work in progress that will take time to fully implement, such as the WHO document and OHCHR Mental Health, Human Rights and Legislation: Guidance and Practice, and WHO Quality of Rights.

Regarding the criteria in the draft Additional Protocol relating to therapeutic purpose and implicit medical “necessity,” this is another example of a deviation from a rights standard applicable to all persons, on the grounds of disability. While the general rule is the right to free and informed consent, this right has been systematically derogated from when it comes to persons with disabilities who are considered incapable of making decisions or incapable of making decisions in their “best interests.” The general rule allows even mental health measures that are considered vital or in the “best interests” of the person to be rejected on the basis of the person's decision, and treatment imposed against the person's will to be prohibited and punished as a violation of human dignity and the right to physical and mental integrity.

Arguments in favour of treatment for therapeutic purposes or medical necessity based on health grounds cannot and should never prevail over the freedom to consent to or refuse treatment. The right



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to free and informed consent is an inherent element of the right to health. Article 25, dealing with the right to health, of the Convention explicitly stipulates that health care shall be provided on the basis of free and informed consent, without discrimination. The United Nations Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment 14 on the right to the highest attainable standard of health also stress the need to support people making informed choices about their health and proscribes any discrimination on the grounds of mental disability and other prohibited grounds.

The enjoyment of the right to liberty and security of person is fundamental to the implementation of Article 19 on the right to live independently and be included in the community. This Committee has emphasized this link with Article 19; it has expressed concern about the institutionalization of persons with disabilities and the lack of community support services and has recommended the implementation of effective support services and deinstitutionalization strategies in consultation with organizations of persons with disabilities. In addition, it has called for more financial resources to be allocated to ensure adequate community services.

In paragraph 22 of its Guidelines on the right to liberty and security of persons with disabilities (A/72/55), the Committee indicated: “In its general comment No. 1, the Committee stated that States parties must respect and support the legal capacity of persons with disabilities to make decisions at all times, including in emergency and crisis situations. States parties must ensure that support is provided to persons with disabilities, including in emergency and crisis situations, and that accurate and accessible information is provided about service options and that non-medical approaches are made available (para. 42). The Committee also stated that States parties must abolish policies and legislative provisions that allow or perpetrate forced treatment and ensure that decisions relating to a person’s physical or mental integrity can be taken only with the free and informed consent of the persons concerned (para. 42). It also stated that, in conjunction with the right to legal capacity on an equal basis with others, States parties have an obligation not to permit substitute decision makers to provide consent on behalf of persons with disabilities (para. 41). 23. In that general comment, the Committee also called for States parties to ensure that persons with disabilities are not denied the right to exercise their legal capacity on the basis of a third party’s analysis of their “best interests”, and that when after significant efforts have been made it is impracticable to determine a person’s will and preferences, practices associated with “best interests” determinations should be replaced by the standard of “best interpretation of the will and preferences” of the person (para. 21)”.

Furthermore, in paragraph 10 of its Guidelines on deinstitutionalization, including in emergencies (CRPD/C/5), the Committee indicated: “Persons with disabilities experiencing individual crises should never be subjected to institutionalization. Individual crisis should not be treated as a medical problem requiring treatment or as a social problem requiring State intervention, forced medication or forced treatment”.

In this regards the Committee would like to mention and recommend the book by Tina Minkowitz: “Reimagining Crisis Support: Matrix, Roadmap and Policy” whose primary thesis is that crisis support can be reimagined as support for decision-making and maintaining an independent life in the community - as provided for under Articles 12 and 19 of the Convention on the Rights of Persons with Disabilities. It explains that the creation of disability support services for crisis rather than reliance on mental health laws, and pilot projects to evaluate community-based, peer-led crisis support practices should be applied instead of institutionalization, forced medication or forced treatment.

Furthermore, the Committee notes that numerous studies point to the fact that involuntary commitment and coercive measure in most cases cause harm and even can cause death. There are no therapeutic benefits and studies show a lack of clear clinical evidence supporting use of coercion and involuntary institutionalization.



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This can be illustrated by the study⁹ by Marianne Engberg from the Institute of Psychiatric Demography in Denmark, who conducted a nationwide study on mortality and suicide of the entirety of persons receiving psychiatric services in Denmark over two periods of four years in two decades. The results of the study show that “committed patients, in spite of the commitment, constitute a high-risk group for suicide, also in relation to psychiatric patients in general.” And it was concluded that “Consequently, involuntary measures cannot be used as prevention, even if the suicide risk is high.” This is further highlighted by the new nationwide scientific study undertaken by the internationally renowned Swedish research centre the Karolinska Institute, “Suicide after involuntary psychiatric care: a nationwide cohort study in Sweden.” The study was covering the entire population of involuntary committed persons for 2010-2020. Of the 72.275 persons committed, 2.104 died by suicide – well above any other psychiatric services and 55 times the rate of the general population - leading to the conclusion that there is “an excess suicide risk among involuntary psychiatric care patients compared to other clinical populations”.

Finally, the Committee recalls that the 46 member States of the Council of Europe are also parties to the Convention on the Rights of Persons with Disabilities. The Convention is legally binding on the parties that have ratified it.

In conclusion, the Committee wishes to recall that, in accordance with Article 4.1.d) of the Convention, Council of Europe member states must refrain from any act or practice that is inconsistent with the Convention, including the negotiation or adoption of regional standards that do not comply with the human rights approach to disability enshrined in the Convention.

Additionally, and particularly, the Committee reminds the representatives of states that are members of the European Union of the Concluding observations on the combined second and third periodic reports of the European Union issued in September 2024. With this Concluding observation the Committee recommends the EU that on the basis of the Memorandum of Understanding signed by the European Union and the Council of Europe on the 11th of May 2007 and in its capacity as State party to the Convention, urge Member States to withdraw from the Draft Additional Protocol to the Oviedo Convention.

With all this, the Committee urges, then, the PACE and PACE-SOC Committee to be consistent with its long track record in its work to bring about the paradigm shift initiated by the Convention and to oppose texts that contravene the spirit and letter of the CRPD, such as the draft Additional Protocol to the Oviedo Convention.

Consequently, the Committee calls on the States Parties to the United Nations Convention on the Rights of Persons with Disabilities and the PACE to oppose the draft Additional Protocol.

This letter will be made public early in January 2026.

Endnotes:

1 PACE Recommendation 2091 (2016) "Arguments against a Council of Europe legal instrument on involuntary measures in psychiatry," PACE Resolution 2291 (2019) and PACE Recommendation 2158 (2019) of the PACE "Ending coercion in mental health: the need for a human rights-based approach," Resolution 2431 (2022) of the PACE and Recommendation 2227 (2022) of the PACE "Deinstitutionalization of persons with disabilities," and Recommendation 2275 (2024) of the PACE "Ending the detention of 'socially maladjusted' persons."



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2 2018, September 21, Statement by the Committee on the Rights of Persons with Disabilities urging States Parties to oppose the draft Additional Protocol to the Oviedo Convention. <https://www.ohchr.org/en/treaty-bodies/crpd/statements-declarations-and-observations>

2021, June, Open letter from the Committee on the Rights of Persons with Disabilities and the United Nations Special Rapporteur on the rights of persons with disabilities. <https://www.ohchr.org/en/treaty-bodies/crpd/statements-declarations-and-observations>

2025, January 15, Open letter from the Committee on the Rights of Persons with Disabilities, reiterating its statement of June 2021. <https://www.ohchr.org/en/treaty-bodies/crpd/statements-declarations-and-observations>

3 CM(2022)14-add1, January 25, 2022, "Draft Additional Protocol to the Convention on Human Rights and Biomedicine concerning the protection of the rights and dignity of persons in relation to involuntary detention and involuntary treatment in mental health services," Article 2, Scope of application and definitions, paragraph 1.

4 See the Committee's Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities, paragraph 6. See also A/HRC/34/32, paras. 29 to 32.

5 See A/HRC/34/58, paragraph 85, and A/HRC/35/21, paragraph 29.

6 See the Committee's Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities (para. 14); see also A/HRC/34/32, paras. 29–32.

7. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805ab6fe>

8. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804553b0>

Yours sincerely,

A handwritten signature in black ink that reads "mi kim".

Ms. Miyeon Kim

Chair

Committee on the Rights of Persons with Disabilities