

Consultation on the merits of the
"Draft Additional Protocol to the Convention on Human Rights and
Biomedicine on the Protection of the Human Rights and Dignity of
Persons with Mental Disorders in respect of the involuntary
placement and treatment "

I. STATE OF THE LAW.

1. In 2013, the **Bioethics Committee of the Council of Europe** started to develop a new **Additional Protocol to the Convention on Human Rights and Biomedicine** (EIS N ° 164, adopted in 1997, better known as the "**Oviedo Convention**"). This Additional Protocol is a legal instrument designed to protect the human rights and fundamental freedoms of persons with a serious mental disorder who are in a situation of involuntary placement or treatment.

The general observation shows that Article 7 of the Oviedo Convention **is not sufficiently clear**. It leaves a significant legal vacuum when, for a certain time, a person is not able to give consent. This article provides for only one exception to the consent requirement. This exception is taken into account "only when the absence of such treatment may be seriously detrimental to his health". In this situation, according to this article, the person must be "subject to the conditions of protection prescribed by law.

Everyday practice shows that involuntary placement or treatment raises a series of questions for the person concerned, as well as for staff working with them and their family or other caregivers.

2. As a Member of the Conference of INGOs, the European Observatory for Non-Discrimination and Fundamental Rights was asked to give its statement concerning a Draft Additional Protocol.

3. In relation with other Associations and NGOs committed in the Protection and Defence of persons with mental disorder, **the European Observatory for Non-Discrimination and Fundamental Rights has proposed the following amendments.**



II. AMENDMENT PROPOSALS.

We considered that the proposed protection of persons with mental disorder as stated in the Draft Additional Protocol was **not sufficient**.

We have advocated the following points :

i/ The creation of an independent Public Authority in charge of places of deprivation and fundamental freedoms seems to us essential in every State. In France, it is the General Controller of places of deprivation and liberty. Its mission is **to ensure the fundamental rights and dignity of persons deprived of their liberty** (prisons, psychiatric institutions).

ii/ We have underlined that it was necessary that the **“person of trust”** designated by a person with mental disorder should have no conflict of interests with the concerned person. We have also mentioned that when the person's condition requires involuntary placement, it often means that she is unable to choose and discern a trusted person. Nevertheless we advocate that **the right to choose a person of trust should be given to any person with mental health disorder**.

iii/ Alternative measure to involuntary placement and treatment should be more promoted than they are mentioned in the Draft Additional Protocol. Indeed involuntary placement and treatment should remain an exception as they are always an additional trauma for the person concerned. We should always bear in mind that persons with mental disorder are vulnerable people.

iv/ We also support that seclusion and restraint should never be considered as a therapeutic treatment but **as a medical decision**. Alternative measures should also be promoted as far as possible. Psychiatric interveners (physicians, health care providers, nurses...) should receive **a good training** concerning the management of violence to avoid the use of seclusion and restraint.

On the basis of our reflection above, we have proposed two following amendments :

Article 2 - Definitions "Trusted person" means a person who has been chosen and expressly designated as such by a person with a mental disorder (...): add : *" and who does not have a conflict of interest with the patient "*.

Article 23 - Add a 3rd paragraph as follows: *"3. The law designates an independent public control authority, in charge of places of deprivation and freedoms. This public authority is in particular responsible for controlling the care provided to patients and is authorized to provide the necessary recommendations to the appropriate authority, and to the institutions concerned, to guarantee the dignity of patients. A representative of this public authority may speak at any time in private with patients who have undergone an involuntary measure"*.