**Statement by Torsten Hjelmar**

**Citizens Commission on Human Rights Europe**

**for**

**Consultation on mental health and human rights**

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Dear Excellencies, friends, and colleagues,

We have advantages and challenges in Europe when advocating for human rights in mental health as evident from years of experience in 18 European countries of advocating for and dealing with various stakeholders, from legislators, central administration officials and experts to mental health care system representatives and other decisionmakers.

I believe we are all painfully aware of and faced with challenges such as stigma and factor related to omission on implementing the Social Determinants of health as well as a psychiatric system that still and largely unchanged too often relies on inhumane and outdated practices such as coercion and the biomedical model.

One of the most important and yet widely unrecognized factors when discussing policy measures in Europe and the need for the realization of the human rights of persons with psychosocial disabilities and users of mental health services is a belief that what is done is necessary in some cases and compliant with human rights.

For more than a decade we have had discussions within the Council of Europe related to regulations on the protection of mental health service users during the application of coercive measures in psychiatry. The UN Committee on the Rights of Persons with Disabilities, the Special procedures and other UN experts repeatedly have addressed this paradox of the Council of Europe from 2015 up to present time.

The final decision on a possible additional protocol to a Council of Europe treaty, the Convention on Human Rights and Biomedicine (Oviedo convention), dealing with the regulations on the protective measures during use of coercive measures – the outcome of work done by the Committee on Bioethics of the Council of Europe – is expected in 2025.

What has not attracted much attention is the underlying reason why this work seemingly with the support of many biomedical experts and jurists have been progressing for years with virtually no response up to end of 2021. Since then, there has been an opening with a stronger interest in voluntary measures, however the decision on the use of involuntary measures is not completed yet.

The reason is a **double set of standards of human rights**.

This has led to a general problem to even understanding or accepting the paradigm shift laid out by the international human rights, most clearly established through the CRPD and its relevant General Comments and texts.

The reference works for the possible additional protocol to the Council of Europe biomedical convention that the Committee on Bioethics work on is Article 7 of the Convention on Human Rights and Biomedicine, which in turn is an elaboration of Article 5 § 1 (e) of the European Convention on Human Rights.

The European Convention on Human Rights was drafted in 1949 and 1950. In its section on the right to liberty and security of person, Article 5 § 1 (e), it notes an exception of “persons of unsound mind, alcoholics or drug addicts or vagrants.” The singling out of persons considered affected by such social or personal realities, or differences in viewpoints has its roots in widespread discriminatory viewpoints of the first part of the 1900s.

The exception was formulated [by representative of the United Kingdom, Denmark and Sweden,](https://www.europeantimes.news/2021/10/the-european-convention-on-human-rights-designed-to-authorize-eugenics-caused-legislation/) led by the British. It was based on a concern that the then drafted human rights texts sought to implement Universal human rights including for persons having some behavioral or mental health problems (psychosocial disabilities), which conflicted with legislation and social policy in place in these countries. Both the British, Denmark and Sweden were strong proponent of eugenics at the time, and had implemented such principles and viewpoints in to legislation and practice.

The targeting of persons with “unsound mind” was driven by the British, that had adopted legislation in 1890 and further specified with the Mental Deficiency Act of 1913, that establishing the means to segregate “mental defectives” in asylums. In both Denmark and Sweden had eugenic laws been enacted during the 1930s, in Denmark specifically authorizing the deprivations of liberty of non-dangerous persons who simply refuse the proposed service in psychiatry.

It is in the light of the widespread acceptance of eugenics as an integral part of the social policy for population control at the time that one has to view the efforts of the representatives of the United Kingdom, Denmark and Sweden in the European Convention of Human Rights drafting process pushing for government authorization to segregate and lock up and remove from society “persons of unsound mind, alcoholic or drug addicts and vagrants”.

“*In the same manner as the Oviedo Convention, it must be acknowledged that the European Convention on Human Rights (ECHR) is an instrument which dates from 1950 and the text of the ECHR reflects a neglect and outdated approach concerning the rights of persons with disabilities. Moreover, in matters concerning mental health detention, the 1950 text explicitly permits deprivation of liberty on the basis of ‘unsound mind’ (Article 5(1)(e)). Even though the ECHR is considered to be a ‘living instrument…which must be interpreted in the light of present day conditions’*.”

– Ms. Catalina Devandas-Aguilar, UN Special Rapporteur on the rights of persons with disabilities

The underlying viewpoint of the additional protocol to the Convention on Human Rights and Biomedicine thus – despite its seeming intend of protecting human rights – in reality is perpetuating a discriminatory policy tainted by eugenic principles, despite the actual words used. It is not promoting human rights; in fact, it contradicts the absolute ban on deprivation of liberty on the basis of impairments as laid out by the United Nations Committee on the Rights of Persons with Disabilities.

The Committee on Bioethics of the Council of Europe in the initial phase of discussing the need for an additional protocol regulating the use of coercion in psychiatry as a result of the exchange of views within the Committee itself adopted a [*Statement on the United Nations Convention on the Rights of Persons with Disabilities*](https://rm.coe.int/inf-2011-10-statement-un-conv-en/16804553b0) in November 2011. The statement while seemingly concerning the CRPD factually only consider the Committee’s own Convention, and its reference work – the European Convention on Human Rights.

The statement lays out that the Committee considered the United Nations Convention on the rights of persons with disabilities, particularly whether articles 14, 15 and 17 were compatible with “the possibility to subject under certain conditions a person who has a mental disorder of a serious nature to involuntary placement or involuntary treatment, **as foreseen in other** national and**international texts**.”

Comparative text on the key point in the statement of the Committee on Bioethics:

Statement on the CRPD: *“Involuntary treatment or placement may only be justified,*

*in connection with****a mental disorder of a serious nature****, if from the****absence of treatment****or placement****serious harm is likely to result to the person’s health****or*

*to a third party.”*

Convention on Human Rights and Biomedicine, Article 7: *“Subject to protective conditions prescribed by law, including supervisory, control and appeal procedures, a person who has****a mental disorder of a serious nature****may be subjected, without his or her consent, to an intervention aimed at treating his or her mental disorder only where,****without such treatment****,****serious harm is likely to result to his or her health****.”*

With this in place the Committee on Bioethics could proceed formulating a new legal instrument, making it appear that it would be in accordance with the international human rights, to which the Council’s member states are bound. The Committee got a new mandate for 2012 and 2013 including the task of preparing a draft legal instrument “concerning the protection of persons with mental disorder with regard to involuntary treatment and placement.” This work will as mentioned likely be decided on in 2025.

The underlying problem, the root text in the European Convention on Human Rights in the last couple of years has been addressed by the Parliamentary Assembly of the Council of Europe. It is however also running in to the same problems. In May 2024 the Assembly however approved a Recommendation 2275 (2024) *Ending the detention of “socially maladjusted” persons*. In the Recommendation it among others is noted that:

“*The right to liberty is one of the most fundamental human rights. It is guaranteed in Article 5 of the European Convention on Human Rights (ETS No. 5, “the Convention”). However, the Convention includes a limitation to the right to liberty specifically on the basis of mental impairment, drug or alcohol use, or not having a fixed abode. The formulation of Article 5.1.e, reportedly stemming from the eugenics movement, states that “persons of unsound mind, alcoholics or drug addicts or vagrants” can be lawfully detained. … The Convention is the only international human rights treaty that excludes these groups from the full enjoyment of the right to liberty. This is problematic, as detaining such vulnerable persons effectively puts them at higher risk of systematic rights violations*.”

The Parliamentary Assembly of the Council of Europe in its May 2024 Recommendation further noted that:

“*The idea of social control – whether of persons with psychosocial disabilities, of persons who use drugs or alcohol or of persons without a fixed abode – is not compatible with our 21st-century understanding of human rights. The Assembly underlines the urgent need for the Council of Europe, as the leading regional human rights organisation, to fully integrate the worldwide paradigm shift to a modern human rights-based approach in its work. The time has come to move away from the discriminatory concept of excluding certain groups from human rights protection.*”

The direct addressing of the European Convention on Human Rights, Article 5 § 1 (e), however was blocked by a few persons within the Council of Europe Assembly based on the same falsehoods and faulty understanding of human rights that we run in to when advocating for the international human rights in mental health. What was agreed upon by the Assembly was to address the secondary effects caused by the exemption of covering persons with psychosocial disabilities under the European human rights as per the ECHR.

It is hoped that this consultation will consider this major challenge to the implementation of enabling normative and policy measures in Europe. An understanding of this problem and a direct challenge of it is needed on all levels. The continued support of the United Nations human rights mechanism, the WHO and others with statements and other material and possible expert appearances is very important for the legislators of the Parliamentary Assembly of the Council of Europe. And for all human rights defenders working on these issues in Europe.

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