

SECRETARIAT GENERAL

DIRECTORATE GENERAL
HUMAN RIGHTS AND RULE OF LAW

HUMAN RIGHTS DIRECTORATE
BIOETHICS DEPARTMENT

Please quote: DG1/BIO/

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 16 December 2013

Dear Madam/Sir,

The Committee on Bioethics (DH-BIO) has started work, with the assistance of a Drafting Group, on the preparation of a draft Additional Protocol to the Convention on Human Rights and Biomedicine, concerning the protection of the human rights and dignity of persons with mental disorders with regard to involuntary placement and involuntary treatment.

This work is based on the existing provisions of the Convention on Human Rights and Biomedicine (CETS n°164) and of the European Convention on Human Rights (CETS n° 5).

In the context of this preparation, a certain number of issues have been identified on which the Drafting Group wishes to benefit from the views and suggestions of the INGOs representing the different fields concerned.

If your organisation is interested in contributing to the process of reflection on these issues, you are invited to send your comments and suggestions in reply to the attached questions to the following e-mail address: dgl.consultation@coe.int, by 1st February 2014.

A hearing will then be organised on 11 March 2014, at the office of the Council of Europe in Paris. Invitations will be sent to INGOs having replied, taking into account the need for a balanced representation of the different fields concerned.

Yours sincerely,

Secretary of the Committee on Bioethics (DH-BIO)
Directorate of Human Rights
Directorate General I - Human Rights and Rule of Law
Council of Europe
<http://www.coe.int/bioethics>

QUESTIONS

INTRODUCTION

For the purpose of this work, the term “involuntary” refers to a placement or treatment measure applied to a person:

- i. who has the capacity to consent and is refusing the placement or treatment concerned, or
- ii. who does not have the capacity to consent and is objecting to the placement or treatment concerned.

QUESTIONS

Exercise of rights

- Which measures/safeguards should be taken to assist a person with a mental disorder subject to a treatment and/or placement measure in the exercise of his/her rights in particular, right to appeal, right to have the decision of treatment or placement reviewed and right to be heard?
- Who should be able to assist the person concerned? What should be his/her role?

Monitoring

- What measures should be taken to ensure an appropriate monitoring of involuntary placement/treatment?
- Should a distinction be made between treatment and placement in this context?

Emergency situations

- Are there emergency situations justifying involuntary measures without respecting all the conditions and criteria to be fulfilled in non-emergency situations?
- Are there special safeguards to be provided?

Persons not able to consent and not opposing

- Some persons with a mental disorder not having the capacity to consent are considered in need of placement or treatment and are not objecting to the measures considered. This situation is, for example, likely to occur with respect to persons with advanced dementia. Should the protective regime to be considered for such persons be the same as in the case where the person concerned opposes the proposed measure?

Minors

- Are particular safeguards necessary for the protection of minors with serious mental disorders in the context of involuntary measures?

If you wish to highlight additional issues in the context of this discussion on the protection of the human rights and dignity of persons with mental disorders with regard to involuntary treatment and involuntary placement, please indicate them below with a brief explanation of the main concerns.