# Open letter to the Secretary-General of the Council of Europe, the Committee of Ministries of the Council of Europe, the Committee on Bioethics of the Council of Europe, the Steering Committee for Human Rights, the Commissioner of Human Rights , the Parliamentary Assembly of the Council of Europe and other organizations and entities of the Council of Europe.

# Adopted by the Committee on the Rights of Persons with Disabilities and the Special Rapporteur on the Rights of Persons with Dusabilities

June 2021

We write with concern about the Council of Europe’s decision to continue with the process leading to the adoption of the draft Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (ETS No 164) (herein referred as the ‘Additional Protocol to the Oviedo Convention’).

We strongly recommend that the Council of Europe withdraw this decision. We note the 2018 Statement made by the Committee on the Rights of Persons with Disabilities calling on Member States of the Council of Europe to oppose the Additional Protocol to the Oviedo Convention.[[1]](#footnote-1) The Additional Protocol to the Oviedo Convention maintains an approach to mental health policy and practice that is based on coercion, which is incompatible with contemporary human rights principles and standards.

The Convention on the Rights of Persons with Disabilities (CRPD) is a contemporary human rights instrument that was developed to address the denial and diminishment of human rights based on impairment. It reframes human rights standards by addressing the specific situation of people with disability to ensure that they enjoy all human rights and fundamental freedoms on an equal basis with others. Fundamental to this is the rejection of impairment as the basis for any limitations on rights and a focus on the support for the exercise of human rights by people with disability.

Respect for autonomy rights is central to the contemporary approach taken by the CRPD. This requires respect for one’s own choices shaped by individual will and preferences, and the promotion of personal autonomy through supported decision-making. It requires new models of mental health policy and practice that embrace non-coercion, personal choice, community living and peer engagement.

This contemporary approach to human rights is already reflected in international jurisprudence[[2]](#footnote-2) and within authoritative guidance material from the World Health Organisation.[[3]](#footnote-3)

The Council of Europe’s Parliamentary Assembly and the Commissioner of Human Rights have both spoken in opposition to the Additional Protocol to the Oviedo Convention and recommended the development of guidelines and standards to end coercive mental health policy and practice.[[4]](#footnote-4) We strongly urge the Council of Europe to focus its condiderable intellectual and moral authority on developing a Committee of Minsiters Recommendation to its Member States on the need to move away from coercive approaches and to build up a non-coercvice framework.

We also note the consistent judgment of European civil society against the draft Protocol as exemplified in the well known views of the European Disability Forum (EDF).[[5]](#footnote-5) The EDF represents the voices of persons with disabilities throughout Europe and has a right to contribute to matters affecting their lives.

We welcome the decision by the DH-BIO committee to postpone its decision until the Autumn of 2021. However, the matter will come back for decision. Any decision to proceed with the process leading to the adoption of the Additional Protocol to the Oviedo Convention prevents the Council of Europe from adopting a progressive contemporary approach to human rights. It establishes the basis for fragmentation of international law, and if adopted, European Member States would be placed in an invidious position of having to choose between international law and a European regional instrument.

By withdrawing this decision, the Council of Europe has the opportunity to demonstrate leadership in the area of disability rights as it has done over the past 20 years. Working cooperatively to embrace a contemporary human rights approach will ensure there is synergy across regional and international law, and will ensure that people with disability can exercise their human rights.

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1. Committee on the Rights of Persons with Disabilities, <https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/HRBodies/CRPD/Statements/StatementOviedo_CRPD20th.docx&action=default&DefaultItemOpen=1> [↑](#footnote-ref-1)
2. See for example, CRPD General Comment 1, 5, 6; CRPD Guidelines article 14; Reports SR RPD; joint statement by SR on health and disability; [↑](#footnote-ref-2)
3. WHO Core Rights <https://apps.who.int/iris/bitstream/handle/10665/329546/9789241516709-eng.pdf> [↑](#footnote-ref-3)
4. Commissioner for Human Rights, ‘Joint hearing on protecting the rights of people with psychosocial disabilities with regard to involuntary measures in psychiatry’ (Speech, 9 October 2018) <https://rm.coe.int/168008ee5fb>; Parliamentary Assembly, ‘Ending coercion in mental health: the need for a human rights-based approach’, Resolution 2291 (2019), <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=28038&lang=en> [↑](#footnote-ref-4)
5. European Disability Forum, <https://www.withdrawoviedo.info/join> [↑](#footnote-ref-5)