



Strasbourg, 28 May 2018

Confidential
DH-BIO (2017) 17 rev4

COMMITTEE ON BIOETHICS (DH-BIO)

Draft Additional Protocol concerning the protection of human rights and dignity of persons with mental disorder with regard to involuntary placement and involuntary treatment

as revised by the 13th DH-BIO (Strasbourg, 23 – 25 May 2018)

1 **Preamble**

2 The member States of the Council of Europe and the other signatories to this Additional Protocol to
3 the Convention for the Protection of the Human Rights and Dignity of the Human Being with regard
4 to the Application of Biology and Medicine (hereinafter referred to as “the Convention on Human
5 Rights and Biomedicine”, ETS No. 164),

6 Considering that the aim of the Council of Europe is the achievement of greater unity between its
7 members and that one of the methods by which this aim is pursued is the maintenance and further
8 realisation of human rights and fundamental freedoms;

9 Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms of
10 4 November 1950 (European Convention on Human Rights, ETS No.005) and in particular Articles
11 5 and 8 thereof;

12 Taking into account the work carried out at international level on the protection of dignity and rights
13 of persons with mental disorders, in particular the United Nations Convention on the Rights of
14 Persons with Disabilities of 30 March 2007;

15 Considering that the aim of the Convention on Human Rights and Biomedicine, as defined in
16 Article 1, is to protect the dignity and identity of all human beings and guarantee everyone, without
17 discrimination, respect for their integrity and other rights and fundamental freedoms with regard to
18 the application of biology and medicine;

19 Bearing in mind Recommendation Rec 2004 (10) of the Committee of Ministers to member States
20 concerning the protection of the human rights and dignity of persons with mental disorder;

21 Acknowledging the importance of the work of the European Committee for the Prevention of
22 Torture and Inhuman or Degrading Treatment or Punishment (CPT) and of the relevant Standards
23 developed by that Committee;

24 Recognising the potential vulnerability of persons with mental disorder;

25 Considering that placement and treatment of persons with mental disorder form an integral part of
26 the health services offered to the population and recalling the importance of taking appropriate
27 measures, taking into account health needs and available resources, with a view to providing
28 equitable access to mental health services of appropriate quality;

29 Recalling that any intervention in the health field must be carried out in accordance with relevant
30 professional obligations and standards;

31 **Stressing the importance of adequate training of staff working with persons with mental**
32 **disorder;**

33 Emphasising that human dignity requires persons to be supported to exercise their autonomy;

34 Stressing the importance of persons being involved in decisions about their treatment and care;

35 Underlining the importance of the principle of free and informed consent to interventions in the
36 health field;

37 Recalling that the existence of a mental disorder in itself shall in no case justify an involuntary
38 measure;

39 Recognising that restrictions on the rights set out in the Convention on Human Rights and
40 Biomedicine are permissible only if prescribed by law and are necessary in a democratic society in
41 the interests of public safety, crime prevention, protection of public health or the protection of the
42 rights and freedoms of others;

43 Taking into account national and international professional standards in the field of involuntary
44 placement and involuntary treatment of persons with mental disorders and the previous work of the
45 Committee of Ministers and the Parliamentary Assembly of the Council of Europe in this field;

46 Considering that involuntary treatment on a person whose ability to decide on treatment is severely
47 impaired must aim at enabling this person to regain such ability;

48 Emphasising the primary importance of developing alternatives to involuntary measures and the
49 systematic use of alternative measures;

50 Recognising that the use of involuntary placement and involuntary treatment has the potential to
51 endanger human dignity and fundamental rights and freedoms **and must therefore be minimised**
52 **and such measures must therefore only be used as a last resort;**

53 **Stressing the need of ensuring that, if such measures are used, the persons concerned are**
54 **appropriately protected and can effectively exercise their rights;**

55 Stressing the importance of appropriate monitoring of the use of such measures;

56 Resolving to take such measures as are necessary to safeguard human dignity and ensure respect
57 for the fundamental rights and freedoms of persons with mental disorder by clarifying the standards
58 of protection applicable to the use of involuntary placement and of involuntary treatment,

59 Have agreed as follows:

60 **Chapter I – Object and scope**

61 **Article 1 – Object**

62 1. Parties to this Protocol shall protect the dignity and identity of persons with mental disorder
63 and guarantee, without discrimination, respect for their integrity and other rights and fundamental
64 freedoms with regard to involuntary placement and involuntary treatment.

65 2. The provisions of this Protocol do not limit or otherwise affect the possibility for a Party to grant
66 a wider measure of protection than is stipulated in this Protocol.

67 **Article 2 – Scope and definitions**

68 *Scope*

69 1. The provisions of this Protocol apply to involuntary placement and involuntary treatment of
70 persons with mental disorder.

71 2. The provisions of this Protocol do not apply to minors.

72 3. This Protocol does not apply to placement and treatment ordered in the context of a criminal
73 law procedure.

74 *Definitions*

75 4. For the purpose of this Protocol, the term:

76 - “mental disorder” is defined in accordance with internationally accepted medical standards;

77 - “involuntary” refers to a placement or treatment applied to a person with mental disorder who
78 objects to the measure;

79 - “involuntary measure” refers to involuntary placement and/or involuntary treatment;

80 - “placement” refers to placing a person in a specific facility for a particular purpose or
81 purposes;

82 - “treatment” means an intervention (physical or psychological) on a person that has a
83 therapeutic purpose in relation to his or her mental disorder irrespective of where this ~~treatment~~
84 **intervention** takes place;

85 - “therapeutic purpose” refers to controlling symptoms, slowing down the rate of deterioration,
86 rehabilitation and cure of the mental disorder;

87 - “seclusion” refers to the involuntary keeping of a person alone in a room or designated area;

88 - “restraint” refers to the use of physical, mechanical or pharmaceutical means aiming at
89 holding or immobilising a person or controlling his or her movements;

90 - “representative” means a person provided for by law to represent the interests of, and take
91 decisions on behalf of, a person who does not have, according to law, the capacity to consent;

92 - “person of trust” refers to a person chosen and expressly designated as such by the person
93 with mental disorder to assist and support him/her and who has accepted that role;

- “court” refers to a judicial body;
- “competent body” means an authority, or a person or body provided for by law ~~to that can~~ take a decision on an involuntary measure;
- “responsible authority” refers to the authority responsible for the facility in which the patient is placed, or the authority with administrative responsibility for the physicians supervising the patient's medical care.

Chapter II – Alternative measures

Article 3 – Alternative measures

Parties to this Protocol shall undertake to ensure the development and primary use of less restrictive and intrusive measures than involuntary placement and involuntary treatment.

Chapter III – General provisions

Article 4 – Legality

Involuntary measures shall only be applied in conformity with the provisions set out in domestic law, and in accordance with the safeguards established in this Protocol.

Article 5 – Proportionality and necessity

Involuntary measures shall only be used in accordance with the principles of proportionality and necessity. Persons subject to such measures shall be cared for in the least restrictive environment possible and with the least restrictive or intrusive treatment possible, taking into account their health needs and the need to protect other persons from harm.

Article 6 – Person of trust

Persons with mental disorder shall have the right to choose a person of trust.

Article 7 – Legal assistance

1. The person shall have the right to benefit effectively from legal assistance.
2. Subject to the conditions provided for by law, legal assistance shall be provided free of charge for all court proceedings **as referred to in Articles 12 and 16.**

Article 8 – Professional standards

Persons subject to involuntary measures shall receive care delivered in accordance with professional obligations and standards by staff having the requisite competence and experience.

Article 9 – Appropriate environment

Parties to this Protocol shall take measures to ensure that any involuntary placement and any involuntary treatment take place in an appropriate environment.

125 **Chapter IV – Criteria for involuntary placement and for involuntary treatment**

126 **Article 10 – Criteria for involuntary placement**

127 Involuntary placement of a person with a mental disorder may only be used if the following criteria
128 are met:

- 129 i. a) the person's mental health condition represents a significant risk of serious harm to his or
130 her health and his or her ability to decide on placement is severely impaired or
- 131 b) the person's mental health condition represents a significant risk of serious harm to others;
- 132 ii. the placement has a therapeutic purpose; and
- 133 iii. ~~other less restrictive~~ **any voluntary** measures ~~are~~ **is** insufficient to address the risk(s)
134 referred to in paragraph i).

135 **Article 11 – Criteria for involuntary treatment**

136 Involuntary treatment of a person with a mental disorder may only be used if the following criteria
137 are met:

- 138 i. a) the person's mental health condition represents a significant risk of serious harm to his or
139 her health and his or her ability to decide on treatment is severely impaired or
- 140 b) the person's mental health condition represents a significant risk of serious harm to others;
- 141 ii. the treatment has a therapeutic purpose; and
- 142 iii. ~~other less restrictive~~ **any voluntary** measures ~~are~~ **is** insufficient to address the risk(s)
143 referred to in paragraph i).

144 **Chapter V – Procedures concerning involuntary placement and involuntary treatment**

145 **Article 12 – Standard procedures for taking decisions on involuntary placement and on**
146 **involuntary treatment**

147 1. Involuntary placement and involuntary treatment shall only take place on the basis of an
148 appropriate examination by at least one physician having the requisite competence and
149 experience, in accordance with applicable professional obligations and standards.

150 2. The decision to subject a person to involuntary placement or to involuntary treatment shall,
151 subject to paragraph 3, be taken by a court or another competent body. The court or other
152 competent body shall:

- 153 i. act on the basis of the medical examination referred to in paragraph 1;
- 154 ii. ensure that the criteria set out in Articles 10 and/or 11, as appropriate to the measure(s)
155 concerned, are met;
- 156 iii. act in accordance with procedures provided by law based on the principles that the person
157 concerned shall be heard in person and with the support of his or her person of trust, if any;
- 158 iv. take into account the opinion of the person concerned, and any relevant previously
159 expressed wishes made by that person; and

v. consult the representative of the person, if any.

3. The law may provide that when a person is subject to involuntary placement the decision to subject that person to involuntary treatment may be taken by at least two physicians, one of whom is not involved in the person's care, each having the requisite competence and experience, after examination of the person concerned, and in accordance with the requirements set out in paragraph 2 ii, iii, iv and v.

4. The decision to subject a person to an involuntary measure shall specify the period of its validity and shall be documented.

5. The law shall specify the maximum period of validity of any decision to subject a person to an involuntary measure and the arrangements for periodic review.

Article 13 – Procedures for taking decisions in emergency situations

1. When there is insufficient time to follow the procedures set out in Article 12 because of the imminent risk of serious harm, either to the health of the individual concerned, or to others, the decision to subject a person to involuntary placement and/or to involuntary treatment may be taken by a competent body, under the following conditions:

i. involuntary placement and/or involuntary treatment shall only take place on the basis of a medical examination appropriate to the measure concerned;

ii. the criteria set out in Articles 10 and/or 11, as appropriate to the measure(s) concerned, are met;

iii. paragraph 2 iii, iv and v of Article 12 shall be complied with as far as possible;

iv. decisions to subject a person to involuntary placement and/or involuntary treatment shall be documented.

2. The law shall specify the maximum period for which an emergency measure may be applied.

3. The duration of the emergency measure shall be as short as possible. It shall neither extend beyond the emergency situation nor the maximum period under paragraph 2, except where a procedure under Article 12 has been initiated.

Article 14 – Extension of an involuntary measure

The provisions of Article 12 shall also apply to procedures for taking decisions on the extension of an involuntary measure.

Article 15 – Termination of an involuntary measure

1. Involuntary placement or involuntary treatment shall be terminated if any of the criteria set out in Articles 10 or 11 respectively are no longer met.

2. The physician in charge of the person's care shall be responsible for assessing whether any of the relevant criteria set out in Article 10 in the case of a placement and Article 11 in the case of a treatment is no longer met.

3. The responsible authority shall ensure that the measure's continuing conformity with the legal requirements is reviewed at regular intervals.

197 4. The physician in charge of the person's care or other health personnel designated by law, and
198 the responsible authority, shall be entitled to take action on the basis of the assessment referred to
199 in paragraphs 2 and 3, in order to terminate that measure, unless according to law, a court or
200 another competent body shall be involved in the termination procedure.

201 **Article 16 – Appeals and reviews concerning the lawfulness of involuntary measures**

202 1. Parties shall ensure that persons subject to involuntary placement and/or involuntary
203 treatment, with the support of their person of trust, if any, can effectively exercise the right:

204 i. to appeal to a court against the decision to subject them to the measure, and

205 ii. to request a review by a court that the measure or its continuing application conforms to the
206 legal requirements.

207 An appeal may also be made and a review requested by the person's representative, if such a
208 person has been designated.

209 2. Parties shall ensure that any person subject to an involuntary measure can effectively exercise
210 the right to be heard in person, with the support of his or her person of trust, if any; or through his
211 or her representative, if such a person has been designated, at such reviews or appeals.

212 3. The person concerned, his or her representative, the person providing legal assistance in the
213 court proceedings, and, according to law, his or her person of trust shall have access to all the
214 materials before the court subject to the protection of the confidentiality and safety of others
215 according to law.

216 4. The court shall deliver its decision promptly.

217 5. In accordance with national law, a procedure to appeal the court's decision referred to in
218 paragraph 4 shall be in place.

219 **Chapter VI – Specific situations**

220 **Article 17 – Seclusion and restraint**

221 1. Seclusion and restraint shall only be used to prevent serious imminent harm to the person
222 concerned or others. Seclusion and restraint shall always take place in an appropriate
223 environment. In accordance with the principle of proportionality and necessity, seclusion and
224 restraint shall only be used as a last resort and for a time limited to its strict necessity.

225 2. Any resort to seclusion or restraint shall be expressly ordered by a physician or immediately
226 brought to the attention of a physician with a view to seeking the latter's approval. The nature of,
227 reasons for, and duration of, every resort to seclusion or restraint shall be recorded in the person's
228 medical file as well as specifically registered.

229 3. Persons subject to seclusion or mechanical restraint shall be continuously monitored by an
230 appropriately trained member of staff.

231 4. Any use of seclusion or restraint may be subject to the complaints procedures provided in
232 Article 22.

233 **Article 18 – Treatment with the aim of producing irreversible effects**

234 **Treatment with the aim of producing irreversible physical effects shall not be used in the**
235 **context of involuntary measures.**

236 **Chapter VII – Information and communication**

237 **Article 19 – Right to information**

238 1. Appropriate information about their rights in respect to the involuntary measure(s) and of the
239 remedies open to them shall be promptly given to persons subject to such measures, and to any
240 person providing them with legal assistance, representative, and person of trust.

241 2. The persons concerned, any representative and any person providing them with legal
242 assistance, shall be informed regularly and appropriately of the reasons for the measure and the
243 criteria for its potential extension or termination and shall be provided with copies of all relevant
244 decisions. The law may provide that the person of trust also receives this information.

245 **3. The persons providing the persons concerned with legal assistance, the representative**
246 **of the latter and their person of trust shall be informed promptly of any use of seclusion or**
247 **restraint.**

248 **Article 20 – Right to communication**

249 1. In the context of involuntary measures, the persons concerned have the right to communicate
250 with any person providing them with legal assistance, representative, or official body charged with
251 the protection of the rights of persons subject to involuntary measures, without restriction.

252 ~~2. Their right to communicate with their person of trust shall not be restricted, except for~~
253 ~~compelling reasons.~~

254 ~~3. Their right to communicate with other persons and bodies shall not be unreasonably restricted.~~

255 **2. The persons concerned also have the right to communicate with their persons of trust**
256 **and other persons and bodies than those referred to in paragraph 1. This right may only be**
257 **restricted to the extent that is necessary to protect the health and personal security of the**
258 **person concerned or of others.**

259 **Chapter VIII – Record-keeping, complaints procedures and monitoring**

260 **Article 21 – Record-keeping**

261 Comprehensive medical and administrative records shall be maintained for all persons subject to
262 involuntary placement and/or involuntary treatment. The conditions governing access to and the
263 period of storage of that information shall be specified by law.

264 **Article 22 – Complaints procedures**

265 Parties shall ensure that persons subject to an involuntary measure, **with the support of their**
266 **person of trust, if any**, as well as any person providing them with legal assistance **and their**
267 ~~representative and person of trust~~, have access to an effective complaints system, both within the
268 responsible authority and to an independent outside body, regarding issues related to the
269 implementation of involuntary measures, which are not covered by the procedures provided for in
270 Article 16.

271 **Article 23 – Monitoring**

272 1. Parties shall ensure that compliance with the provisions of this Protocol is subject to
273 appropriate independent monitoring.

274 2. Facilities designed for the involuntary placement of persons with mental disorder shall be
275 registered with an appropriate authority.