

## Statement of the European Network of National Human Rights Institutions (ENNHRI) on the Draft Additional Protocol to the Oviedo Convention

### **The European Network of National Human Rights Institutions (ENNHRI):**

- Calls upon the DH-BIO to withdraw the present version of draft Additional Protocol in view of the persisting concerns with the draft text, including those raised by the UNCRPD Committee, the Council of Europe's Commissioner for Human Rights, the Council of Europe's Parliamentary Assembly and its Committee on Equality and Non-Discrimination, and Committee on Social Affairs, Health and Sustainable Development.
- Calls upon Member States of the Council of Europe to ask for the withdrawal of the present version of the draft text and, if this draft is ultimately put to a vote, to oppose its adoption.
- Calls upon DH-BIO to ensure that any text relating to the deprivation of liberty of persons with disability includes the necessary procedural safeguards, and is subject to thorough, further consultations and dialogue with a broad range of stakeholders, including National Human Rights Institutions, disabled persons organisations and civil society at large.

In 2014, ENNHRI and its CRPD Working Group submitted its [comments](#) to the Council of Europe's Committee on Bioethics (DH-BIO) on an earlier iteration of the [draft Additional Protocol](#) to the Convention on Human Rights and Biomedicine, also known as the "Oviedo Convention". On that occasion, ENNHRI expressed a number of concerns about the overall form and approach of the draft, including that it was not coherent with the aims and wording of the UN Convention on the Rights of Persons of Disabilities.

Despite the [notes of concerns](#) from a broad range of stakeholders, including the Council of Europe's Commissioner for Human Rights and the UN Committee on the Rights of Persons with Disabilities (UNCRPD Committee), DH-BIO has proceeded with working on the draft and is due to plan the finalisation of the draft Additional Protocol during its next meeting from 20-22 November 2018.

ENNHRI remains concerned about the current draft of the Additional Protocol. Particularly, we would like to point out that:

- 1. The draft Additional Protocol creates the risk of a conflict between international norms at the global and European levels:** [According](#) to the UNCRPD Committee, the draft Additional Protocol still falls short of fully observing the spirit and provisions of the UN Convention on the Rights of Persons with Disabilities. The adoption of the Additional Protocol would result in fragmented, conflicting frameworks in the field of international human rights law for persons with disabilities. This lack of harmonised standards could hinder the efforts of Member States and bring confusion when implementing the necessary changes at the national level. This is particularly the case for those States who already engage in a constructive dialogue with the UNCRPD Committee. Finally, for National Human Rights Institutions (NHRIs) and disabled persons organisations (DPOs) the existence

of conflicting standards could debilitate their work for the promotion and protection of the human rights of persons with disabilities in Europe.

- 2. As it stands, the draft Additional Protocol lacks clear, strong procedural safeguards to ensure respect for the rights of persons with disabilities:** As indicated by a number of stakeholders during the consultations on the draft Additional Protocol, including by the Council of Europe's [Commissioner for Human Rights](#), the draft does not adequately and sufficiently provide procedural safeguards to ensure respect for the rights of persons with disabilities in situations under the scope of the draft Additional Protocol. In addition, the draft as it stands lacks the necessary legal precision and, thus, risks undermining the already existing human rights standards at the regional and international levels.
- 3. Different stakeholders have opposed the adoption of the draft, both at the level of the Council of Europe and the United Nations:** During the public consultation on the draft Additional Protocol, different voices within the Council of Europe have expressed their concerns about the draft, including the Commissioner for Human Rights. More recently, the Council of Europe Parliamentary Assembly's Committee on Social Affairs, Health and Sustainable Development, and the Committee on Equality and Non-Discrimination, have expressed the view that the DH-BIO should "cease its work on the draft Additional Protocol". At the UN level, the UNCRPD Committee's Statement on the draft Additional Protocol strongly recommended States to oppose the adoption of the Additional Protocol.

### **ENNHRI Recommendations**

ENNHRI is of the view that the drafting amendments are not sufficient to allay the fundamental concerns surrounding the Additional Protocol. The intention to move forward with the draft and finalise it in due time seems to contradict the prevalent, substantial criticism to the Additional Protocol, already explained in detail by a wide range of stakeholders during the consultation process.

ENNHRI is confident that the DH-BIO and all stakeholders share the same objective, that is, the promotion and protection of the human rights of persons with disabilities, including intellectual and psychosocial disabilities. Therefore, it encourages the DH-BIO to reconsider its priority to move forward with this version of the draft Additional Protocol. Instead, the expertise and resources of the DH-BIO could certainly fulfil important gaps in this field, always when aligned with the corps of international human rights law and in close consultation and cooperation with disabled persons organisations (DPOs), the UNCRPD Committee and NHRIs. For example, both the Council of Europe's [Commissioner for Human Rights](#) and [Parliamentary Assembly](#) have proposed that the DH-BIO works on developing and promoting positive guidance and "good practice models" for alternatives to forced treatment, including devising measures to increase the involvement of persons with psychosocial disabilities in decisions affecting their health.

ENNHRI welcomes the example set by Portugal, Bulgaria and the former Yugoslav Republic of Macedonia, countries that have indicated their opposition to the draft Additional Protocol as it stands. We respectfully call upon Member States of the Council of Europe to ask for the withdrawal of this draft text and, if the draft is ultimately put to a vote, to oppose its adoption. Given the depth and significance of the matters concerned, thorough further consultations and dialogue with a broad range of stakeholders are vital. In this regard, Member States are encouraged to duly consider the UNCRPD Committee's [Statement](#) and the [comments](#) from the Council of Europe's Commissioner for Human Rights on the draft Additional Protocol.

As a network of National Human Rights Institutions in Europe, gathered to work together in the promotion and protection of the rights of persons with disabilities in the region, ENNHRI welcomes the Council of Europe's commitment to the principles of transparency, mutual respect and meaningful dialogue with different stakeholders. ENNHRI remains available to provide further information and look forward to continuing to engage in a constructive, transparent dialogue on this matter.

## **About the European Network of National Human Rights Institutions (ENNHRI)**

ENNHRI, the European Network of National Human Rights Institutions, brings together 42 National Human Rights Institutions (NHRIs) from across wider Europe. ENNHRI's mission is to promote and protect human rights across the European region. ENNHRI supports the development of European NHRIs by: advising on the establishment and accreditation of NHRIs; coordinating the exchange of information and good practice between members; organising capacity building and training on NHRI methodologies and human rights; building solidarity between European NHRIs; providing support for NHRIs under threat and facilitating NHRIs' engagement with regional and international mechanisms.