

**Labklājības ministrijas  
Sociālās iekļaušanas un sociālā darba  
politikas departamenta  
direktorei E.Celmiņai**  
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*Par viedokli Eiropas Padomes Bioētikas komitejai*

*Cienītā E.Celmiņas kundze!*

Biedrība “Resursu centrs cilvēkiem ar garīgiem traucējumiem “ZELDA”” (RC ZELDA) saņēma Jūsu lūgumu sniegt viedokli par Eiropas Padomes Bioētikas komitejas izstrādāto dokumentu. Proti, par darba dokumentu par izstrādāto dokumenta projektu par personu ar garīga rakstura traucējumiem cilvēktiesību un cieņas aizsardzību, ja persona ievietota un ārstēta pret savu gribu.

Pielikumā pievienojam RC ZELDA viedokli angļu valodā.

Ar cieņu  
RC ZELDA direktore

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**Opinion of the Resource Centre for Persons with Mental Disabilities “ZELDA” (hereinafter – RC ZELDA) on the Working document of the Bioethics Committee of the Council of Europe concerning the protection of human rights and dignity of persons with mental disorder with regard to involuntary placement and involuntary treatment.**

RC ZELDA would like to congratulate the Bioethics Committee of the Council of Europe (hereinafter – Bioethics Committee) on draft of the Working document concerning the protection of human rights and dignity of persons with mental disorder with regard to involuntary placement and involuntary treatment. Especially on separation of involuntary placement and involuntary treatment.

Nonetheless RC ZELDA considers that some improvements should be made to the Working document in order to ensure its compliance with the standards set by the European Convention on Human Rights and Fundamental Freedoms and especially UN Convention on Rights of Persons with Disabilities (hereinafter – UN CRPD).

**1. Informed consent**

The basic principle of providing psychiatric assistance is free and informed consent. This principle has been stressed in Article 25 paragraph d of the UN CRPD. RC ZELDA considers that this principle should be included in the beginning of the Working document. Person who receives medical assistance has a right to information about treatment, medication, risks and possible outcomes. Only then person can either give or refuse consent. Thus RC ZELDA believes that this should be mentioned either in the Preamble of the Working document or be included in Article 1 as the basic principle for the protection of human rights and dignity of persons with mental disorders.

**2. Part 4 of the Article 2 (line 62-63).**

Wording of term “involuntary” used in Part 4 of the Article 2 is very limited in its scope and refers only to those patients that can provide active objection against placement. Although according to explanation provided in commentary of the Working document patients who cannot provide active objection are also included, RC ZELDA considers that more precise definition should be provided. Thus RC ZELDA urges to specify that “involuntary” includes not just those who provide active objection but also those who are unable to give informed consent.

**3. Article 5 (line 91-92)**

This Article refers to development of alternative mechanisms. RC ZELDA considers that wording of this article is too soft as provides only an obligation of promotion of non-binding language. It is also not in conformity with the language used in the Working document and its commentaries, as well as UN Convention on Rights of Persons with Disabilities. In all these documents it is stressed that involuntary placement could and should be used only as the last resort, i.e., after all alternatives are used and none of them has shown any progress of improvement. Nonetheless the language of the Article 5 does not correspond to this line. It rather provides a positive obligation for the future. RC ZELDA proposes to rephrase the Article providing that memberstates have to develop effective alternative mechanisms that could be used prior involuntary placement.

**4. Article 13 (lines 149-164)**

RC ZELDA strongly objects to creation of any additional emergency involuntary placements or treatments of persons with mental disabilities. It is not clear how this mechanisms differs from mechanism included in Article 12 of the Working document. Person can be placed involuntary only if emergency situation exists. Creation of alternative mechanism undermines use of standard procedure and human rights of any person. Additionally it is contrary to the standards set out in the Article 25 of

the UN Convention on the Rights of Persons with Disabilities. Thus RC ZELDA suggests the Bioethics Committee to exclude this Article from the Working document.

European Court of Human Rights in its case *MH v. the United Kingdom* has specifically stressed that “The Convention requirement for an act of deprivation of liberty to be amenable to independent judicial scrutiny is of fundamental importance in the context of the underlying purpose of Article 5 of the Convention to provide safeguards against arbitrariness”. Thus also even in cases of emergency individual should be able to have judicial review of his/her case.

Based on that RC ZELDA considers that emergency measures in fact do not differ from standard procedures and any derogation should be anyway reviewed by the court or other judicial body to prevent arbitrariness and violation of basic human rights.

#### **5. Article 14 (lines 165-167)**

This Article provides possibility to extend involuntary placement or involuntary treatment. Nonetheless in order to prevent situations where persons with mental disabilities are deprived of liberty for indefinite time periods, RC ZELDA proposes to set certain maximum time limits, example, extension of involuntary placement and involuntary treatment cannot be extended for longer than 6 months. Thus states would be prompted to develop alternative and community-based mechanisms for treatment of persons with mental disabilities.

#### **6. Article 17 (lines 204-209)**

RC ZELDA wishes to stress that information to persons with mental disabilities should be provided not just in understandable language, but also in understandable way using easy-to-read language or alternative communication methods. Although this principle is mentioned in commentary of the Working document, nonetheless it should also be included in the wording of the Article, thus stressing the obligation to introduce reasonable accommodations.

#### **7. Use of restrictive measures**

Involuntary treatment is often connected with use of restrictive measures in order to ensure that person receives necessary medical assistance. Thus RC ZELDA urges the Bioethics Committee to include regulation on restrictive measures, i.e., types, possible use and limitations of restrictive measures. This is especially important as so far the use of such coercive methods has been regulated only in soft-law.