

# COUNCIL OF EUROPE

## COMMITTEE OF MINISTERS

### **Resolution ResAP(2005)1 on safeguarding adults and children with disabilities against abuse**

*(Adopted by the Committee of Ministers on 2 February 2005  
at the 913th meeting of the Ministers' Deputies)*

The Committee of Ministers, in its composition restricted to the Representatives of the States members of the Partial Agreement in the Social and Public Health Field,<sup>1</sup>

Recalling its Resolution (59) 23 of 16 November 1959, concerning the extension of the activities of the Council of Europe in the social and cultural fields;

Having regard to its Resolution (96) 35 of 2 October 1996, whereby it revised the structures of the Partial Agreement in the social and public health field and resolved to continue, on the basis of revised rules replacing those set out in Resolution (59) 23, the activities hitherto carried out and developed by virtue of that Resolution; these being particularly aimed at:

- a. raising the level of health protection of consumers in its widest application: constant contribution to harmonising – in the field of products having a direct or indirect impact on the human food chain as well as in the fields of pesticides, pharmaceuticals and cosmetics – legislation, regulations and practice governing, on the one hand, quality, efficiency and safety controls for products; and, on the other hand, the safe use of toxic or noxious products;
- b. integrating people with disabilities into the community; defining – and contributing to the implementation at European level – a model coherent policy for people with disabilities, which takes into account simultaneously the principles of full citizenship and independent living; contributing to the elimination of barriers to integration, whatever their nature, whether psychological, educational, family-related, cultural, social, professional, financial or architectural;

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of facilitating their economic and social progress;

Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms;

Bearing in mind the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

Bearing in mind the European Social Charter and the Revised European Social Charter, in particular Article 15 and the additional protocol to the European Social Charter (ETS No. 158) providing for a system of collective complaints;

Bearing in mind the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: the Convention on Human Rights and Biomedicine;

Bearing in mind the following Recommendations of the Committee of Ministers to member states:

- Recommendation No. R (79) 17 concerning the protection of children against ill-treatment;
- Recommendation No. R (85) 4 on violence in the family;

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<sup>1</sup> States concerned: Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland and United Kingdom.

- Recommendation No. R (90) 2 on social measures concerning violence within the family;
- Recommendation No. R (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults;
- Recommendation No. R (92) 6 on a coherent policy for people with disabilities;
- Recommendation No. R (93) 2 on the medico-social aspects of child abuse;
- Recommendation No. R (98) 9 on dependence;
- Recommendation No. R (99) 4 on principles concerning the legal protection of incapable adults;
- Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation;
- Recommendation Rec(2001)16 on the protection of children against sexual exploitation;
- Recommendation Rec(2002)5 on the protection of women against violence;
- Recommendation Rec(2002)8 on child day-care;
- Recommendation Rec(2004)10 concerning the protection of the human rights and dignity of persons with mental disorder;

Bearing in mind the following Recommendations of the Parliamentary Assembly:

- Recommendation 1371 (1998) on abuse and neglect of children;
- Recommendation 1450 (2000) on violence against women in Europe;
- Recommendation 1592 (2003) “Towards full social inclusion of people with disabilities”;
- Recommendation 1601 (2003) on improving the lot of abandoned children in institutions;

Having regard to the United Nations Convention on the Rights of the Child (1989);

Having regard to the United Nations Declaration on the Elimination of all Forms of Violence against Women (1993);

Having regard to the United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (1993);

Acknowledging the work carried out in the field of disability policies by the Council of Europe’s Committee on the Rehabilitation and Integration of People with Disabilities and its subordinate body, the Working Group on Violence Against, Ill-treatment and Abuse of People with Disabilities;

Considering that the estimated number of people with disabilities in Europe is 10% to 15% of the population and that the number of elderly and disabled persons is continually increasing;

Considering that failure to promote the rights of people with disabilities and ensure their equivalent protection at law is a violation of human dignity;

Convinced of the need to assure the safety and protection of people with disabilities and provide access to redress where they are wronged,

Recommends that the governments of the States members of the Partial Agreement in the Social and Public Health Field, having due regard to their specific constitutional structures, national, regional or local circumstances, as well as economic and social conditions:

- a. draw up national action plans on safeguarding adults and children with disabilities against abuse applying in their policy, legislation and practice the principles and measures set out in the Appendix to this Resolution;
- b. encourage participation of relevant non-governmental organisations in the elaboration of such action plans;
- c. implement such action plans by initiating appropriate measures and actions and take steps towards the application of the principles and measures contained in the Appendix in fields where these are not the direct responsibility of governments, or where public authorities have a certain power or play a role;
- d. ensure that all measures are coordinated within and between authorities, as well as between authorities and relevant non-governmental organisations;
- e. ensure the widest possible dissemination of this Resolution among all parties concerned;
- f. follow up the implementation of the provisions contained in the Appendix by appropriate means.

*Appendix to Resolution ResAP(2005)1*

**I. Definition of abuse<sup>2</sup>**

1. In this Resolution abuse is defined as any act, or failure to act, which results in a breach of a vulnerable person's human rights, civil liberties, physical and mental integrity, dignity or general well-being, whether intended or through negligence, including sexual relationships or financial transactions to which the person does not or cannot validly consent, or which are deliberately exploitative. At a basic level abuse may take a variety of forms:
  - a. physical violence, including corporal punishment, incarceration – including being locked in one's home or not allowed out –, over- or misuse of medication, medical experimentation or involvement in invasive research without consent, and unlawful detention of psychiatric patients;
  - b. sexual abuse and exploitation, including rape, sexual aggression, indecent assault, indecent exposure, forced involvement in pornography and prostitution;
  - c. psychological threats and harm, usually consisting of verbal abuse, constraints, isolation, rejection, intimidation, harassment, humiliation or threats of punishment or abandonment, emotional blackmail, arbitrariness, denial of adult status and infantilising disabled persons, and the denial of individuality, sexuality, education and training, leisure and sport;
  - d. interventions which violate the integrity of the person, including certain educational, therapeutic and behavioral programmes;
  - e. financial abuse, including fraud and theft of personal belongings, money or property;
  - f. neglect, abandonment and deprivation, whether physical or emotional, in particular an often cumulative lack of health care or negligent risk-taking, of food or drink or of other daily necessities, including in the context of educational or behavioural programmes;

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<sup>2</sup> A more detailed discussion of the issue, including a workable definition of abuse, an overview of research, case studies, examples of good practice, specific measures, tools to help professionals assess the risk of people with disabilities (checklists) is contained in *Safeguarding adults and children with disabilities against abuse* (Council of Europe Publishing, Strasbourg, 2002, Reprint 2003, ISBN 92-871-4919-4).

g. institutional violence with regard to the place, the level of hygiene, the space, the rigidity of the system, the staff, the programme, the visits, the holidays.

2. These abuses may be perpetrated by any person (including by other people with disabilities) but are of special concern when they take place within a relationship characterised by powerful positions based on:

- the legal, professional or authority status of the perpetrator;
- his/her physical, psychological, economic or social power;
- the fact that he/she is responsible for the person's day-to-day assistance;
- any inequalities based on gender, race, religion or sexual orientation.

3. These abuses require a proportional response – one which does not cut across legitimate choices made by individuals with disabilities but one which recognises vulnerability and exploitation. The term “abuse” therefore refers to matters across a wide spectrum, which includes criminal acts, breaches of professional ethics, practices falling outside agreed guidelines or seriously inadequate care. As a consequence, measures to prevent and respond to abuse involve a broad range of authorities and actors, including the police, the criminal justice system, the government bodies regulating service provision and professions, advocacy organisations, user networks and patient councils, as well as service providers and planners.

## **II. Principles and measures to safeguard adults and children with disabilities against abuse**

### *1. Protection of human rights*

Member states have a duty to protect the human rights and fundamental freedoms of all their citizens. They should ensure that people with disabilities are protected at least to the same extent as other citizens.

Member states should recognise that abuse is a violation of human rights. People with disabilities should be safeguarded against deliberate and/or avoidable harm at least to the same extent as other citizens. Where people with disabilities are especially vulnerable, additional measures should be put in place to assure their safety.

### *2. Inclusion of people with disabilities*

Member states should acknowledge that safeguarding the rights of people with disabilities as citizens of their country is a state responsibility.

They should combat discrimination against people with disabilities, promote active measures to counter it and ensure their inclusion in the socio-economic life of their communities.

They should recognise that all people with disabilities are entitled to dignity, equal opportunity, their own income, education, employment, acceptance and integration in social life, including accessibility, health care as well as medical and functional rehabilitation.

They should guarantee that people with disabilities are ensured protection – to at least the same extent as other citizens – in their use of services of all kinds.

### *3. Prevention of abuse*

Member states should increase public awareness, promote open discussion, develop knowledge, and improve education and professional training.

They should encourage cooperation between authorities and organisations in finding measures to prevent abuse, to improve detection and reporting of abuse, and to support the victims.

They should create, implement and monitor legislation concerning the standards and regulation of professionals and care settings, in order to make abuse of people with disabilities less likely through action taken or through failure to act.

#### *4. Legal protection*

Member states should ensure access to the criminal justice system and provision of redress and/or compensation to people with disabilities who have been victims of abuse at least to the same extent as other citizens. Where necessary additional assistance should be provided to remove physical and other barriers for people with disabilities.

People with disabilities are applicants under civil law whose rights should be safeguarded. Member states should therefore ensure that professionals working within the criminal justice system treat people with disabilities without discrimination and in such a way as to guarantee them equality of opportunity in the exercise of their rights as citizens.

#### *5. International cooperation*

Member states should cooperate on an international level in research into incidence and prevalence of different types of abuse, professional education and training initiatives and treatments and interventions in care settings.