

THE HUMAN RIGHTS OF PEOPLE with Mental or Intellectual Impairments in the Republic of Moldova



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**An Assessment of Key Aspects of the Domestic Law
and Policy Framework in Light of the UN Convention
on the Rights of Persons with Disabilities**

Chisinau 2015

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This report arises from joint OHCHR and MDAC work to assess law, policy and practice as concerns persons with mental or intellectual disabilities from a human rights perspective in the Republic of Moldova. Field research has been undertaken during the period 2012-2015. In addition, the report reflects the experience of OHCHR in direct involvement with Moldovan authorities, National Human Rights Institution and civil society to move reforms in the areas at issue, as well as to support the development of Moldovan civil society of persons with mental or intellectual disabilities.

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ACRONYMS

CRPD	Convention on the Rights of Persons with Disabilities
MDAC	Mental Disability Advocacy Center
MoE	Ministry of Education of the Republic of Moldova
MoH	Ministry of Health of the Republic of Moldova
MLSPF	Ministry of Labour, Social Protection and Family of the Republic of Moldova
OHCHR	Office of the United Nations High Commissioner for Human Rights
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNPRPD	United Nations Partnership to Promote the Rights of Persons with Disabilities
WHO	World Health Organization

FOREWORD

Bringing the Law against Stigma

On June 2, 2015, Ms. Elena Voronina became the first person in Moldovan history to have her legal capacity ordered restored by a court.

This development is the newest move in a struggle toward compliance with the Convention on the Rights of Persons with Disabilities (CRPD) in which Moldova has been engaged since it first ratified the treaty in 2010. That struggle has involved (mostly) good faith efforts to grapple with the content of the CRPD Convention, and the way in which it alters fundamentally the international law basis on which Moldovan law – similarly to that of the rest of Europe and the globe – rests. And above all, it has challenged the lawmakers, professionals, civil servants and the public alike to look deeply at the stigma attaching to persons with disabilities in Moldova – and in particular persons with intellectual or mental impairments --, and the way in which this stigma continues deeply to shape the lives and possibilities of such people. This struggle is by no means finished.

Moldovan Parliament ratified the CRPD Convention in 2010, responding to mobilized calls by civil society – and in particular disabled persons organisations – to join the global consensus around the CRPD treaty. At the time, certain questions came from the lawmakers repeatedly: was it not the case that Moldova had to be fully compliant with all aspects of the CRPD Convention at the moment of ratification? And what about the cost? Could a poor country such as Moldova afford to implement this treaty?

At the time, we agreed that there were major costs involved in moving forward matters such as accessibility – most buildings were (and remain now) not accessible. We urged however focus also on issues which were “cost zero” or indeed “Moldova gain”. These start with ending the habits of decades of excluding persons with disabilities from school, work and ultimately society, and instead working step-by-step toward an inclusive society. It was at that time – and unfortunately remains – rare to see persons with disabilities in mainstream employment. Mainstream schools had not accepted children with disabilities, and education was not oriented around preparing everyone for inclusion. Previous policies of segregation have left Moldova with huge institutions -- some of them for life-long placement -- as well as with legal forms for cancelling a person’s legal existence: guardianship and legal incapacity.

Challenging these practices has been Elena Voronina’s small revolution. But Elena has by no means been alone. New flowers blossom everywhere as people take seriously the core ideas of the Convention. The Education Code was revamped in 2014 to support inclusive education. Also in 2014, persons with psycho-social disorders for the first time founded a civic organisation, and parents came together to found Moldova’s first national network to seek inclusive education. Of circa 65 parents involved in the network, around 55 have succeeded in bringing their children into mainstream education, working to overcome rigidity and hostility in the system. The Ministry of Health (MoH) has begun a large-scale hospital transformation which aims among a number of structural changes to bring mental health care into communities. Some people – although far too few – have left the neuro-psychiatric residential institutions under the competence of the Ministry of Labour, Social Protection and Family (MLSPF). This year, Moldova has had its first Minister with a disability.

But so much still remains ahead: efforts by MLSPF to move forward more general reforms have met with revolts by staff who fear losing their jobs. As such, all major institutions under both MLSPF and MoH remain open and functioning, and only a handful of people have actually been deinstitutionalized. In the 2nd city of Balti, only international intervention has to date stopped the city from seizing its small stock of integrated protected housing for use by corrupt officials. No moratorium even on institutionalization of children 0-3 – a fairly simple step -- has yet been achieved.

As concerns guardianship reform – the effort to reform the Civil Code and Family Code to affirm that everyone is entitled to their own personhood and to decide autonomously according to their own will and preferences – efforts at systemic legal reform -- has dragged on for 5 years, opposed by administrators and above all by civil law experts unable or unwilling to grasp the changes required by the CRPD Convention.

The biggest barrier however is stigma, still so palpably felt. We are not yet at the point where the public believes people with disabilities belong – belong in the sense of living and working among us and deciding about their own lives. We do not yet see a society where having a disability is an uninteresting fact, rather than a cause for shame or pity.

This publication aims to be several things. First of all, the publication endeavours to explain, in lay terms, the meaning of three particular rights in the CRPD Convention and the reforms they imply: Article 12 right to equal legal capacity; Article 19 right to live independently and to be included in the community; and Article 24 right to inclusive education. These rights are by no means the end of the Convention, but they are seen by many as particularly important places within it.

Secondly, this report is a stocktaking of where the Moldovan reform currently stands as concerns these rights.

Third, the report is a call to action – to everyone -- to help move this reform forward. In this sense, each chapter includes recommendations for further work. Our hope is that everyone will see – and seize – possibilities to help Moldova advance the rights of persons with disabilities.

And finally, the report endeavours to be a celebration of the many efforts by many, many people, organisations and public institutions, in their efforts to advance implementation of the CRPD Convention in the Republic of Moldova. We hope that their voices and efforts come through the pages of this document. It is to them that this report is dedicated.

Claude Cahn

Human Rights Adviser

Office of the United Nations Resident Coordinator in the Republic of Moldova

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Chisinau, 6 July 2015

Progress is Happening in Moldova and throughout the World

In many ways Moldova is leading by example. Thanks to attention by international civil society, a persistent focus by the UN Office, creative activism by people with disabilities and their family members, and enlightened policy-makers – the country has made important changes already. Some of these changes can and should serve as an example to other countries in the region. Highlights include reducing the numbers of children in institutions from about 10.000 in 2012 to approximately 4.000, with many of these children going to mainstream schools with teachers having the supports they need to manage a diverse classroom. The prohibition of people under guardianship to exercise their right to vote was removed in May 2015; and thanks to awareness-raising about how guardianship systems need to be reformed, some judges are now refusing lazy guardianship applications and insisting that the local authority puts in place supports, to enable the person with disabilities to author their own lives.

Much has been done, and the raft of legal, policy and practice initiatives have been inspired by Moldova's ratification of the UN Convention on the Rights of Persons with Disabilities in 2010. But much remains to be done.

I have seen first-hand personally how people with mental health issues are still denied healthcare and support in the community, so they are routinely taken to under-funded psychiatric hospitals which operate with insufficiently-trained staff and few legal safeguards. In these environments abuse is commonplace, and people with mental health issues are forced to live restricted lives separated from their communities and families.

Guardianship of people with disabilities is a Roman law relic which, like slavery, should be cast into legal history. Systems exist which are much better for people with disabilities, for their families, and are easy to use by judges and local government officials. No system is going to be perfect and it is important that change happens, because – as this report points out – the current system is unfair, unjust, and un-needed. International law is clear – it is no longer acceptable to strip away the personhood of people with mental health issues and people with intellectual disabilities. Just like everyone else, they have the right to autonomy in their lives, and should be valued as full members of society. The Government has a key role in catalysing this change by convening people with disabilities, disabled persons organisations, public authorities and wider civil society to achieve these goals. We, in the wider international community, stand ready to contribute too.

Finally, as people are evacuated out of large institutions which have warehoused people with disabilities for many decades, it is important to put in place mechanisms to ensure that each person is enabled to live in the community of their choice, with supports that they need in order to prevent isolation or segregation from society. Transferring people into smaller or warmer or newer institutions must be avoided at all costs. A “good institution” is an oxymoron.

It has been a privilege for us to collaborate with partners in Moldova in developing this study. I hope that the consolidated information in the report will be used by politicians and civil society actors to continue to drive the reforms which people with mental health issues and people with intellectual disabilities in Moldova deserve.

Oliver Lewis

Executive Director

Mental Disability Advocacy Center (MDAC)

London, 7 July 2015

EXECUTIVE SUMMARY

This report discusses many of the struggles that people with mental and intellectual impairments¹ experience on a daily basis in the Republic of Moldova. It describes and assesses legislation, policies and practices relating to people with disabilities through the lens of international human rights law, with particular reference to the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which Moldova ratified in 2010.

This report is not a comprehensive assessment of all aspects of CRPD implementation in the Republic of Moldova. Rather, it examines in particular the right to inclusive education for children with disabilities ('Schools for All'), the right to autonomy and legal capacity ('I'm a Person') and the right to live independently in the community ('My Home, My Choice').

The report also does not examine the situation in the Transnistrian region, which as a result of the separatist conflict taking place at the time of the dissolution of the Soviet Union remains under the de facto administration of unrecognized, separatist authorities. Given the historical developments, the human rights concerns as relates to the persons with disabilities in the Transnistrian region are similar in context, background and legacy to those identified in the rest of the Republic of Moldova. Indeed, existing documentation indicates that issues facing persons with disabilities in the Transnistria are similar to those in the rest of the Republic of Moldova². However, Transnistria's isolation from international and regional justice mechanisms may spur additional barriers for the persons with disabilities in accessing their rights as guaranteed under the CRPD, and has limited reform efforts there.

The aim of this report is to provide human rights assessment of certain key areas of policy, law and practice in the Republic of Moldova, with a view to guiding reforms, as well as galvanizing improvement of the treatment of persons with mental or intellectual disabilities.

1 The human rights definition of persons with disabilities contained in Article 1 of the CRPD offers a holistic approach to defining disability making at the same time a clear differentiation between impairment and disability, and the (open) definition of the group. The wide range of impairments that fall within the term "disability" include persons with psychosocial and intellectual impairments. While many persons with disabilities may experience similar discriminatory treatment, issues affecting the equality outcomes for a person who has a psychosocial or intellectual impairment may differ entirely to the issues that affect the equality outcomes for persons who have lost a sensory function, for example. In practice, it was observed that the use of the same terminology both for impairment and disability creates higher resistance to understand the human rights-based approach to disability and that by differentiating among the two, people become familiar to the two concepts easier. This report is examining only the issues affecting the persons with mental and intellectual impairments who experience disability as a social restriction, whether those restrictions occur as a consequence of questionable notions of reasonableness, intelligence and social competence, the lack of easy-read material or hostile public attitudes to people with mental health conditions.

2 See United Nations Senior Expert on Human Rights Thomas Hammarberg, "Report on Human Rights in the Transnistrian Region of the Republic of Moldova", Chisinau/Tiraspol, February 2013.

Schools for All: the right to inclusive education

When she first came to the mainstream school from a special school, Stela was mostly looking down, too afraid to look into people's eyes. Whenever asked something she could not answer, her eyes would tear up. Stela [is now] open, communicative, responsive, conscientious, hardworking and very friendly.³

Moldova inherited an education system based on segregation from the Soviet era, in which children who did not meet certain standards would be hidden away. Today however, circa 3,500 children who need enhanced support, including children with disabilities, are included in mainstream education – they are referred to in Moldovan legislation as “children with special educational needs”.⁴ A collaborative effort between civil society, international donors and organisations and the Moldovan government has resulted in the education system gradually opening up to children with disabilities and becoming more inclusive. Despite being one of the poorest countries in Europe, the impressive progress made by Moldova in recent years should serve as an important example to its richer neighbours that children with disabilities can study together with other children, and inclusive education is indeed possible and desirable for all.

While acknowledging this success, it is important to note that 1,716 children with mental or intellectual impairments remain in segregated educational settings,⁵ and not all children are receiving the support they need to access inclusive schooling. The Moldovan government should redouble its efforts to implement strategies and plans so that these children, too, will be able to access quality education on an equal basis with others. Recent reform processes must continue until the day when Moldovan society forgets that ‘special schools’ ever existed.

³ Institute for Public Policy, “The Implementation of inclusive education in the Republic of Moldova. A study on public policies”, 2014, p. 50. Available [in Romanian] from http://www.ipp.md/public/files/Proiecte/Studiu_Cara_Angela.pdf.

⁴ Republic of Moldova, Education Code of the Republic of Moldova No. 152 of 17 of July 2014, Article 3. Definitions. Available from <http://lex.justice.md/md/355156/>

⁵ Institute for Public Policy, “The Implementation of inclusive education in the Republic of Moldova. A study on public policies”, 2014, p. 62. Available [in Romanian] from http://www.ipp.md/public/files/Proiecte/Studiu_Cara_Angela.pdf.

I'm a Person: the right to legal capacity

"I feel like a beggar. I am forced to starve and freeze because all my money goes into the guardian's hands and she spends it on everything except my necessities. By the fact that the court does not want to examine my case I understand that I have lesser value for the State than every other citizen." (Petru, a man in his fifties)⁶

The right to legal capacity refers to both the capacity to bear rights and to be recognised as an actor under the law.⁷ Restriction of legal capacity has serious implications in numerous areas of a person's life, including in exercising civil and political rights, making healthcare decisions, the choice of where and with whom to live, and whether a person can exercise their sexual, reproductive and family rights. International law, and most importantly the CRPD, now requires States to abolish systems of guardianship and to replace them with systems which support people with disabilities to exercise their autonomy.

In Moldova, people with disabilities, namely adult men and women with mental or intellectual impairments, continue to be deprived of their legal capacity through judicial procedures which sometimes they are not allowed to attend or are not even informed about. Guardians can be appointed without the person concerned having any say. Moldovan legislation vests wide decision-making powers in guardians, and many guardians choose to place people with disabilities in closed institutions against their will, use their disability allowances and control the assets of the person under their guardianship.

The reform of the Moldovan legislative framework in relation to legal capacity has been under debate for many years. The most important amendments to such legislation were adopted in May 2015.⁸ The right to vote of people under guardianship was finally recognized and people with disabilities were finally awarded the right to appeal against the establishment of guardianship.

These amendments are however insufficient. People continue to be placed under guardianship, being stripped of core rights such as the right to get married, divorce, adopt children or submit complaints to courts of their own volition. They are effectively denied equal protection of the law and the opportunity to challenge human rights violations.

Moldova's legislative reforms are therefore insufficient and do not ensure that people with disabilities can enjoy full recognition before the law, as bearers of rights rather than objects of management or care. It is now time for the Moldovan government to abolish its outdated system of guardianship, and introduce comprehensive reforms so that people with mental or intellectual impairments can access the support they may require to exercise full legal capacity.

⁶ Interview with Petru., July 2012. The names of individuals who provided testimony for this report have in many cases been changed. The entities publishing this report are prepared to release the names of persons interviewed if and where the interests of justice so require.

⁷ Committee on the Rights of Persons with Disabilities. General comment No. 1. Article 12: Equal recognition before the law, U.N. Doc. CRPD/C/GC/1, 2014, para. 12.

⁸ Law 36 of 8 May 2015 on amending and completing a number of legislative acts.

My Home, My Choice: the right to independent living in the community

*“They are keeping us here like in a jail. [...] They check our pockets and the gate is always closed. They let me go out because I have a big mouth and I fight with them every day.”
(Tatiana, in her twenties, living in an institution)⁹*

All persons with disabilities have the right to live independently in the community, but this is frequently denied to people with disabilities in Moldova. The third substantive chapter of the report discusses forced admissions to psychiatric hospitals, forced hospitalisation and long-term institutionalisation. It also assesses Moldova’s progress in developing community services, as required under Article 19 of the CRPD.

Moldovan legislation continues to facilitate placement of people with mental or intellectual impairments presumed to be unable to live independently in residential social care institution, known as “psycho-neurological internats”. Yet, the law considers as ‘voluntary’ those people who have been placed in such institutions with the consent of a guardian. This results in people being denied the right to liberty without robust safeguards. Moldovans in such situations have no say in relation to the procedures they are subjected to, have no right to periodic reviews of their detention in an institution, nor is there any judicial oversight.

Almost 2,500 children and adults with mental disabilities in Moldova are required to live in segregated institutions which are cut off from their community. Life in such institutions means denial of basic liberties and dignities for residents: strong smells of faeces, urine, sweat and dust are common, people can only leave the premises with prior authorization, violence and abuse perpetrated by staff and other residents are commonplace and residents are neglected and denied medical care.

The government has initiated some reforms to address these issues. Institutions and hospitals are now monitored on a regular basis by officially designated bodies and the abuses people suffer become public more often. There is also a plan for the deinstitutionalisation of children, however it is of concern that this fails to address the majority of children with disabilities who currently live in institutional settings. For adults, there is no official deinstitutionalisation strategy.

In a more promising development, the government has adopted a framework through which a range of mental health services are being developed in the community and community living settings have been developed. Similarly to the positive reforms regarding inclusive education, these programmes are the result of close collaboration between government, civil society, activists and international donors and organisations. They are however still not sufficient or adequate to ensure that all people with mental or intellectual impairments can live independently in the community. Significant legislative and policy reforms are needed.

In conclusion, Moldova has made significant strides to further advancing the rights of children and adults with disabilities in the country, but many continue to be denied the support they need to be fully included in Moldovan society. The education system has become significantly more inclusive and community-based services have been developed, but these processes are far from complete. Serious concerns remain in relation to legislation allowing people to be deprived of their legal capacity, subjected to forced interventions and placed in institutions. It is hoped that this report, including recommendations to the Moldovan government, will catalyse further action.

⁹ Interview with Tatiana, 17 December 2014.

INTRODUCTION

A. Context

The Republic of Moldova is a country located in Eastern Europe, bordering Romania to the south and west, and Ukraine to the north and east. Despite recent progress, Moldova remains one of the poorest countries in Europe.¹⁰ Moldova has a population of approximately 3 million people,¹¹ out of whom, according to official statistics,¹² circa 183,000 are people with disabilities.

In 2010 Moldova ratified the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD), voluntarily undertaking binding international legal obligations to advance the rights of persons with disabilities. Moreover, the Moldovan Constitution provides that international laws have supremacy over national legislation,¹³ and international law can be directly applied in national courts.¹⁴

The ratification process has brought the country on a reform pathway. The state has adopted a wide range of legislative and policy reforms which have both directly and indirectly affected people with disabilities. Some of these reforms, such as in the area of guardianship, are still highly debated and increasingly opposed by the civil law academia which fails to understand the progressive nature of the Article 12 CRPD requirements, while others – particularly in the field of inclusive education – are amongst the most promising practices existing in Europe. Such changes must be analysed through a human rights lens and it is important that this learning is brought to the attention of human rights activists and the international community. It is hoped that a comprehensive approach will support future reform of laws, policies and practices.

Studies assessing public opinion toward persons with disabilities in the Republic of Moldova indicate troubling levels of negative attitudes. For example a sociological study conducted in 2011 revealed that only 29.7% out of the 807 respondents considered that persons with disabilities are entitled to equal rights, whereas 11.8% were holders of the opinion that persons with disabilities should be segregated in special schools or residential social care institutions.¹⁵ Similarly, the 2011 Soros Foundation-Moldova Report, “Perceptions of the Population of the Republic of Moldova on Discrimination: Sociological Study”, portrays people with disabilities as the most discriminated social group in Moldova, particularly those with mental and intellectual impairments. The same study illustrates that only 8% of the respondents would accept to have in their family a person with psychosocial disability.¹⁶

¹⁰ Central Intelligence Agency, United States of America, Europe: Moldova, The World Factbook. Available from <https://www.cia.gov/library/publications/the-world-factbook/geos/md.html>.

¹¹ More specifically, 2,913,281 people, including those living abroad (329,108) and excluding the population from Transnistria, according to the National Bureau of Statistics of the Republic of Moldova, Information Note- Preliminary results of the 2014 Population and Housing Census of the Republic of Moldova (Chisinau, 2014). Available [in Romanian] from <http://www.statistica.md/newsview.php?l=ro&idc=30&id=4603>.

¹² National Bureau of Statistics of the Republic of Moldova, The situation of people with disabilities (Chisinau, 2013). Available [in Romanian] from <http://www.statistica.md/newsview.php?l=ro&id=4253&idc=168>.

¹³ Republic of Moldova, Constitution of the Republic of Moldova, Title I, Article 4 (29 July 1994).

¹⁴ Republic of Moldova, Law on International Treaties No. 595 of 24 September 1999, art. 20.

¹⁵ “Social barriers to inclusion of persons with disabilities in Moldova” study conducted by the Center of Legal Assistance for Persons with Disabilities in 2011. Available from http://pdf.usaid.gov/pdf_docs/pa00j422.pdf

¹⁶ Soros Foundation-Moldova Report, “Perceptions of the Population of the Republic of Moldova on Discrimination: Sociological Study”, 2011. Available from http://www.soros.md/files/publications/documents/Studiu_sociologic_EN.pdf

A recent analysis of the media reports reveals that the news broadcasting agencies approach persons with disabilities from a medical perspective, reflecting mostly topics related to health and aspects related to prevention, early intervention and treatment. It was also found out that most of the media reports related to persons with disabilities were broadcasted/published around the International day of persons with disabilities, depicting persons with disabilities in roles of dependency from state contributions.¹⁷

There are, however, promising initiatives aiming at redressing the situation, especially in regard to government – development partners - civil society cooperation on advancing CRPD implementation. Many of the promising practices in the country have come about as a direct consequence of international cooperation and this provides valuable learning for other European countries, international donors and civil society.

The present report provides a comprehensive description and expert analysis informing the interested reader about the current state of human rights of children and adults with disabilities in Moldova, in particular barriers hindering equal enjoyment of rights for people with mental and intellectual impairments. The report presents reliable evidence of concrete cases of human rights violations enabling the reader to draw their independent conclusions on the situation. Based on the findings presented in the report, a set of recommendations that signal the way to bringing about changes through the application of political, legal or social action is presented.

¹⁷ For more detailed information, please see „Monitoring of mass-media and of the societal attitude related to persons with disabilities: November 14, 2012 – February 10, 2014”. Available from <http://www.cod.rs/wp-content/uploads/2014/06/Raport-mass-media-eng.pdf>

B. International human rights recommendations addressed to Moldova

Moldova's first review by the United Nations Committee on the Rights of Persons with Disabilities (CRPD Committee) is tentatively scheduled to take place in the autumn of 2016, therefore the CRPD Convention's authoritative body has not yet issued any comments or recommendations on the situation of the persons with disabilities in the country. However, since 2010, a number of UN human rights bodies have looked into the disability-related issues and measures taken by the state to give effect to its international law obligations related to the rights of persons with disabilities.

In 2011, the Committee on Economic, Social and Cultural Rights has considered Moldova's second report on the implementation of the International Covenant on Economic, Social and Cultural Rights, and in their concluding observations relevant to the persons with disabilities, the committee calls the state to:¹⁸

- take urgent measures to establish a system for the collection of disaggregated data and monitoring progress;
- include provisions in the draft anti-discrimination law on reasonable accommodation;
- take concrete steps to ensure the right to work and to significantly reduce the unemployment rate, including measures to ensure efficient vocational training, the enforcement of the established quota, as well as the creation of centres for professional training and rehabilitation;
- implement the reform of the residential care system for children, focusing especially on the re-integration of children with disabilities;
- remove discriminatory health or disability criteria imposed in the assessments of the eligibility of prospective adoptive parents;
- ensure that poverty alleviation and social assistance programmes are targeted at the most disadvantaged and marginalized individuals and groups;
- provide alternative forms of mental health treatment, in particular outpatient treatment;
- ensure independent and effective monitoring of psychiatric institutions and effective judicial control of psychiatric confinement;
- incorporate into the law the abolition of violent and discriminatory practices against children and adults with disabilities in the medical setting, including deprivation of liberty, the use of restraint and the enforced administration of intrusive and irreversible treatments such as neuroleptic drugs and electroconvulsive therapy (ECT);
- amend existing legal provisions on legal capacity and introduce assisted decision-making alternatives without delay;
- ensure the implementation of inclusive education of children with disabilities.

¹⁸ Committee on Economic, Social and Cultural Rights, Concluding observations on Moldova, July 2011, E/C.12/MDA/CO/2

Shortly afterwards, in October 2011, the UPR recommendations¹⁹ emphasized the necessity to accelerate social inclusion of persons with disabilities and guarantee equal enjoyment of human rights, including through the:

- adoption and implementation of a legislative framework to prevent, punish and eliminate all forms of discrimination, with special attention to discrimination based on disability;
- elimination of discriminatory practices against persons with disabilities in the medical setting;
- provision of awareness raising amongst the general population on the rights of persons with disabilities;
- desegregation of children with disabilities and inclusion in the mainstream educational system;
- creation of physical accessibility in educational and public institutions;
- deinstitutionalisation and re-integration of children with disabilities;
- implementation of the Law on Social Protection of Disabled Persons;
- provision of support services for children with disabilities and their families;

In 2013, the Committee on the Elimination of Discrimination against Women (CEDAW) considered the combined fourth and fifth periodic reports of the Republic of Moldova and, amongst others, made specific recommendations pertaining the situation of women with disabilities.²⁰ In their concluding observations, the CEDAW Committee urged the state to:

- adopt temporary special measures where women with disabilities are underrepresented or disadvantaged;
- introduce procedures to ensure the effective participation of women with disabilities in elected offices and appointed bodies;
- develop public awareness and training programmes for decision makers, employers, young people and groups of women with disabilities, on women's rights;
- protect women and girls with disabilities from violence and provide access to immediate means of redress;
- promote access by girls with disabilities to high-quality mainstream and inclusive education and their retention at all levels of education;
- increase access by women with disabilities to formal employment;
- collect comprehensive disaggregated statistical data on the situation of women with disabilities;
- implement the law on social inclusion of persons with disabilities adopted in 2012, including by creating mechanisms to enforce quotas concerning the employment of persons with disabilities;

¹⁹ Universal Periodic Review, Report of the Working Group on the Universal Periodic Review on Republic of Moldova, December 2011, A/HRC/19/18

²⁰ Committee on the Elimination of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic reports of the Republic of Moldova, October 2013, CEDAW/C/MDA/CO/4-5

- investigate all cases of sexual assault against women with disabilities in residential institutions, facilitate access by such women to high-quality reproductive health care and ensure that all medical interventions are based on informed consent;
- reform the guardianship system so as to bring it into conformity with article 12 of the Convention on the Rights of Persons with Disabilities.

Specific recommendations related to children with disabilities and their human rights situation have been provided by the Committee on the Rights of the Child (CRC), which in 2009 considered the combined second and third periodic report of the Republic of Moldova. In their concluding observations the CRC Committee urges the State to²¹:

- Develop a comprehensive policy for the protection of children with disabilities and for their equal access to social, educational and other services;
- Make available the necessary professional and financial resources, especially at the local level, and to promote and expand community-based rehabilitation programmes, including parent support groups;
- Ensure that children with disabilities enjoy their right to inclusive education;
- Collect accurate disaggregated statistical data on children with disabilities;
- Establish a formal monitoring system for residential care homes for children with disabilities, favouring the participation of civil society organizations and incorporating concrete steps to follow up recommended actions;
- Train the professional staff working with children with disabilities, such as teachers, social workers and health-care workers;
- Monitor and evaluate the quality of services for children with disabilities and raising awareness about all services available;
- Ratify the Convention on the Rights of Persons with Disabilities and its Optional Protocol;

More recently, in June 2014, the Special Rapporteur on Extreme Poverty and Human Rights presented her report on Moldova to the Human Rights Council. Drawing from the human rights situation of persons with disabilities, which the Special Rapporteur witnessed while on official mission in the Republic of Moldova, she recommended that the State takes immediate action to²²:

- Close the psychiatric institution in Pavlovca village without further delay and integrate the persons institutionalized there into the community, providing them with the necessary support, in conformity with CRPD article 19;
- Put in place national mechanisms to systematically monitor, receive complaints and initiate prosecutions in cases of allegations of ill-treatment in the context of medical care and medical institutions and take measures to ensure that all patients, regardless of their mental health condition, have the possibility of submitting complaints against any abuse and mistreatment;

²¹ Committee on the Rights of the Child, Concluding observations: Republic of Moldova, 20 February 2009, CRC/C/MDA/CO/3

²² UN General Assembly, "Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona. Addendum. Mission to the Republic of Moldova (8–14 September 2013)", U.N. Doc.

- Take measures to ensure that health-care personnel involved in psychiatric treatment receive human rights education and training, in particular on the CRPD; and promote a culture of respect for human integrity and dignity and diversity and the elimination of stigma;
- Take immediate steps to adopt policies and protocols that uphold autonomy, self-determination, access to legal recourse and human dignity for persons with disabilities, in line with the CRPD;
- Completely reform the guardianship laws as soon as possible by abolishing civil guardianship, and adopt legislation, such as the proposed new law on supported decision-making, that empowers to the fullest extent persons with disabilities in the exercise of their own will, autonomy and preferences, as provided for by the CRPD;
- Impose an absolute ban on all forced and non-consensual medical interventions with regard to persons with disabilities, including the non-consensual use of restraints and solitary confinement, both long- and short-term; and immediately fulfil the obligation to end forced psychiatric interventions based solely on grounds of disability, in line with international human rights standards.

Council of Europe human rights monitoring and assessment bodies have also documented human rights abuses of people with disabilities, including segregation, coercive practices, exploitation and violence.²³

23 See for example Council of Europe, “Report to the Moldovan Government on the visit to the Republic of Moldova carried out by the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishments (CPT) from 1 to 10 June 2011”, 2012. Available from <http://www.cpt.coe.int/documents/mda/2012-03-inf-eng.pdf>; and Council of Europe, “Report to the Government of the Republic of Moldova related to the visit in Moldova of the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishments”, 2008. Available [in French] from <http://www.cpt.coe.int/documents/mda/2008-39-inf-fra.pdf>.

C. Methodology

A qualitative desk research tool was developed for the purpose of this study, which allowed for gathering and analysis of primary and secondary data on the main human rights issues addressed in this report. The tools were framed in line with international law on the rights of persons with disabilities, provided by the CRPD, including:

- the right to equal recognition before the law (Article 12);
- the right of access to justice (Article 13);
- the right to be free from torture or cruel, inhuman or degrading treatment or punishment (Article 15);
- the right to live independently and to be included in the community (Article 19); and
- the right to inclusive education (Article 24).

Desk research identified relevant secondary data, including Moldovan legislation and policies, documents on planned legislative and policy reforms, as well as available human rights monitoring and research reports. Preliminary findings were deduced and were further investigated through primary data gathering, which included semi-structured interviews with representatives of authorities and state agencies (Ministry of Justice, Ministry of Labour, Social Protection and Family, Ministry of Education, Ministry of Health, local public administrations, guardianship authorities), people with mental disabilities living in the community and in institutional settings, and their family members or carers. A first round of interviews was conducted in 2012. The findings of these were verified, where possible, through secondary sources. They were also supplemented with findings of other studies, and two further rounds of interviews conducted in December 2014 and March 2015.

In addition, as noted above, the report reflects the experience of OHCHR in direct involvement with Moldovan authorities, National Human Rights Institution and civil society to move reforms in the areas at issue, as well as to support the development of Moldovan civil society of persons with mental or intellectual disabilities. These include actions to support policy and legal reform in the area of CRPD Articles 12 and 19; strategic legal work to support court-led moves away from the application of guardianship and legal capacitation measures, as well as a number of aspects of legal challenge to discrimination against persons with disabilities; support for lawyers in serious human rights abuse cases, in particular as concerns serial sexual assault allegations in the Balti and Cocieri institutions; support for the National Human Rights Institution, in particular as concerns Constitutional petitions concerning the rights of persons with disabilities; as well as support for the development of civil society organisations of disabled persons, including Moldova's first group of users and survivors of psychiatry (2013-2014), a national network of parents of children with disabilities (2014-2015), and long-term work to advance the overall coordination architecture of Moldova's persons with disabilities civic organisations.

D. Structure of the report

The report starts with an **Executive Summary**, and the present **Introduction**. The report has three substantive chapters focusing on the right to inclusive education ('Schools for All'), the right to equal recognition before the law including the exercise of legal capacity and autonomy ('I'm a Person') and the right to live independently in the community and not be segregated in institutions ('My Home, My Choice'). Each of the three substantive chapters provide a short introduction to the field of inquiry and a description of relevant international human rights standards.

Each chapter then provides a detailed analysis of Moldovan law and policy, and commentary on the extent to which these meet international standards. The following sections provide information about the lives of people with disabilities themselves, highlighting where there are gaps between law and policy and lived realities. Conclusions and targeted recommendations flowing from international standards are provided at the end of each chapter.

Chapter 2: Schools for All, outlines the legislative and policy framework relating to the education system, with a specific view to children with disabilities. While segregation of children with disabilities continued to be allowed by Moldovan law, extensive reform has resulted in a greater number of children with mental or intellectual impairments benefiting from inclusion in the mainstream education system, and fewer children being placed in segregated settings. The chapter assesses remaining challenges and the further steps necessary for all children to benefit from an inclusive education.

Chapter 3: I'm a Person, describes how Moldovan law and policy still allows for people with disabilities, namely mental or intellectual impairments, to be deprived of their legal capacity and their placement under guardianship. It goes on to describe the negative implications of this substitute decision-making regime, including the denial of direct access to courts, even where there have been human rights violations. Restriction of legal capacity also has other far-reaching consequences for Moldovans with disabilities which are analysed in this chapter, including denial of the right to make decisions in important areas of life such as those related to where to live, with whom to live, who to marry, and the use of money and property. Recent legislative reforms have recognised the right of people under guardianship to vote and to appeal against the establishment of guardianship. These reforms are however insufficient to ensure the full enjoyment of rights for people with disabilities.

Chapter 4: My Home, My Choice, assesses Moldovan law and policy which still allows for people to be locked in hospitals and mental health care institutions against their will and to be subjected to forced psychiatric treatment. It describes the steps Moldova has taken to develop community services and identifies a need for a national deinstitutionalisation policy for all adults and children with disabilities. This chapter also considers related human rights violations that continue to take place in closed institutions. Ingrained social prejudices and negative attitudes against people with mental disabilities are highlighted as particular barriers to the realisation of full inclusion, and the chapter provides recommendations that the government tackle these through a public awareness-raising programme.

The **Conclusion** highlights the positive developments at the macro level, but calls for further concrete action by the Moldovan government to fully discharge its obligations under international law, particularly in relation to Articles 12 and 19 of the CRPD.

1. Schools for all

Introduction

In Moldova there are approximately 15,000 children with disabilities.²⁴ Many of them are excluded from mainstream schools or, when they do attend mainstream schools, are not always provided with appropriate support, adjustments and reasonable accommodation. While these problems do exist and require action, it is important to state that Moldova has developed some of the most promising practices in Central and Eastern Europe in transforming the education system away from segregation and towards inclusion.

Moldovan policies, legislation and practices in the field of education are assessed by taking into consideration the standards outlined in Article 24 of the UN CRPD. This makes clear that all children have the right to be educated in inclusive environments, and that there is no longer any legitimate place for segregated or 'special schools', and that inclusion applies to the provision of education at all levels. Inclusive education reflects the broader principle of non-discrimination and the full social inclusion of persons with disabilities envisioned by the CRPD. Essential to these standards are that education systems must respond to the unique characteristics, interests, abilities and learning needs of each child, including all children with disabilities.

To this end, States must ensure that people with disabilities are not excluded from the general education system and are provided with the reasonable accommodation and support they might need (Article 24(2)). Education must be delivered in the most appropriate language and make use of appropriate modes and means of communication for the individual. This should always be guided by a clear purpose, this being that inclusive education should maximise the academic and social development of every child (Article 24(3)(c)). Moreover, States must employ qualified staff and ensure there are training opportunities for teachers working with adults and children with disabilities (Article 24(4)).

Moldova also has the obligation to raise awareness throughout society regarding the rights of people with disabilities and to combat stereotypes, prejudices and harmful practices (Article 8(1)). Lastly, the CRPD requires that States collect and disseminate disaggregated data in relation to people with disabilities, including their situation within the education system (Article 31).

Law and policy analysis

Moldova has recently undergone extensive legislative reform in relation to its education system. In November 2014 a new Education Code entered into force, which must also be assessed with reference to the 2012 Law on Social Inclusion of Persons with Disabilities. The second of these includes a number of provisions related to the creation of an inclusive education system. As many children with disabilities continue to receive education services in residential settings, it is also important to assess the new education legislation in light of the national policy on deinstitutionalisation of children.²⁵

²⁴ Kelley McCreery Bunkers, "Foster care services for children in Moldova", March 2013, p. 17. Available from <http://www.crin.org/docs/Foster%20Care%20Services%20for%20Children%20in%20Moldova.pdf>.

²⁵ See Republic of Moldova, Government Decision no. 784 of 9 July 2007 on approval of the National Strategy and Action Plan for the reform of the residential care system for children for the period 2007-2012.

A system of inclusive education

According to the 2014 Education Code the system of education is regulated by national legislation and also by international human rights treaties, including the UN Convention on the Rights of Persons with Disabilities (UN CRPD).²⁶

The Code also states that all citizens have an equal right to education²⁷ and that the state should support children with disabilities - deemed by the legislation to have “special educational needs”.²⁸ To date, there are no specifications for children with mental or intellectual impairments in the relevant legislation, who are all absorbed or identified as “students with special educational needs (SEN)”

However, from a human rights perspective, this type of terminology is problematic because it focuses very much on the person’s impairment, which is represented as the source of inequality, and diverting our attention from the environmental conditions. All children have “especial educational needs” in inclusive education systems; however, some might need “enhanced levels of support”.²⁹

The 2012 Law on Social Inclusion of Persons with Disabilities regulates the provision of inclusive education in more detail.³⁰ According to this, every person, regardless of their disability, has the right to choose an inclusive education and be provided access to mainstream schools on an equal basis with other members of society.³¹

The 2012 law mandates the provision of inclusive education at all levels and in all public and private institutions, starting with pre-school education, primary and secondary schools, secondary vocational schools, high schools, undergraduate, graduate and postgraduate studies, extra-curricular educational programmes, professional and vocational studies.³² The Ministry of Education is mandated to develop and approve an inclusive framework curriculum which is adapted and corresponds to the developmental level of the child and their learning needs and to develop and provide educational materials for these purposes.³³

Under Article 29 paragraph 7 of the 2012 law, the State has committed to provide a workplace for every student with disabilities successfully graduating from tertiary or professional education.

²⁶ Republic of Moldova, Education Code of the Republic of Moldova No. 152 of 17 of July 2014, Article 2(2).

²⁷ Republic of Moldova, Education Code of the Republic of Moldova No. 152 of 17 of July 2014, Article 9(1).

²⁸ Republic of Moldova, Education Code of the Republic of Moldova No. 152 of 17 of July 2014, Article 9(6).

²⁹ Interview with Facundo Chávez Penillas, OHCHR Human Rights and Disability Advisor

³⁰ Republic of Moldova, Law on Social Inclusion of Persons with Disabilities No. 60 of 30 March 2012.

³¹ Republic of Moldova, Law on Social Inclusion of Persons with Disabilities No. 60 of 30 March 2012, Article 27(1).

³² Republic of Moldova, Law on Social Inclusion of Persons with Disabilities No. 60 of 30 March 2012, Article 27(3).

³³ Republic of Moldova, Law on Social Inclusion of Persons with Disabilities No. 60 of 30 March 2012, Article 32(5).

Testimony:³⁴

Now, my child is happy. She is accepted by her colleagues and they do not see her disability. They see Daria as a talented and friendly girl. My child is fulfilled. (Mother who managed, after several refusals and with the help of the OHCHR, to obtain a place in a mainstream kindergarten for her daughter with disabilities).

Reasonable accommodation in the Convention on the Rights of Persons with Disabilities

What is reasonable accommodation?

- It is an anti-discrimination measure
- If unlawfully denied it amounts to discrimination
- It applies in individual cases upon request of the person concerned
- It is immediately enforceable
- It must be reasonable and must not represent an undue burden

How do I know if the accommodation is reasonable or not, and that it does not represent an undue burden?

- The request must be addressed to the proper duty bearer and not to a third party (due burden)
- The duty bearer must engage in a dialogue with the right holder to agree on the accommodation
- In case of disagreement, the duty bearer must prove that the accommodation required is unreasonable in order to deny it legally, following this criteria:
 1. The accommodation is not relevant for the purpose it was required (relevance)
 2. The accommodation does not provide for integration or inclusion (proportional)
 3. The accommodation is not available (possible)
 4. The duty bearer has no access to any other source of funding to provide the accommodation (financially feasible)
 5. The provision of the accommodation economically jeopardizes the existence of the duty bearer and the performance of its core functions considering its overall budget (economically feasible)

What is not reasonable accommodation?

- It is not subject to progressive realization
- It is not based on an economic unit but on the overall budget of the duty bearer
- “Reasonable” is not a subjective analysis but an objective outcome of a “reasonableness” test
- It is not a measure that replaces the State’s general obligation to implement the full scope of the particular rights involved – e.g. the implementation of an inclusive education system

³⁴ United Nations, “Supporting children with disabilities into mainstream schools in Moldova,” 12 October 2014. Available from <http://www.ohchr.org/EN/NewsEvents/Pages/SupportingchildrenwithdisabilitiesintomainstreamschoolsMoldova.aspx>

According to Moldovan legislation, public authorities and education institutions have a general obligation to provide reasonable accommodation designed to meet the individual educational needs of students with disabilities.³⁵

The new Education Code provides that children and parents have the right to choose the institution where they want to study or to register their children³⁶ and attendance at school is mandatory for all children and teenagers up to the moment they turn 18.³⁷ Therefore, although there is no explicit “no rejection clause”, children should technically not be denied access to schools on the basis of disability. At the same time, the Code provides that children with disabilities can be educated in mainstream schools, in a special school or at home.³⁸ As the possibility to attend segregated schooling still exists and traditionally this is where children with disabilities would go, in practice there are still obstacles for children with disabilities in accessing mainstream schooling. More details are provided in a section below.

Availability of complaints mechanisms for victims of discrimination

The non-rejection clause is recognized in article 24(2)(a) of the Convention, stating that States parties must ensure that students with disabilities are not rejected from general education on the basis of disability. This clearly implies that no measures or schemes should be in place leading to deny the right of students to choose for pursuing their education in regular schools or other education facilities available to the general public. States parties cannot adopt laws or policies that force students to study in special schools if they (or their families) choose for integrated or inclusive settings. This antidiscrimination measure, as such, is of immediate realization and States must ensure, to the maximum of their available resources, that students with disabilities that decide for being educated in general education settings enjoy of quality education on an equal basis with others. The non-rejection clause is applicable on individual basis, and is not subjected to reasonableness tests.³⁹

³⁵ Republic of Moldova, Law on Social Inclusion of Persons with Disabilities No. 60 of 30 March 2012, Article 27(6).

³⁶ Republic of Moldova, Education Code of the Republic of Moldova No. 152 of 17 of July 2014, Articles 136(1) and 138(1)(a).

³⁷ Republic of Moldova, Education Code of the Republic of Moldova No. 152 of 17 of July 2014, Article 13(2).

³⁸ Republic of Moldova, Education Code of the Republic of Moldova No. 152 of 17 of July 2014, Articles 32 and 33.

³⁹ Day of General Discussion on the right to education of persons with disabilities, presentation of the OHCHR Human Rights and Disability Advisor, 15 April 2015

“No rejection clause” and the Convention on the Rights of Persons with Disabilities

What is the “no rejection clause”?

- It is an anti-discrimination measure
- It is subject to immediate realization
- It applies in individual cases
- It implies that no child with disability can be rejected from general schools on the basis of the existence of an impairment

What does a “no rejection clause” imply?

- States must refrain from excluding students with disabilities from general schools
- States cannot establish mechanisms of medical diagnosis to drive students to special schools or other segregated educational settings
- States must advance on building inclusive education systems without denying the right to be included in the community and having access to general education services
- States must provide reasonable accommodation for integration on an individual basis until inclusive education systems are in place

In the cases where the support services needed for certain students with disabilities are not yet created, the Law on Ensuring Equality requires for reasonable accommodation in order to ensure the realization of this right.⁴⁰

As any other antidiscrimination measure, reasonable accommodation is of immediate realization. While the CRPD Committee has not yet defined the reasonableness objective test in the context of the realization of the right to education, some of its elements were identified (in general terms) in the analysis of the case *Jungelin v. Sweden*.⁴¹ Drawing from these elements and those identifiable in comparative law, the following elements of the test are advisable to be considered in the design of a General Comment on the right to education.

1. Undue burden: The student with disability must request the adequate duty bearer the provision of accommodation. The State should identify in law and policy the duty bearer to avoid posing such burden on the student.
2. Interactive dialogue: the duty bearer and the right holder should engage in an interactive dialogue in order to identify the necessary accommodations that fulfills the goal of enjoying the right to inclusive quality education.
3. If no agreement is reached in the interactive dialogue between the duty bearer and the right holder, law should reverse the burden of proof on the duty bearer, who will have to prove at least one the following elements in order to avoid responsibility on the basis of discrimination:

⁴⁰ Republic of Moldova, Law No. 121 of 25 May 2012 on Ensuring Equality, Article 2. Definitions

⁴¹ Case of Ms. Marie-Louise Jungelin vs. Sweden, CRPD/C/12/D/5/2011

- a. Relevance: the duty bearer must prove that the accommodation requested was irrelevant for the effective access to inclusive quality education of the student;
- b. Proportional: means that the duty bearer in the interactive dialogue considered the requested accommodation, can prove that objectively is beyond the necessary and proposed an alternative that objectively equally provides for the effective enjoyment of inclusive quality education;
- c. Possible: implies that the accommodation requested must exist and can be made available;
- d. Financially feasible: the duty bearer must prove that it exhausted financial support resources to provide for the accommodation requested, including by requesting public and private funding;
- e. Economically feasible: the duty bearer must prove that the implementation of such accommodation jeopardizes the existence of the duty bearer or that it substantially jeopardizes the performance of its core functions.⁴²

In Moldova, a **victim of discrimination** can **seek protection** through judicial proceedings⁴³ or they can submit a petition to the Council for the Prevention and Elimination of Discrimination and for Ensuring Equality (“Equality Council”).⁴⁴ Under Article 12 of the 2012 Law on Ensuring Equality, the Equality Council investigates allegations of discrimination, requests the responsible bodies to take remedial measures and provides redress.

Discrimination on the basis of disability, including in relation to the provision of education, is prohibited under Moldovan law.⁴⁵ The Law on Ensuring Equality provides for two substantive antidiscrimination measures that ensure the enjoyment of this right immediately: the non-rejection clause and the provision of reasonable accommodation.⁴⁶ The Law further provides that discrimination, including discrimination on grounds of disability, can be punished under the 2009 Administrative Offences Law.⁴⁷

During our research a number of parents and professionals told us that these mechanisms are not often used due to a lack of confidence in their effectiveness. According to these informants, victims of discrimination thought that even where the Equality Council found an act or practice to be discriminatory, this was unlikely to effectuate change in the practice of a school.

⁴² Day of General Discussion on the right to education of persons with disabilities, presentation of the OHCHR Human Rights and Disability Advisor, 15 April 2015

⁴³ Republic of Moldova, Code of Administrative Offences No. 218 of 24 October 2008, Article 394.

⁴⁴ Officially called the Council for the Prevention and Elimination of Discrimination and for Ensuring Equality (see Republic of Moldova, Law on Ensuring Equality, No. 121, of 25 May 2012).

⁴⁵ Republic of Moldova, Law No. 121 of 25 May 2012 on Ensuring Equality.

⁴⁶ Republic of Moldova, Law No. 121 of 25 May 2012 on Ensuring Equality, Article 9.

⁴⁷ Republic of Moldova, Code of Administrative Offences No. 218 of 24 October 2008.

Affirmative action

Moldova has adopted several affirmative action measures to encourage and facilitate the participation of children with disabilities in education. Primary and secondary schools, secondary vocational schools and tertiary educational institutions have an obligation to reserve 15% of places for students with disabilities.⁴⁸ Persons with disabilities have priority admission when two or more persons have scored equally in entrance exams held for particular educational programmes.⁴⁹ Furthermore, students with disabilities enrolled in higher educational or professional schools are granted social scholarships.⁵⁰

Such measures are not to be considered discriminatory under the CRPD, as they have the aim of accelerating and achieving substantive equality of persons with disabilities.⁵¹

Support services

According to Moldovan legislation, public authorities and education institutions have a general obligation to provide support services tailored to meet the individual educational needs of students with disabilities.⁵² Additionally, authorities have the obligation to develop and facilitate access to support services, provide assistive technologies and ensure an accessible environment for all.⁵³ The Law on Social Inclusion of Persons with Disabilities therefore provides a comprehensive framework for children and adults with disabilities to enjoy effective, individualised support measures, consistent with the goal of full inclusion.

The 2012 Governmental Regulation on the Redirection of Funds for People with Disabilities⁵⁴ states that children with disabilities must have access to the following minimum support services:

- 1) Psycho-pedagogical assistance;⁵⁵
- 2) Support teachers;
- 3) Resource Centres for Inclusive Education;⁵⁶
- 4) Educational support in doing homework;
- 5) Free meals, teaching and learning materials and transportation.

⁴⁸ Republic of Moldova, Law on Social Inclusion of Persons with Disabilities No. 60 of 30 March 2012, Article 29(5).

⁴⁹ Republic of Moldova, Law on Social Inclusion of Persons with Disabilities No. 60 of 30 March 2012, Article 29(4).

⁵⁰ Republic of Moldova, Law on Social Inclusion of Persons with Disabilities No.60 of 30 March 2012, Article 29.

⁵¹ United Nations, Convention on the Rights of Persons with Disabilities (CPRD), Treaty Series, volume 2515, p. 3, entered into force on 3 May 2008, Article 5(4).

⁵² Republic of Moldova, Law on Social Inclusion of Persons with Disabilities No. 60 of 30 March 2012, Article 27(6).

⁵³ Republic of Moldova, Law on Social Inclusion of Persons with Disabilities No. 60 of 30 March 2012, Articles 27(5) and 27(6).

⁵⁴ Republic of Moldova, Government Decision No. 351 of 29 May 2012 on approving the Regulation regarding the diversion of financial resources within the reform of residential institutions, Article 8.

⁵⁵ Republic of Moldova, Government Decision nr 732 on the establishment of the Republican and Rayonal Services for Psycho-pedagogical Assistance

⁵⁶ Defined in Republic of Moldova, Government Decision No. 351 of 29 May 2012 on approving the Regulation regarding the diversion of financial resources within the reform of residential institutions, Article 2(f) as a service of assistance to beneficiaries with “special educational needs” who are integrated in mainstream education, provided at the local level within educational institutions which are inclusive and at the level of each rayon by the Service for psycho-pedagogical assistance.

These support services have been developed at the rayon⁵⁷ and community levels. A variety of tools have also been developed to contribute to child-centred individual educational plans.

At the rayon level, psycho-pedagogic assistance services are mandated to facilitate the access of all children, including children with disabilities, to primary and secondary education. The staffs of the service are responsible for conducting individual assessments, aiming to identify the type of supports a child requires for ensuring their full inclusion in the educational process, and working in cooperation with the school teachers at the development of the individualized educational plans. The psycho-pedagogic assistance teams are composed of specialists in psychology, speech therapy, kinetotherapy and social work, who carry out after school work with children and their families, according to the identified priorities.⁵⁸

Other services, such as the support teacher and the resource centres for inclusive education are created and provided by schools.⁵⁹ Their aim of these services is to support adequate implementation of the inclusive education policy and facilitate teacher's compliance with their obligations. They are reported to significantly facilitate the inclusion of children with disabilities in mainstream education. Some parents explained that the Centres play an essential role in facilitating the transition of children with disabilities into mainstream schools.⁶⁰ As of May 2015, resource centres for inclusive education were created in approximately 40% of the schools around the country. Despite these progressive advancements, there are still several gaps which require the attention of the Moldovan government. The legislation specifies that only one support teacher is available for every ten children with special educational needs, and only one support teacher will be made available for every five children with severe/associated disabilities.⁶¹ While in some cases this might be sufficient, it must be recognised that some children will require higher levels of intensive and individual assistance from support teachers.

The information related to the independent living support services, established under the Ministry of Labour, Social Protection and Family is provided in Chapter 5.⁶²

⁵⁷ Rayons are Moldovan administrative units, similar to counties. In the Republic of Moldova there are 37 rayons in total.

⁵⁸ Republic of Moldova, Government Decision No. 351 of 29 May 2012 on approving the Regulation regarding the diversion of financial resources within the reform of residential institutions, Articles 46 and 47.

⁵⁹ Institute for Public Policy, "The Implementation of inclusive education in the Republic of Moldova. A study on public policies", 2014, p. 44. Available [in Romanian] from http://www.ipp.md/public/files/Proiecte/Studiu_Cara_Angela.pdf.

⁶⁰ Institute for Public Policy, "The Implementation of inclusive education in the Republic of Moldova. A study on public policies", 2014, p. 46. Available [in Romanian] from http://www.ipp.md/public/files/Proiecte/Studiu_Cara_Angela.pdf.

⁶¹ Republic of Moldova, Government Decision No. 351 of 29 May 2012 on approving the Regulation regarding the diversion of financial resources within the reform of residential institutions, Article 50.

⁶² Republic of Moldova, Law on Social Inclusion of Persons with Disabilities No. 60 of 30 March 2012, Article 27.

Testimony:⁶³

Petru's father was very much against the boy going to school, thinking that he could never manage, especially as he was older than his classmates. With the mother insisting and the support offered by the counsellors of a mobile team lead by an NGO, Petru's father accepted the idea and the boy is currently attending classes in mainstream school.

Testimony:⁶⁴

A teacher didn't know how to deal with a child with autism who, while at school, was always staying under the desk. The teacher was advised by experts in inclusive education to spend time under the desk with the child and teach him part of the lessons there. She tried this and it worked: the child started studying and after some time dared to sit at his desk, not under it.

Support and accommodations are vital for ensuring the inclusion of children with disabilities within education systems. Moldova has developed very promising practices in providing such services, which are becoming increasingly available. Moreover, it is a positive development that a policy and legal framework was created to regulate them.

63 Institute for Public Policy, "The Implementation of inclusive education in the Republic of Moldova. A study on public policies", 2014, p. 41. Available [in Romanian] from http://www.ipp.md/public/files/Proiecte/Studiu_Cara_Angela.pdf.

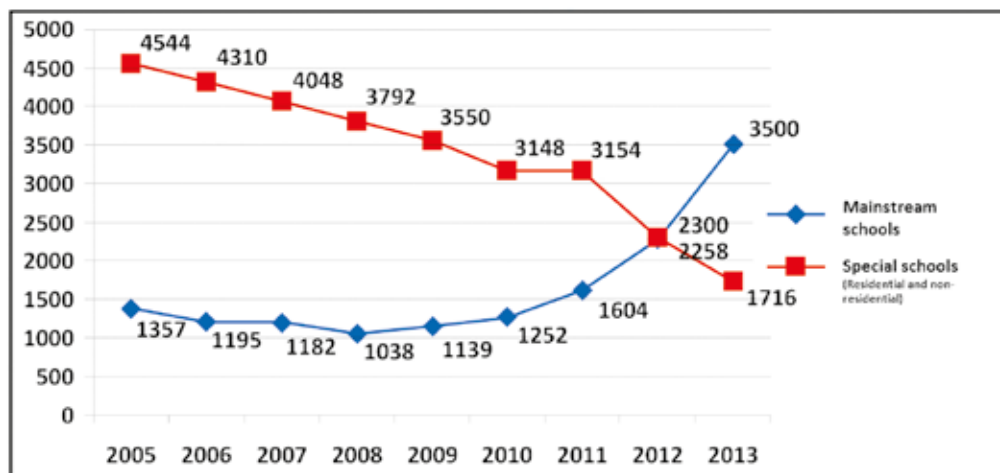
64 Interview with Lucia Gavrilita, a leading expert in the field of the rights of persons with disabilities in the Republic of Moldova, "Speranta" (Hope) Day Care Centre, December 2014.

Segregated education

It is unfortunate that the new Education Code also provided for the option of sending children with disabilities to ‘special schools’,⁶⁵ some of which are residential institutions (*scoli auxiliare*).⁶⁶ It provides for this option without an overarching commitment to progressively close them or setting our mentioning mandatory targets for achieving this result. The national Programme on Inclusive Education for the years 2011-2020,⁶⁷ however, declares inclusive education as a national priority.

The Government has also adopted a 2004-2015 National Education for All Strategy and Action Plan⁶⁸ with a particular focus on the reorganisation of special boarding schools for children with mental disabilities, aimed at dismantling the dual system of special and general schooling, and the gradual transition of children with psycho-social and intellectual disabilities into general schools.

As a result of these policies, in the 2013-14 school year there were 3,500 children which require enhanced levels of support were studying in mainstream schools.⁶⁹ A number of 4,495 children which require enhanced levels of support were successfully enrolled in mainstream schools at the beginning of the 2014 school year and about 1321 young children were enrolled in regular preschool groups. Therefore, the number of children who need enhanced support and are included in mainstream schools has been steadily growing in recent years, showing a significant increase since 2011, along with a marked decrease in the numbers of children educated in special schools.



Number of children with special educational needs⁷⁰ in mainstream schools and in special schools⁷¹

⁶⁵ Republic of Moldova, Education Code of the Republic of Moldova No. 152 of 17 of July 2014, Articles 23(4), 27(7) and 29(4).

⁶⁶ Republic of Moldova, Education Code of the Republic of Moldova No. 152 of 17 of July 2014, Articles 23(4), 27(7) and 29(4).

⁶⁷ Republic of Moldova, Government Decision No. 352 of 11 July 2011 approving the Regulation on the organisation and functioning of the Ministry of Health, on its structure and on the limits of the number of staff within its central units.

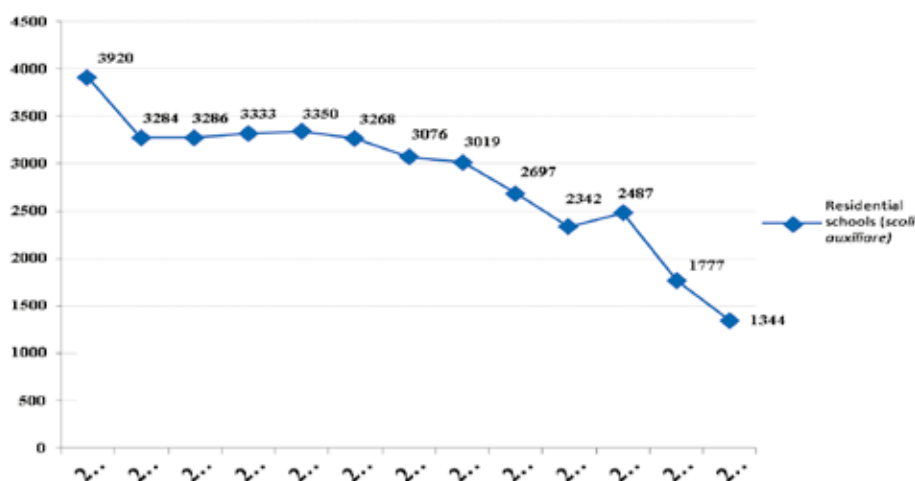
⁶⁸ Republic of Moldova, Governmental Decision No. 410 of 4 April 2003 for adopting the “Education for All” National Strategy (2004-2015).

⁶⁹ Institute for Public Policy, “The Implementation of inclusive education in the Republic of Moldova. A study on public policies”, 2014, p. 7. Available [in Romanian] from <http://www.ipp.md/libview.php?l=ro&idc=171&id=723>.

⁷⁰ This report does not endorse use of the term “special educational needs”. However, this is the conceptual framework applied by the Ministry of Education of the Republic of Moldova. The category appears to extend beyond children with disabilities, and it includes also apparently children with behavioral issues and other children not succeeding under the mainstream curriculum.

⁷¹ Institute for Public Policy, “The Implementation of inclusive education in the Republic of Moldova. A study on public policies”, 2014, p. 62. Available [in Romanian] from <http://www.ipp.md/libview.php?l=ro&idc=171&id=723>.

According to data provided by the Ministry of Education,⁷² inclusive practices have been piloted in 49 mainstream schools out of the total 1,200 schools in Moldova with financial support of the Ministry of Finance and international donor organisations. The results of these pilot projects have been extremely positive: many more children with disabilities now benefit from an inclusive education and support for inclusion has increased amongst parents, teachers and children without disabilities.⁷³



Number of children with mental or intellectual impairments attending residential special schools: 2001-2013⁷⁴

3,909 children continue to be educated in segregated residential settings in Moldova. 40% of these (1,543 students) are children with mental or intellectual impairments.⁷⁵

1,344 children are provided education in residential special schools (*scoli-internat auxiliare*).⁷⁶ These schools are closed residential institutions founded and financed by the Ministry of Education,⁷⁷ and provide basic living conditions, nutrition, medical services and care. During the school year, students from these schools have no access to educational activities outside the institution. Twice a year, “open door days” are organised. During these days, members of the community are invited to visit the institution, meet the students and take part in joint activities. On completion of the mandatory 8 grades, students leave these schools without any formal qualifications. They only receive a confirmatory certificate of attendance which means they are unable to continue their studies or enrol in professional schools or tertiary educational institutions. Such certificate also represents a significant barrier to employment on the open labour market.⁷⁸

⁷² Ministry of Education, “Results and lessons learned during the reformation of residential system for children. Inclusive Education – a challenge for the educational system” (conference, Chisinau), 9 November 2012.

⁷³ Institute for Public Policy, “The Implementation of inclusive education in the Republic of Moldova. A study on public policies”, 2014, p. 39. Available [in Romanian] from <http://www.ipp.md/libview.php?l=ro&idc=171&id=723>.

⁷⁴ Institute for Public Policy, “The Implementation of inclusive education in the Republic of Moldova. A study on public policies”, 2014, p. 27. Available [in Romanian] from <http://www.ipp.md/libview.php?l=ro&idc=171&id=723>.

⁷⁵ Institute for Public Policy, “The Implementation of inclusive education in the Republic of Moldova. A study on public policies”, 2014, p. 25. Available [in Romanian] from <http://www.ipp.md/libview.php?l=ro&idc=171&id=723>.

⁷⁶ Ministry of Education, System of Education, Residential education and inclusive education. Available [in Romanian] from <http://www.edu.md/ro/inv-rezidential/> (accessed on 18 March 2015).

⁷⁷ Their functioning is regulated by Republic of Moldova, Government Decision No. 432 of 20 March 2007 approving minimum quality standards for the care, education and socialization of children in residential institutions.

⁷⁸ Republic of Moldova, Government Decision No. 432 for adopting the Framework Regulation and Quality Standards for the Special Boarding Schools, adopted 20 March 2007.

Testimony:⁷⁹

I am ashamed to tell people what kind of school I went to. I am scared the other children will mock me for having gone to a special school. (Nicolae was recently transferred from a segregated into a mainstream school)

Funding

Education funding in Moldova “follows the student”,⁸⁰ meaning that resources are allocated on a case by case basis, and takes into consideration the number of children which require enhanced levels of support at each school. Each school is responsible for requesting the funds it needs, which is then assessed and determined by the central authorities. The role of the Ministry of Education is to ensure that local public authorities redirect financing to establish community services for children with disabilities.⁸¹

In 2012, Moldova adopted a Regulation on the Redirection of Funds for People with Disabilities⁸² that redirects financial resources from residential institutions to community-based services. This has resulted in the transition of beneficiaries from residential institutions to general schools.

These policies have contributed to the increased inclusion of children in mainstream education. However, some public bodies lack information and expertise in planning and channelling available financial resources to increasing school inclusion, in developing educational support services for children with intellectual disabilities and also in ensuring the provision of reasonable accommodations.

Consequently, funds are not always used with the greatest effect to promote inclusive education. In addition, during our research many interviewees said that budgets allocated per student were often lower than the actual expenses needed to ensure meaningful inclusion of children with intellectual disabilities in schools.

⁷⁹ Stela Grigoras, USAID, “The deinstitutionalisation of child care”, 2014.

⁸⁰ Republic of Moldova, Education Code of the Republic of Moldova No. 152 of 17 of July 2014, Article 9.

⁸¹ Republic of Moldova, Government Decision No. 351 of 29 May 2012 on approving the Regulation regarding the diversion of financial resources within the reform of residential institutions.

⁸² Republic of Moldova, Government Decision No. 351 of 29 May 2012 on approving the Regulation regarding the diversion of financial resources within the reform of residential institutions.

Human rights in practice

Access to mainstream schools

Moldova has undergone extensive developments in ensuring that children with disabilities have access to education in mainstream schools. Many children have benefited from these reforms and are no longer rejected when they ask for admission to general schools.

However, gaps continue to exist between policies and the reality of how students with psycho-social and intellectual impairments are supported in their communities, schools and classrooms.⁸³ There are still cases in which parents are refused or turned away by school administrators,⁸⁴ and there are school headmasters who admit that they deny access to children with intellectual disabilities in their schools or at least attempt to persuade parents against schooling their children in mainstream schools.⁸⁵

Such attitudes reflect a lack of knowledge and training on the forms of support children with disabilities might need, and sometimes a lack of support services in practice. They are also due to strong prejudices regarding children with disabilities in general and children with mental or intellectual impairments in particular. One of the headmasters interviewed for this research said:

“There is no point in sending a child with intellectual or psycho-social disabilities to school anyway: they are not able to learn and operate normally. Their schooling requires high financial spending and big effort on behalf of teachers. We would rather spend this money on the healthy children who are the hope of our future.”⁸⁶

Testimony:⁸⁷

I want my child to be integrated in a mainstream kindergarten and have the benefit of a quality education. Despite the legal framework that supports inclusion of children with disabilities in regular institutions and all my efforts we have been excluded by all the local kindergartens. (Maria, a mother of young girl with disabilities)

Parents reported that the first schooling experience was often negative and that they had been forced to withdraw their children with disabilities from mainstream schools and find alternative solutions for education on their own. In some cases, this meant that the mother of the child or the grandmother felt obliged to renounce employment and stay at home to take care of their child and provide a basic education with limited or no support.⁸⁸

Such situations are the result of either direct or indirect discrimination on the basis of disability, and violate the right to inclusive education outlined in the CRPD and Moldovan law.⁸⁹

⁸³ Interview with Iuliana Samburschi of the organisation SOIR and 5 other parents of children with intellectual impairments, Chisinau, 25 September 2012.

⁸⁴ Focus group with five mothers of children with intellectual impairments, Chisinau, 12 September 2012; these findings are similar to those from UNICEF Moldova, “Baseline Study on Basic Education in the Republic of Moldova from the perspective of child-friendly schools”, p. 29, 2008. Available from <http://www.erisee.org/downloads/2013/2/Baseline%20Study%20on%20Basic%20Education%202008%20ENG.pdf>.

⁸⁵ Interview with school and kindergarten headmasters, Chisinau, 30 August 2012.

⁸⁶ Interview with Headmaster of school, July 2012.

⁸⁷ United Nations, “Supporting children with disabilities into mainstream schools in Moldova,” 12 October 2014. Available from <http://www.ohchr.org/EN/NewsEvents/Pages/SupportingchildrenwithdisabilitiesintomainstreamschoolsinMoldova.aspx>

⁸⁸ UNICEF Moldova, “Baseline Study on Basic Education in the Republic of Moldova from the perspective of child-friendly schools”, p. 29, 2008. Available from <http://www.erisee.org/downloads/2013/2/Baseline%20Study%20on%20Basic%20Education%202008%20ENG.pdf>.

⁸⁹ Republic of Moldova, Law on Social Inclusion of Persons with Disabilities No. 60 of 30 March 2012, Article 24 (2)(a).

Training for teachers and educational staff

Inclusive education requires a significant shift in teaching practices, and it is important that pedagogical staff are provided with appropriate practical training and tools.

Moldova has an underlying lack of qualified teaching staff with few professional training opportunities. To respond to this, the Ministry of Education has developed a set of materials for teachers to promote inclusive education, including:

- A Methodological Guide for Inclusive Education;
- Adapted Curriculum and Individualized Education Plans in the Context of Inclusive Education; and
- A Guide to Educational Inclusion of Children with Disabilities in Kindergartens.⁹⁰

It has also developed a “Final Evaluation and Certification Methodology” for students with special educational needs (SEN) that complete their education in mainstream schools and has started developing modules on inclusive education for qualified and trainee teachers.

The professional trainings provide an opportunity for teachers to acquire the skills needed to enable them to offer support to children with mental disabilities in the classroom and are as well challenging negative or exclusionary attitudes towards children with special educational needs. An evaluation of these trainings was carried out by the Institute for Public Policy from Moldova and found that the longer the period of training, the more open teachers became in support of inclusive pedagogical practices.⁹¹ Training on disability-related skills in the sphere of education are to be welcomed, particularly with reference to Article 24(4) of the CRPD.⁹²

Tackling prejudices, stereotypes and harmful practices

Stigma and prejudices against children with disabilities are still pervasive in Moldovan society, including among parents and education professionals.

According to a 2009 national survey on early childhood development, inclusive education lacked support from parents of children without disabilities.⁹³ Only 5% of the 1,806 parents interviewed thought that children with disabilities should attend general community kindergartens. More than 20% of families opposed inclusive education, and preferred children with disabilities to be educated in special schools. Furthermore, only 46% of families would allow their children to play with children with disabilities.

⁹⁰ Ministry of Education of the Republic of Moldova, official website. Available from <http://www.edu.md/en/start/>

⁹¹ Institute for Public Policy, “The Implementation of inclusive education in the Republic of Moldova. A study on public policies”, 2014, p. 7. Available [in Romanian] from http://www.ipp.md/public/files/Proiecte/Studiu_Cara_Angela.pdf.

⁹² Article 24(4) states that: “In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.”

⁹³ UNICEF Moldova, “National Survey on Early Childhood Care and Development: Family Knowledge, Attitudes, and Practices”, 2010, p. 27. Available from http://www.unicef.org/moldova/2010_007_ECD_KAP_Study_ENG.pdf.

The majority of teachers still consider inclusive education to be detrimental for children without disabilities because teachers believe that they would have to spend too much time and attention on supporting children with disabilities.⁹⁴ Another challenge perceived by the teachers is that children with disabilities would experience isolation and prejudice at the hands of their classmates. Teachers said that the Moldovan government should not invest budgetary resources in deinstitutionalisation as they did not consider it to be a priority compared to other community issues.⁹⁵

To address these problems the Ministry of Education, in collaboration with experienced civil society organisations,⁹⁶ developed several pilot-projects through which children with disabilities were included in mainstream schools. A 2014 evaluation of these projects found that while in other schools teachers had negative attitudes about inclusion, the attitudes of teachers from schools involved with the pilot project had positively changed, and that they had become more willing to support children with disabilities.⁹⁷

Studies have shown that while children without disabilities tend to be understanding and protective towards their peers with physical disabilities, attitudes are usually less tolerant towards children with intellectual impairments, who are particularly stigmatised.⁹⁸

Such attitudes can significantly limit the inclusion of children with disabilities in mainstream education. Parents of children without disabilities also sometimes argue against inclusion, for example by refusing to allow their child to sit in classes next to a child with disability.⁹⁹

Prejudice and discrimination also has a direct effect on parents of children with disabilities. Some of the parents interviewed reported that gaining quality and inclusive education for their children was an uphill battle, and that the combination of obstacles meant that they were more likely to send their child into segregated education.

For these reasons, it is important for states to undertake awareness-raising campaigns (Article 8) and promote relevant training of professionals and staff working with children with disabilities (Article 4(1)(i)). While the Moldovan government has taken many positive steps in this direction, it is clear that broad public awareness campaigns are required to tackle deeply-rooted prejudices against children with mental disabilities.

⁹⁴ UNICEF Moldova, “Baseline Study on Basic Education in the Republic of Moldova from the perspective of child-friendly schools”, p. 29, 2008. Available from <http://www.erisee.org/downloads/2013/2/Baseline%20Study%20on%20Basic%20Education%202008%20ENG.pdf>; and Institute for Public Policy, “The Implementation of inclusive education in the Republic of Moldova. A study on public policies”, 2014, p. 37. Available [in Romanian] from <http://www.ipp.md/libview.php?l=ro&idc=171&id=723>.

⁹⁵ UNICEF Moldova, “Baseline Study on Basic Education in the Republic of Moldova from the perspective of child-friendly schools”, p. 29, 2008. Available from <http://www.erisee.org/downloads/2013/2/Baseline%20Study%20on%20Basic%20Education%202008%20ENG.pdf>

⁹⁶ NGOs including Lumos, Keystone Human Services International Moldova Association, CCF “Moldova”, Speranța (Hope) NGO, Partnerships for Children and others, see Institute for Public Policy, “The Implementation of inclusive education in the Republic of Moldova. A study on public policies”, 2014, p. 23. Available [in Romanian] from http://www.ipp.md/public/files/Proiecte/Studiu_Cara_Angela.pdf.

⁹⁷ Institute for Public Policy, “The Implementation of inclusive education in the Republic of Moldova. A study on public policies”, 2014, p. 26. Available [in Romanian] from http://www.ipp.md/public/files/Proiecte/Studiu_Cara_Angela.pdf.

⁹⁸ Institute for Public Policy, “The Implementation of inclusive education in the Republic of Moldova. A study on public policies”, 2014, p. 7. Available [in Romanian] from http://www.ipp.md/public/files/Proiecte/Studiu_Cara_Angela.pdf.

⁹⁹ Institute for Public Policy, “The Implementation of inclusive education in the Republic of Moldova. A study on public policies”, 2014, p. 38. Available [in Romanian] from http://www.ipp.md/public/files/Proiecte/Studiu_Cara_Angela.pdf.

Collection and dissemination of data

Moldova does not gather sufficient data in relation to children with disabilities, and the data that is collected is not disaggregated by age, impairment type, gender or forms of support. There is only general data on the total number of children with all impairment-types who are included in mainstream schools, and the available data is incomplete. Independent studies indicate that many children with disabilities are not included in official statistics as parents avoid registering their children with the Consultative Medical Board.¹⁰⁰ The reasons for this are lack of information or money to obtain the necessary documents and the desire to protect the child with a disability from stigmatisation and discrimination.

In their written reply to our request regarding the prevalence and trends on segregated education, the Ministry of Education declared that there is no national statistical database on the issue.¹⁰¹

Gathering disaggregated information on the situation of children with disabilities is necessary for the Moldovan government to be able to undertake a comprehensive assessment of the extent and scale of need of children with mental disabilities in education, and to formulate and to implement policies related to inclusive education. It is also an obligation under the CRPD (Article 31), which the Moldovan government currently fails to meet.

100 Association for Charity and Social Assistance ACASA, "Comparative study on the situation of disabled children conducted in the district Ungheni, Soldanesti and the municipality Comrat from the Republic of Moldova," 2009, pp. 13-14. Available [in Romanian] from <http://sociopolis.md/uploads/0/images/large/studiul-comparativ-privind-situatia-copiilor-cu-disabilitati-din-raioanele-usc.pdf>.

101 OHCHR written correspondence with the Ministry of Education: 13 September 2012.

Conclusions and recommendations

Moldova has achieved significant progress in recent years with the purpose of strengthening the inclusion of children who need enhanced support into mainstream schools in law, policy and financing. Several measures were taken including the development of assessment centres, providing teachers with professional development opportunities, providing specially trained support teachers, guidelines for adjusting the education curriculum and providing for reasonable accommodations during schooling and testing. Of particular merit is that these achievements have taken place as a result of close collaboration between the government, national and international organisations and with the involvement of Moldovan civil society, including parents and children with disabilities.

However, there remain significant gaps in law and policy and changes are needed to ensure that the Moldovan education system becomes fully inclusive of children disabilities. While rejection of children with disabilities from mainstream schools became less common, a number of parents reported that schools failed to provide the individualised support and reasonable accommodations their children need. At the same time, children with severe impairments or high support needs continue to be denied access to mainstream schools and the majority of children with disabilities placed in residential institutions continue to receive their education in segregated settings.

Too few teachers are sufficiently equipped with the skills they need to support children with disabilities in the classroom, and many teachers have prejudicial attitudes that hinder the process of inclusion. In terms of financing, the distribution of education budgets is sometimes faulty, with money not being used in the most effective way to provide appropriate and targeted support services where they are needed. An expert interviewed for the purpose of this research explained that there was funding allocated to implement inclusive education which has gone unused because of the lack of experience of schools in estimating their costs and making requests for such funding from central public authorities.¹⁰²

The lack of comprehensive and disaggregated data constitutes a considerable barrier to the development of inclusive national and regional strategies and plans to enhance the inclusion, participation and achievements of students with psycho-social and intellectual disabilities in mainstream education.

The experiences of parents and children with disabilities themselves show that there has been substantial progress, but that many still encounter attitudinal and other barriers. Many of the promising practices developed in the country should be used to inform other countries in the region and beyond. At this point, it is important that Moldova redoubles its efforts to ensure that every child, no matter their disability, are able to access high quality, inclusive education which prepares them for becoming active citizens. Segregation of children with disabilities in education must become a thing of the past.

¹⁰² Interview with Tatiana Cernomorit (expert on inclusive education and former consultant on inclusive education for UNDP), 4 March 2015.

Recommendations

On the basis of the above, the following actions are recommended:

1. Amend the Education Code to reflect the transition towards an inclusive education system for all children and withdraw the legal foundation for segregated education as of 2020.
2. Amend current legislation to properly reflect anti-discrimination measures enshrined in the CRPD.
3. Support and develop continuous professional development programmes, including compulsory modules for teachers at all levels, on pedagogical approaches to support inclusive education. Specific pedagogical materials should be developed, including for children with mental disabilities.
4. Facilitate and develop specialist training for support teachers so that they can respond to common needs of children with different impairments, including children with intellectual or psycho-social impairments.
5. Amend current legislation to ensure that the level of provision of support teachers corresponds to with the level of need identified, rather than through a general provision in law, as is currently the case.
6. Accelerate the process of closing down residential special schools providing, at the same time, adequate community-based support.
7. Increase the availability and accessibility of educational support services across the country.
8. Undertake an analysis of the use of education funding, particularly in relation to the provision of support services and reasonable accommodations for children with disabilities, and develop methods for ensuring that maximum use is made of the funding available by schools.
9. Develop an independent and accessible complaint mechanism for parents of children with disabilities who have been denied access to mainstream schools or who have experienced discrimination, formally or informally, with the Ministry of Education.
10. Amend the mandate of the National Equality Council to make its findings binding on public authorities, including schools, with the power to sanction authorities who fail to act on decisions, and share this information broadly with parents and children with disabilities.
11. Develop a systematic method for collecting, analysing and disseminating disaggregated education-related data on the inclusion and participation of children with mental disabilities, by impairment-type, age, gender and forms of support.
12. Encourage and develop public awareness raising programmes to challenge prejudice and stigma against children with disabilities; such programmes should target all children, teachers, parents and wider society, and should spread information about human rights including the right to inclusive education and anti-discrimination measures.
13. Continue collaborating with civil society in the development and implementation of legislation and policies advancing inclusive education, closely consulting with and actively involving children with disabilities themselves and their parents.

2. I'M A PERSON

Introduction

Legal capacity is a legal concept that recognises people as bearers of rights and actors before the law. It is a crucial guarantee of a person's autonomy and is recognised as being the "root from which all the human rights grow".¹⁰³ A person whose legal capacity is denied or removed is plunged into a status of "civil death"¹⁰⁴ which means that they cannot participate in the legal circuit. In these cases their legal capacity is vested in a guardian or other substitute decision-maker who, from that point on, will be in charge of the incapacitated person's life. While most of us take for granted the ability to make decisions in our lives about where we live, how we manage our property, and the relationships we have, people with disabilities are frequently denied these fundamental freedoms through the operation of laws which render their choices legally invalid and surrogate decision making arrangements. And this is the situation in which approximately 4,000 people with mental and intellectual impairments find themselves to be trapped in.¹⁰⁵

It should be mentioned from the outset that no single public authority collects disaggregated data on the number of people with disabilities who have been deprived of their legal capacity. According to one source there are 3,267 people who are fully deprived of their legal capacity in Moldova. This data however is different from figures provided by other state authorities, which suggests that the actual figure is higher. Besides constituting a violation of the obligation to collect appropriately disaggregated data in the CRPD, the lack of data makes it difficult to assess the needs of people with disabilities to access support to exercise their legal capacity, and is a significant barrier to undertaking evidence-based legislative and policy reform.

This chapter provides an analysis of Moldovan legislation, policies and practices related to legal capacity, and highlights how these restrict the right to equality before the law and autonomy of many people with disabilities. The first section provides a description of the process through which people are deprived of legal capacity and the system of guardianship. The second part of the chapter assesses the effects of guardianship through the lens of human rights. Recommendations for the government are also provided, and specifically that Moldova should take prompt steps to abolish the outdated guardianship system and ensure that support is available to people with disabilities to exercise their autonomy.

103 Mr. Gábor Gombos, ex-member of the CRPD Committee, Adjunct Professor at NUIG and at NALSAR Law University Hyderabad.

104 Mental Disability Advocacy Center, "Legal capacity in Europe", 2014, p. 9. Available from http://mdac.info/sites/mdac.info/files/legal_capacity_in_europe.pdf

105 Election Observation Mission Final Report of the 30 November 2014 parliamentary elections elaborated by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR). Available from: <http://www.osce.org/odihr/elections/moldova/144196?download=true>

Article 12 of the CRPD provides for the right to equal recognition before the law for all adult women and men with disabilities, and confirms that legal capacity is a universal right for all people. The CRPD Committee, as the authoritative international body interpreting the Convention, clarifies that mental capacity can never be used to deny a person the right to recognition before the law,¹⁰⁶ and should not be conflated with the concept of legal capacity. Instead, legal capacity refers both to legal agency (the right to bear of rights) and the capacity to make legally valid acts under the law (the right to exercise rights). People with disabilities are entitled to the full enjoyment of human rights and this must be recognised and enforced by national law and the courts.

Article 12(3), recognises the right of persons with disabilities to access support in order to exercise their legal capacity. In practical terms, this means that people with disabilities must be able to receive support to exercise their autonomy on an equal basis with others in order to make decisions about their lives, and in a way that respects their will and preferences.¹⁰⁷

Recognition of legal capacity is inextricably linked to the right to have effective access to justice, and to gain remedies when rights have been violated. Article 13 CRPD expressly provides that persons with disabilities shall have effective access to justice on an equal basis with others, including through the provision of procedural and age-appropriate accommodations. This means that people with disabilities must be able to enforce their rights before the courts: they must be able to personally go to the police and have standing in courts, have their complaints listened to and investigated and have access to legal representation on an equal basis with others. Access to justice and legal representation is the ultimate guarantee for rights to be effective and not to become illusory or theoretical.¹⁰⁸

As highlighted in the General Commentary No.1 the denial of legal capacity had extended its negative ramifications into the justice system as well. Persons with mental and intellectual impairments have often been denied procedural capacity which barred them from lodging petitions before courts and other bodies that make up the justice system. Additionally, persons with disabilities are discriminated against in terms of attaining positions as lawyers, judges, and other officials in the justice system. Such barriers not only limit the ability of persons with disabilities to use the justice system, but also limit their ability to contribute to the administration of justice to society and to the community as a whole.

People with disabilities also have the right to exercise associated civil and political rights, including participation in public and political life as set out under CRPD Article 29. The Committee on the Rights of Persons with Disabilities (CRPD) – the arbiter of rights included in the CRPD – has held in their General Comment No.1 that there is a direct link between the deprivation of the persons with mental and intellectual disabilities of their legal capacity and the right to participation in political and public life. This means that adult men and women with disabilities should not be prohibited from voting, putting forward their candidacy for elections and holding office when elected, and becoming part of political or civil organisations, regardless of the nature or severity of their impairment.¹⁰⁹

106 Mental capacity refers to the decision-making skills of a person, which naturally vary from one person to another and may be different for a given person depending on many factors, including environmental and social factors (according to Committee on the Rights of Persons with Disabilities. General comment No. 1. Article 12: Equal recognition before the law, U.N. Doc. CRPD/C/GC/1, 2014, para. 13).

107 Committee on the Rights of Persons with Disabilities. General comment No. 1. Article 12: Equal recognition before the law, U.N. Doc. CRPD/C/GC/1, 2014, para. 14.

108 The European Court of Human Rights final judgement on the case of Airey v. Ireland

109 Committee on the Rights of Persons with Disabilities. General comment No. 1. Article 12: Equal recognition before the law, U.N. Doc. CRPD/C/GC/1, 2014, para. 44.

Law and policy analysis

According to the Moldovan Civil Code, the normative framework which governs the legal capacity provisions, full legal capacity is acquired at the age of 18.¹¹⁰ However, adults with disabilities can be declared “incapable” of exercising legal capacity on the basis of perceived or actual deficits in mental capacity.¹¹¹

Originally, the institution of incapacitation and guardianship were developed with the purpose to preserve the property and assets of those with mental and intellectual impairments by isolating them from the opportunity of entering into risky legal and financial transactions. Over time, the constructive isolation of guardianship has been extended to intensely personal decisions such as consenting to treatment and concluding a marriage, resulting into a more general deprivation of rights in all areas of life.¹¹²

Deprivation of legal capacity is a relatively easy judicial procedure¹¹³ which can be initiated by a very broad range of actors, including: family members and relatives; the local guardianship authority; representatives of the psychiatric hospitals or psycho-neurological internats¹¹⁴; and the public prosecutor.¹¹⁵ To be exempted of the procedural costs, people usually resort to the prosecutor’s support, asking them to initiate the incapacitation proceedings.

An incapacitation request launched with the court has to contain evidence that the person whose legal capacity is under question has or is assumed to have a diagnosed mental health condition which negatively impacts a person’s ability to understand and control their actions.¹¹⁶

Once the judge has decided on the admissibility of the complaint, they will formally notify the applicant and the local guardianship authority and invite them to a first hearing. Meanwhile, the judge will commission an expert psychiatric examination of the person’s mental condition asking the psychiatrists to assess whether the person has a mental or intellectual impairment which render them eligible for placement under guardianship.¹¹⁷ The resulting reports are given significant weight in the court’s final determinations.¹¹⁸

110 Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 19.

111 Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 24(1): “a person who cannot understand or control his or her actions as a result of a mental illness or mental deficiency can be declared legally incapable by the court”.

112 Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 24

113 Republic of Moldova, Civil Procedural Code, Law No. 225 of 30 May 2003, Articles 302-308.

114 In the Republic of Moldova residential social care institutions for persons with disabilities referred to as “psycho-neurological internats”.

115 Republic of Moldova, Civil Procedural Code, Law No. 225 of 30 May 2003, Article 302(2).

116 Republic of Moldova, Civil Procedural Code, Law No. 225 of 30 May 2003, Article 303.

117 Republic of Moldova, Civil Procedural Code, Law No. 225 of 30 May 2003, Article 305(1).

118 United Nations Office of the High Commissioner for Human Rights (OHCHR), “The System of Guardianship in Practice in the Republic of Moldova: Human Rights and Vulnerability of Persons Declared Incapacitated,” 2013, p. 20. Available from <http://www.un.md/publicdocget/39/>

Case of David v. Moldova¹¹⁹

In 2005 Mr David was ordered by the court to undergo psychiatric investigation in the Chisinau Psychiatric Hospital. The man agreed initially to be admitted to the hospital; however, two days later he had expressed the wish to return home, asking therefore to be released. The doctors refused to authorise his leave and since there were no effective remedies available to him, Mr David spent at total of 25 days in detention.

Mr David's complaint with the Prosecutor's Office on illegal detention was dismissed. Later on, the court also dismissed Mr David's appeal, claiming that his detention had been carried out in accordance with the national legislation.

In their final decision the European Court of Human Rights (ECtHR) considered that Mr David's continued detention from the moment he expressed his wish to leave the hospital amounted to a "deprivation of liberty" within the meaning of Article 5 § 1 of the Convention.

There are only two institutions in the country, the Chisinau Psychiatric Hospital and the Balti Psychiatric Hospital, which are authorised to form psychiatric commissions and participate in incapacitation procedures.¹²⁰

According to the Code of Civil Procedure, a person whose legal capacity is under question should undergo an in-patient psychiatric evaluation which can last for a period of 10 to 30 days. After this, the members of the psychiatric commission will formulate recommendations and present them to the court.¹²¹

When interviewed, the psychiatrists who take part in the assessment commissions informed us that there are no standardised tools or approved methodologies for assessing a person's mental capacity. The reports filled with the court provide mostly information on the medical diagnosis of the person. In separate interviews, the judges have confirmed that the medical report provides sufficient evidence for them when deciding whether or not to declare a person incapable.

Mr. B is a permanent member of the psychiatric evaluation commission in Balti. He says that because there is no official guidance on how to conduct assessments of a person's legal capacity, he had to come up with his own methodology. He bought himself a Russian book on forensic psychiatry which clearly indicates that "if a person is diagnosed with dementia, schizophrenia, delirium or intellectual disability then they for sure need to be deprived of their legal capacity". In all other cases, he would conduct ad-hoc conversations with the person attempting to ascertain whether or not the person has enough cognitive abilities for making important life decisions and taking care of their-self.

¹¹⁹ Case of David v. Moldova, Application no. 41578/05, decision from 27 February 2008

¹²⁰ Republic of Moldova, Law No.1086 of 23 June 2000 on judicial expertise and technical-scientific and forensic findings.

¹²¹ Republic of Moldova, Civil Procedural Code, Law No. 225 of 30 May 2003, Article 305

The judge will make their final decision on the case relying preponderantly on the findings of the psychiatric commission,¹²² sometimes without ever seeing the person whose legal capacity is under question.¹²³ The notification of the person concerned about the incapacitation procedures and their presence in court is completely left at the discretion of the judge, and the practice shows that judges prefer not to take the effort and invite them to the hearings. The person concerned is therefore unlikely to be given an opportunity to appear in person during court proceedings and often judges find it “neither necessary nor useful”.¹²⁴

In any case, the law provides that the interests of the person concerned shall be represented by a State attorney, free of charge.¹²⁵

In October 2013, Moldova’s Council for Preventing and Eliminating Discrimination and Ensuring Equality (the Equality Council) initiated an ex officio procedure on a case of discrimination in access to legal assistance against a person with disabilities.

The case was identified by the member of the Equality Council, Doina Ioana Straisteanu, during a monitoring visit to the Balti psychiatric hospital where Mr. P.N. was ordered to undergo forced psychiatric treatment. However, Mr. P.N. contended that he was neither notified nor present to the court hearing when the decision on forced treatment was adopted. Only later on he was informed that his case was represented in court by an attorney provided by the State. As Mr. P.N. explained, the attorney has never meet nor received any instructions form him, but she ok the liberty to argue in from of the court that forced hospitalisation and treatment would serve her client’s best interests. Furthermore, the same attorney was responsible to help Mr. P.N. file an appeal against the primary’s court decision, however, she neglected to do so.

For these reasons the Equality Council held that Mr. P.N. was discriminated against on grounds of disability and therefore he had his right to justice unlawfully denied.¹²⁶ Additionally, the Equality Council expressed concerns at the fact that this was not only an isolated case when attorneys discriminate against their clients with disabilities.

The decision, however, was overruled by the Supreme Court of Justice.¹²⁷ The Court found that there was no need to hear the person concerned in relation to coercive measures.

122 Republic of Moldova, Law No.1086 of 23 June 2000 on judicial expertise and technical-scientific and forensic findings.

123 Republic of Moldova, Civil Procedural Code, Law No. 225 of 30 May 2003, Article 306(2).

124 United Nations Office of the High Commissioner for Human Rights (OHCHR), “The System of Guardianship in Practice in the Republic of Moldova: Human Rights and Vulnerability of Persons Declared Incapacitated,” 2013, pp. 14-15. Available from <http://www.un.md/publicdocget/39/>

125 Republic of Moldova, Law No. 198 of 26 July 2007 on State Guaranteed Legal Aid, Article 18.

126 Decision in File no. 002/2013 from 30 October 2013, The Council for the Prevention and Elimination of Torture and Equality Ensuring, para. 4.8. Available [in Romanian] from http://www.egalitate.md/media/files/files/2013_10_31_decizia_cauza_002_13_avocata_cojocar_r_final_4998205.pdf.

127 Decision in File no. 3ra-1486/14 from 26 November 2014, Supreme Court of Justice of Moldova. Available from http://jurisprudenta.csj.md/search_col_civil.php?id=15069

According to the Moldovan legislation, legal capacity lumps all rights together – either a person has capacity to hold and exercise all rights or no capacity to exercise any right, including in the most private areas of life, such as deciding if or not to undergo an abortion procedure for example.¹²⁸ As a result of incapacitation all legal decisions, acts and transactions concluded by adults with disabilities are considered void and cannot produce legal consequences.

An incapacitation decision can be appealed within the first 30 days from the moment of pronouncement,¹²⁹ however, until very recently there were no appeals lodged within this initial period.¹³⁰ On 7 May 2015, the Parliament passed an omnibus bill concerning persons with disabilities which recognizes the legal standing of persons under guardianship to appeal the incapacitation decisions and introduces the required amendments to the Civil Procedure Code.

This is for the first time when incapacitated persons are able to independently use the justice system for restoring their legal capacity.

Ms. Elena Voronina is the first person in Moldova who managed to independently initiate court procedures and have her legal capacity restored. A decision on her case was passed by the Chisinau Court of Appeal on the 2 June 2015.

As a result of a patrimonial conflict, in 2007 Ms. Elena Voronina was deprived of her legal capacity. Elena's daughter took advantage of her mother's disability and instead of negotiating with her the partage of a common property she went to court and obtained an incapacitation decision.

Between 200 and 2011 the woman tried to restore her legal capacity, however, her efforts rendered unsuccessful. The courts were automatically dismissing her petition claiming that she lacked procedural capacity. The prosecutor, who has the general legal mandate to initiate court procedures in the public interests, refused to bring an action for restoration of Ms. Voronina's legal capacity.

Only when the new law was adopted, the Chisinau Court of Appeal had the necessary legal framework to declare her request admissible and issue a favorable decision on her case. The amendments envisaged in this law are firm steps on the way of a broader legal capacity reform.

128 According to the Moldovan Civil Code there is the possibility to partially limit the legal capacity of people who, due to alcohol abuse or to the abuse of drugs or other psychotropic substances, are worsening the financial situation of their family (Article 25). These people are placed under a form of partial guardianship (curatela). These cases however are beyond the scope of the present study. Minors also have, in certain circumstances, limited legal capacity.

129 Republic of Moldova, Civil Procedural Code, Law No. 225 of 30 May 2003, Article 362.

130 United Nations Office of the High Commissioner for Human Rights (OHCHR), "The System of Guardianship in Practice in the Republic of Moldova: Human Rights and Vulnerability of Persons Declared Incapacitated," 2013. Available from <http://www.un.md/publicdocget/39/>

Guardianship

When the deprivation of legal capacity has been decided, the judge will inform the local guardianship authority about the decision, asking them to identify and appoint a guardian to the incapacitated person.¹³¹ The guardian shall be appointed through an administrative procedure no later than 30 days from the moment of the adoption of the incapacitation decision.¹³² The law provides a list of people who cannot be appointed as guardians,¹³³ and the guardianship authority has the final say on appointing the guardian. People about to be placed under guardianship can be consulted about the selection, but their preferences are not necessarily taken into account.¹³⁴

Testimony:¹³⁵

Mr H. is a man in his fifties who has been deprived of his legal capacity on grounds of mental impairment. He has been trying to challenge this status for years. Mr H. was never informed that the proceeding was initiated and he was not present at his own trial. No attorney or guardianship authority representative ever asked his opinion about his placement under guardianship. He only found out about the court ruling when he was refused access to his monthly disability allowance.

Although the law requires the guardian to live with the person under their guardianship,¹³⁶ in practice many people under guardianship are right-away placed in residential institutions. In such cases, the institution will often act as a *de facto* guardian, although the appointed guardian retains their position – often without maintaining any contact with the person under guardianship.¹³⁷

Once appointed, a guardian can conclude all legal acts and transactions on behalf of the person concerned.¹³⁸ Although guardians are not remunerated, they have the right to claim compensation for expenses incurred while performing their tasks, which are paid for from the assets of the person under their guardianship.¹³⁹ The guardian is obliged to act in the “best interest” of the person under guardianship regardless of the person’s will or preferences. The CRPD Committee has explained that such practices are in direct violation of Article 12 of the CRPD:¹⁴⁰

¹³¹ Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 37.

¹³² Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 36.

¹³³ Minors, persons with limited legal capacity or incapacitated persons, persons whose health state is preventing them from becoming guardians, persons who have been denied the right of adoption, persons restricted in their exercise of civil and political rights, persons with conflicting interests, persons removed from guardianship through a testament or authentic legal act, persons who were previously appointed as guardians but dismissed from their duties for failure to fulfill their obligations and the employees of the residential institution where the person under guardianship is placed. (Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 38(4)).

¹³⁴ Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 38.

¹³⁵ Interview with H., July 2012.

¹³⁶ Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002.

¹³⁷ United Nations Office of the High Commissioner for Human Rights (OHCHR), “The System of Guardianship in Practice in the Republic of Moldova: Human Rights and Vulnerability of Persons Declared Incapacitated,” 2013, p. 2, 8 and 17. Available from <http://www.un.md/publicdocget/39/>

¹³⁸ Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 33.

¹³⁹ Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 39(2).

¹⁴⁰ Committee on the Rights of Persons with Disabilities. *General comment No. 1. Article 12: Equal recognition before the law*, U.N. Doc. CRPD/C/GC/1, 2014, para. 21.

Where, after significant efforts have been made, it is not practicable to determine the will and preferences of an individual, the “best interpretation of will and preferences” must replace the “best interests” determinations. This respects the rights, will and preferences of the individual, in accordance with article 12, paragraph 4. The “best interests” principle is not a safeguard which complies with article 12 in relation to adults. The “will and preferences” paradigm must replace the “best interests” paradigm to ensure that persons with disabilities enjoy the right to legal capacity on an equal basis with others.

Testimony:¹⁴¹

I feel like a beggar. I am forced to starve and freeze because all my money goes into the guardian’s hands and she spends it on everything except my necessities. By the fact that the court does not want to examine my case I understand that I have lesser value for the state than every other citizen. (H, a man in his fifties)

Moldovan law requires that the guardianship authority must supervise the activities of guardians,¹⁴² but there is no guidance about how this should be done. Guardians must submit annual reports about any financial and property decisions they have made,¹⁴³ and reporting on other decisions only happens at the discretion of the guardian. Where any irregularities are identified, the guardianship authority may request that these are rectified or may order suspension of the measures in question.

Guardians can be discharged from their duties where they have been found to have committed acts of abuse or negligence towards the person under their guardianship. In such cases, the guardianship authority is required to undertake an initial investigation of the case. Where financial irregularities or physical abuse are detected, the guardianship authority must seek the involvement of the police.¹⁴⁴ All the decisions adopted by the guardianship authority are amenable to judicial review initiated at the request of the public prosecutor.¹⁴⁵

Testimony:¹⁴⁶

Mr H. has filed several applications before the local court and all of them were dismissed on the ground that persons deprived of their legal capacity lack legal standing. “I want my sister to be my guardian but the guardianship office would not allow that, arguing that they know better what is right for me,” he said. He wrote a number of complaints to the guardianship authorities regarding his will to have a new guardian appointed, but he has never received a response. His sister intervened in the case and requested to be Mr H’s guardian. The local social assistant was sent to assess the situation and report on the necessity of changing the guardian. In their final report, the social assistant reported that Mr H’s guardian was well fulfilling her duties therefore doesn’t need to be changed. (Mr. H, man in his fifties)

¹⁴¹ Interview with H., July 2012.

¹⁴² Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Articles 35-36.

¹⁴³ Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 41(5).

¹⁴⁴ Republic of Moldova, Civil Procedural Code, Law No. 225 of 30 May 2003, Article 46(2).

¹⁴⁵ Republic of Moldova, Civil Procedural Code, Law No. 225 of 30 May 2003, Article 71(2).

¹⁴⁶ Interview with H., July 2012.

Supported decision-making

Current Moldovan legislation does not provide for or recognise any forms of supported decision-making,¹⁴⁷ and is solely based on substitution.¹⁴⁸

The only available alternative to plenary guardianship are the *patronaj arrangements*.¹⁴⁹ Patronaj is usually applied to people who cannot exercise or protect their rights or fulfil certain obligations due to a health condition¹⁵⁰ allowing them to maintain their legal capacity and receive necessary support from the people they trust.

A team of Moldovan lawyers are currently trying to use this legal mechanism as an alternative to guardianship for people with disabilities.¹⁵¹

In November 2013, for the first time in Moldovan history, a judge from the Cahul court of justice dismissed the application of incapacitation lodged in by the parents of an 18-year-old girl with disabilities. Subsequently, few other similar decisions which were affirming the right of a person with disabilities to access supports in exercising full legal capacity have followed.¹⁵² As of June 2015, a reported 42 persons have been able to conclude “patronaj” contracts instead of being placed under guardianship, including fifteen adults with mental and intellectual impairments from Cahul raion, eight adults from Soroca and four people from Chisinau, were enabled to decide whom they want to receive decision making and representational support from and have concluded “patronaj” agreements. According to lawyers working on such cases, this measure has mostly been used by young people who recently attained 18 years of age and who want their parents to continue doing specific acts on their behalf.

These developments – in which courts lead in the application of international law in the domestic system – are to be welcomed. They should not however undermine the efforts of the State to harmonize the national legislation to the requirements of Article 12 CRPD.¹⁵³

147 Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 19.

148 Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 48. The only available legal mechanism which bears some similarities with supported decision-making is patronaj, a form of curatela.

149 Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 48.

150 Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 48(1).

151 Ion Schidu, lawyer, presentation on Current experience in the Cahul court and piloting patronaj agreements during the Perspectives on the Past and the Future of Legal Capacity conference organised by MDAC and OHCHR on the 15th of December in Chisinau, Moldova.

152 Decision for Sculea Elena in File No. 2-75331 2073, issued on 16 December 2013 by the First Instance Court and Decision for Umaniuc Natalia in File No. 2-2871, issued on 6 February 2014 by the First instance Court in Cahul.

153 Committee on the Rights of Persons with Disabilities. General comment No. 1. Article 12: Equal recognition before the law, U.N. Doc. CRPD/C/GC/1, 2014, para. 27.

Human rights analysis

Guardianship as a form of disability-based discrimination

Deprivation of legal capacity, is discrimination because it denies the exercise of a fundamental right recognized in international human rights law, as defined in CRPD Article 2 regarding “discrimination on the basis of disability” and contradicts the universal principles of personal autonomy and human dignity.

Although people under guardianship often reside in the community,¹⁵⁴ guardianship isolates the person and limits their possibilities to interact with others.

Guardianship is a form of institutional segregation severely restricting a person’s ability to manage one’s personal and financial affairs, as well as to enter into agreements that are substantial for inclusion, such as employment contracts, loans, rent, among others.

Discrimination arises from the fact that in order to be able to receive necessary support, individuals with mental and intellectual impairments are forced to relinquish participation in community life they could enjoy if provided reasonable accommodation, while persons without impairments can receive the supports and services they need without similar sacrifices.¹⁵⁵

CRPD Article 12 paragraph 3 envisages supported decision-making to be an antidiscrimination measure aiming to, on one side, ensure the best guarantee of the best decision possible (not to protect the decision of the person, who should be considered autonomous) and for the provision of juridical certainty to the actions.

In spite of this obvious case of discrimination and assurances to the person and society, civil law experts continue to raise the following concerns:

- a) supported decision-making may be too greatly influenced by the support person;
- b) whether supported decision-making has enough safeguards to ensure that the individual is not exploited or abused by others; and
- c) how to prevent persons with psychosocial and intellectual disabilities from making bad decisions.
 - a) The concern related to the undue influence is not illegitimate. Nevertheless, there are several responses to this concern.

First, no decision-making process is perfect or free from influences, and everyone seeks assistance with decisions from others at various points in their lives. People make decisions based on their emotions, out of love or compassion, on religious basis; they even sacrifice their own lives for the good of others. These decisions are based, in cases, in irrational basis that may reduce their patrimonies or put their lives in danger. Family members listen to each other and make decisions under their opinions on the basis of the bonding and not necessarily on the rational output of those decisions. All of these decisions result from the interdependence and

¹⁵⁴ The System of Guardianship in Practice in the Republic of Moldova: Human Rights and Vulnerability of Persons Declared Incapacitated, United Nations Office of the High Commissioner for Human Rights, Annex 3, p.25, Chisinau 2013

¹⁵⁵ Supreme Court of the United States, OLMSTEAD V. L. C. (98-536) 527 U.S. 581 (1999)

independence of human beings. All of these decisions are legally valid, even when negatively impacting the person. However, when made by persons with disabilities, in particular persons with mental or intellectual impairments, such decisions are questioned and effectively nullified by deprivation of legal capacity when made by persons with disabilities, notably by those whose intellect or decision-making process is questioned, although not only.

Second, deriving from the principle of personal autonomy, on which the entire civil law is constructed, decisions made within a support model will belong to the individual and not be imposed, as is the case of guardianship.

In the end, it is empirically difficult to argue that decisions made by substitute decision makers are “better” or “wiser” than those made in the supported decision-making context. Evidence shows that persons with disabilities are at larger risk of suffering from abuse when deprived of their legal capacity and denied of the possibility to make decisions on their own. Substituted decision-making leads to deprivation of control over decisions, including where medical decisions are concerned, decisions concerning a person’s own body. It also leads to denial of the right to manage buy or sell one’s own property, to marry or divorce. Third parties making decisions on behalf of the person concerned violates the principle of autonomy and enhances the risk of abuse.

- b) Seeking guardianship instead of using traditional avenues for protection against abuse, fraud, misrepresentation, and undue influence and imposing criminal liabilities is discriminatory. However, acknowledging an increased risk of abuse, the model legislation would include a variety of safeguards.

Supported decision-making allows for the person concerned to remain in control over their lives. There are existing practices in the world that provide for methods that allow for the person concerned to remain in control over their own decisions.

For example, in Canada, persons with disabilities are allowed to enter into agreements that need to be signed by the individual concerned and co-signed by witnesses in the presence of a notary to appoint proxies. The presence of a notary helps to protect against agreements that are coerced or fraudulent. The support agreement shall be entered into a central registry and the person with a disability can authorize registry access to third parties to view the agreement.

These and similar models include provisions to safeguard against abuse by the persons or networks providing support in the decision-making process, in assistance with financial transactions by requiring the appointment of a trusted individual to serve as a financial monitor of the support agreement or by other provision of the courts or administrative entities intervening.

Additionally, for example in the Canadian case, state authorities and service providers who suspected abuse or neglect would not be required to honor the support agreement and would instead be encouraged (or, in some states, required) to report their suspicions to the agency coordinating the supported decision-making arrangements.

While the existing examples do not reach the standards of the CRPD Committee, as developed in its General Comment No 1, they all prove that there are systems in place that allow for upholding to a greater level the autonomy of a larger number of the population with disability. Local practice continues to improve towards compliance with the CRPD.

- c) The right to take risks and make mistakes are part of adulthood and personal autonomy. Persons with disabilities' decisions should be considered valid, on an equal basis with others.

Most civil law systems include in their structures measures to attend issues like mistake of fact, mistake of law, and other possible error in decision making that may or not be based on the mental capacity of the person. Full and partial nullity of the validity of the act, as well as limitations on the effects can be effective measures to consider such cases. Nevertheless, decisions made by persons with disabilities questioned in their mental capacity, on the basis of supported decision-making processes should be considered valid on an equal basis with others. For the validity of the civil contracts it is immaterial whether a person's deeds and choices appear reasonable to the third parties. Rationality or alleged soundness of the decision is not the test, what indeed matter is that the person concerned arrives to the decision through an informed process.¹⁵⁶

Depriving people of legal capacity has a serious impact on people's lives and amounts to "civil death",¹⁵⁷ meaning that individuals cease to exist as actors able to make legally valid decisions about their lives.

Children with disabilities in institutions about to reach the age of majority are a particularly vulnerable group, and are significantly more likely than others to have their legal capacity restricted upon reaching adulthood. The law provides that when children with disabilities turn 18 they must automatically be transferred from a residential institution for minors to a mental health institution for adults.¹⁵⁸ In these cases, the institution's staff file a request for the deprivation of their legal capacity in order to effectuate the transfer, regardless of their will or preferences, and without consent. It is routine practice that staff of institutions and the authorities fail to inform the person concerned that proceedings have been initiated. Many are then transferred to adult institutions and are not aware that they have been deprived of their legal capacity.¹⁵⁹ Such practices have been revealed in children's institutions in Orhei and Hincesti.¹⁶⁰

Testimony:¹⁶¹

The institution uses the incapacitation procedure as a measure of forced institutionalisation against the residents who otherwise would want to leave the institution and return to their community.

¹⁵⁶ Citation from the decision of Ontario Supreme Court on a case of restricting a woman's capacity to manage her financial affairs and property and involuntary placement in a care facility on grounds of disability: the right knowingly to be foolish is not unimportant; the right to voluntarily assume risks is to be respected. The state has no business meddling with either. The dignity of the individual is at stake.

¹⁵⁷ For further details on what "civil death" means see Mental Disability Advocacy Center, "Legal capacity in Europe", 2014, p. 9. Available from http://mdac.info/sites/mdac.info/files/legal_capacity_in_europe.pdf

¹⁵⁸ Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 20.

¹⁵⁹ Interview conducted with representatives of The Association Keystone Human Services International Moldova, August 2012.

¹⁶⁰ Interview conducted with representatives of The Association Keystone Human Services International Moldova, August 2012.

¹⁶¹ Interview with Ms L., Comrat guardianship authority, July 2012.

Choice of where and with whom to live

From the moment a person has been deprived of their legal capacity and placed under guardianship, the person's domicile or main tenement is that of their guardian.¹⁶² Article 40 of the 2002 Civil Code obliges guardians to live together with the person under their guardianship.

Guardians can avoid this obligation by placing the person concerned into an institution, a decision which cannot be challenged by the person concerned. The only condition required for placement in an institution is to have a qualified psychiatrist provide an opinion that the person concerned has a “mental disorder” which does not allow them to live outside of a “specialized institution”.¹⁶³

One of the purposes of the right to equal recognition before the law is to ensure the respect of the persons' autonomy, will and preferences.¹⁶⁴ This right is violated when the person cannot choose where and with whom they live. Moreover, the practice of placing people in institutions without their consent or with the substitute consent of a guardian results in an arbitrary deprivation of liberty, violating both the right to equal recognition before the law and the right to liberty and security (Article 14, CRPD).¹⁶⁵

Finances and property

Once a person with a mental disability is deprived of legal capacity in Moldova, his/her daily life significantly changes and they become totally subject to the decisions of their guardian, including in the management of finances and property.

- **No financial independence:** all benefits, investments¹⁶⁶ and income are transferred to and administered by the guardian.¹⁶⁷ Persons under guardianship similarly also cannot have their own bank accounts. This makes people under guardianship entirely financially dependent on their guardian.
- **No management of property:** Property is managed by either the guardian¹⁶⁸ or an appointed trustee.¹⁶⁹ Trustees may be appointed by the guardianship authority; all other assets are administered by the guardian. People under guardianship cannot challenge the appointment of trustees or decisions about how their property is managed.
- **No entering into civil contracts:** As a blanket measure, the law denies people under guardianship the right to enter into legal contracts. Anyone who has a specific interest can invoke the absolute nullity of such legal acts.¹⁷⁰ Any contracts will be declared void when the person is deprived of legal capacity.
- **No wills:** People under guardianship can inherit property, but they cannot make a will.¹⁷¹

¹⁶² Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 31(6).

¹⁶³ Republic of Moldova, Law No. 1402 of 16 December 1997 on Mental Health, Article 40.

¹⁶⁴ Committee on the Rights of Persons with Disabilities. General comment No. 1. Article 12: Equal recognition before the law, U.N. Doc. CRPD/C/GC/1, 2014, para. 20.

¹⁶⁵ As set out in Committee on the Rights of Persons with Disabilities. General comment No. 1. Article 12: Equal recognition before the law, U.N. Doc. CRPD/C/GC/1, 2014, para. 40.

¹⁶⁶ Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 580.

¹⁶⁷ Republic of Moldova, Law No. 929 of 15 August 2006 on approving the Regulation on the methods of payment of pensions established by the public system of state social insurances and state social allowances.

¹⁶⁸ Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 41.

¹⁶⁹ Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 44.

¹⁷⁰ Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 217(1).

¹⁷¹ Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 1449(2).

Such practices are in violation of Article 12(5) CRPD. This article provides that persons with disabilities have “the equal right to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.” The CRPD Committee has also noted that the “approach of denying persons with disabilities legal capacity for financial matters must be replaced with support to exercise legal capacity, in accordance with article 12, paragraph 3. In the same way as gender may not be used as the basis for discrimination in the areas of finance and property, neither may disability.”¹⁷²

Family rights

People under guardianship in Moldova cannot get married, adopt children or divorce.¹⁷³ They are therefore prohibited from taking some of the most meaningful and personal decisions a person can make, sometimes leading to absurd situations.

For example, in one case, Ms. V petitioned the European Court of Human Rights after she was denied the possibility to divorce because of her placement under guardianship. Her claims were rejected at the domestic level as she was not recognised as having standing to appear before the court. The only person allowed to file for the divorce was her husband, who was also her legal guardian.¹⁷⁴

Such situations violate the CRPD, which requires State Parties to prevent discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships.¹⁷⁵

172 Committee on the Rights of Persons with Disabilities. General comment No. 1. Article 12: Equal recognition before the law, U.N. Doc. CRPD/C/GC/1, 2014, para. 23.

173 Republic of Moldova, Family Code, Law No.1316 of 26 October 2000.

174 The case has not yet been communicated to the Government by the European Court of Human Rights.

175 UN CRPD, Article 23.

Political rights

In Moldova people under guardianship could not vote or stand for elections for a long period of time.¹⁷⁶ In May 2015 however the law was amended, with right to vote being finally recognized to people under guardianship.¹⁷⁷ The law however continues to prohibit standing for elections and require public functionaries¹⁷⁸ and members of political parties¹⁷⁹ to have full legal capacity, meaning that such positions are not accessible to people under guardianship.

According to monitors of the 2011 local elections, only 286 residents of psychiatric hospitals and psycho-neurological institutions were allowed to vote on the day of the election (June 5), out of 3,582 persons who were legally eligible to vote.¹⁸⁰ In the compilation of electoral lists, the administrative staff of institutions arbitrarily exclude large numbers of persons with full voting rights.¹⁸¹

The restriction of political rights violates Article 29 CRPD on the right to participation in political and public life. This article requires States Parties to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected.¹⁸²

Scientific and medical experimentation

In Moldova people under guardianship may be subjected to biomedical or clinical research with the consent of their guardian.¹⁸³ The law does not clearly specify the obligation of medical professionals or guardians to provide comprehensive information on the nature, purpose, anticipated risks or benefits of the prospective experimentation to the person who will be subjected to such procedures.¹⁸⁴

People in Moldovan psychiatric hospitals are at real risk of being involved in medical experimentation, as has been uncovered in a recent investigation involving 240 people.¹⁸⁵ The study revealed that in many of these cases “consent” was obtained from the persons in an inadequate manner: some people were not aware of what they were signing, and others signed the paper in an attempt to gain the goodwill of unreasonably restrictive staff (e.g. being allowed to smoke some cigarettes on a balcony).

176 Republic of Moldova, Electoral Code, Law No.1381 of 21 December 1997, Article 13.

177 Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 24 (21).

178 Republic of Moldova, Law No.158 of 4 July 2008 on public office and the status of public functionaries, Article 27.

179 Republic of Moldova, Law No.294 of 21 December 2007 on political parties, Article 6.

180 The Institute for Human Rights from Moldova (IDOM), “Monitoring the respect for electoral rights in psychiatric institutions from the Republic of Moldova in General local elections – 5 JUNE 2011”, 2011. Available [in Romanian] from <http://www.e-democracy.md/files/elections/local2011/report-idom-local-elections-2011-ro.pdf>.

181 The Institute for Human Rights from Moldova (IDOM), “Monitoring the respect for electoral rights in psychiatric institutions from the Republic of Moldova in General local elections – 5 JUNE 2011” 2011, p. 15. Available [in Romanian] from <http://www.e-democracy.md/files/elections/local2011/report-idom-local-elections-2011-ro.pdf>.

182 UN CRPD, Article 29(a).

183 Republic of Moldova, Law No. 263 of 27 October 2005 on the rights and responsibilities of patients, Article 41.

184 Republic of Moldova, Law No. 263 of 27 October 2005 on the rights and responsibilities of patients, Article 41.

185 More details at Criminally suspect medical experiments, *Publika.md* (17 December 2012), available [in Romanian] from http://www.publika.md/experimente-cu-iz-penal-mai-multi-moldoveni-si-au-riscat-sanatatea-pentru-un-producator-de-medicamente-fara-sa-stie_1171431.html; and Medical experiments in psychiatric units, *Ziarul de garda* (9 August 2012), available [in Romanian] from <http://www.zdg.md/editia-print/social/experimente-la-psihiatric>.

Access to justice

Access to courts

Persons deprived of legal capacity cannot bring civil cases to courts.¹⁸⁶ All procedural acts performed by persons deprived of their legal capacity are considered void. The practical implication is that people with disabilities can complain to institutions and service providers when they are not satisfied with services,¹⁸⁷ but they can never directly demand compensation because damages are only awarded through judicial proceedings.¹⁸⁸

Civil cases on behalf of persons deprived of legal capacity can only be brought to court by the public prosecutor,¹⁸⁹ or by the person's guardian.¹⁹⁰ The only exception is constitute by the court order through which a person is deprived of legal capacity, which, since May 2015, can be appealed by the person concerned.¹⁹¹ The guardian is also *de jure* nominated as legal representative of the person's interests.¹⁹²

In cases when the guardian cannot be identified or located, courts can commission the National Council for Legal Aid Guaranteed by the State to appoint a *pro bono* lawyer, who will represent the person under guardianship.

When they are victims of crimes, persons with disabilities can complain directly to the relevant authorities. The prosecutor is responsible for conducting criminal investigations in such cases and also for representing the victim in court.¹⁹³ Prosecutors however often have their own prejudices against people with disabilities, which has an impact on the effectiveness of investigations and perpetrators being brought to trial. International bodies have reported that complaints of people living in institutions are not thoroughly and independently investigated, even where there are allegations of rape, with perpetrators often enjoying *de facto* impunity.¹⁹⁴

186 Republic of Moldova, Civil Procedural Code, Law No. 225 of 30 May 2003, Article 58.

187 Republic of Moldova, Law no. 190 of 1994 Law on Petitions.

188 Republic of Moldova, Law no. 190 of 1994 Law on Petitions, Article 4(3).

189 Republic of Moldova, Civil Procedural Code, Law No. 225 of 30 May 2003, Article 71(2).

190 Republic of Moldova, Civil Procedural Code, Law No. 225 of 30 May 2003, Article 58.

191 Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002, Article 24 (11).

192 Republic of Moldova, Civil Procedural Code, Law No. 225 of 30 May 2003, Article 79(1).

193 Republic of Moldova, Civil Procedural Code, Law No. 225 of 30 May 2003, Article 51.

194 See Council of Europe, "Report to the Government of the Republic of Moldova related to the visit in Moldova of the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishments", 2008. Available [in French] from <http://www.cpt.coe.int/documents/mda/2008-39-inf-fra.pdf>.

Balti Case (Serial Sexual Abuse of Women in Institutions, including Rape, Forced Abortion and Non-Consensual Insertion of Intra-Uterine Contraceptive Devices)

18 women with disabilities from the neuropsychiatric facility in Balti (under the competence of Ministry of Labour, Social Protection and Family) were allegedly sexually assaulted by 2 male perpetrators, including the director of the institution and a senior doctor. The cases were reported in 2013. Victims have also manifestly been subjected to coercive measures including forced abortion. Criminal proceedings initiated at the first instance court Balti have been long and protracted as concerns 10 alleged victims (April 2014-present). Material evidence including DNA testing has not been gathered, or has been mishandled. Despite the elapse of close to 18 months in the case, there is still no first-instance decision in the criminal proceedings concerning allegations of rape. No criminal proceedings at all have yet been initiated into allegations of forced abortion. Three of the alleged victims are now dead.

Cocieri Institution (Sexual Assault)

Allegations of sexual assault on inmates of the Cocieri neuropsychiatric residential institution was first reported in 2008 by the Council of Europe's Committee for the Prevention of Torture. Allegations again concerning two orderlies resurfaced in 2013. In November 2013, Dubasari police and prosecutors declined to open criminal proceedings, apparently on grounds that women in neuro-psychiatric residential institutions provide inherently unreliable testimony. Under international pressure, criminal investigation was reportedly re-opened, but the status of proceedings is not currently known.

In order to seek enforcement of their rights and obligations on an equal basis with others, persons with disabilities must be recognized as persons before the law with equal standing in courts and tribunals.¹⁹⁵ By not being allowed to perform procedural legal acts, people under guardianship are subjected to different treatment by the law and have their right to access to justice violated.¹⁹⁶

The court process

Reasonable accommodations, procedural and age-appropriate adjustments are not always provided for people with disabilities involved in legal proceedings.

For example, in the Balti case no adjustments were provided to 19 victims allegedly exposed to systematic sexual abuse and rape by medical staff at the institution. OHCHR Moldova hired a licensed psychologist to provide support to the victims.

¹⁹⁵ Committee on the Rights of Persons with Disabilities. General comment No. 1. Article 12: Equal recognition before the law, U.N. Doc. CRPD/C/GC/1, 2014, para. 38.

¹⁹⁶ The right to access to justice is forest out in Article 13 of the UN CRPD.

Providing testimonies

Persons with psycho-social disabilities and persons with intellectual disabilities can only be called as witnesses in criminal procedures following an assessment by a Forensic Psychiatric Commission. The assessment tests their ability to understand information relevant to the case and to make ‘fair’ statements in relation to them.¹⁹⁷ The purpose of the tests, rather than providing support or identifying potential needs for procedural accommodations, undermines the role of courts in assessing evidence. Depending on the findings of the Forensic Psychiatric Commission, the judge might not even see a witness if that witness has a disability.

Such practice is in violation of the UN CRPD, which requires State Parties to ensure that persons with disabilities are granted legal capacity to testify on an equal basis with others.¹⁹⁸

Conclusions and recommendations

In Moldova, people with mental disabilities can be stripped of the right to make decisions in their lives. This power is then vested in a guardian who acts as a substitute decision maker. No legally recognized alternatives which respect to the will and preferences of the person concerned, such as being allowed to exercise their rights directly or being provided with the option to conclude advance directives or enduring powers of attorney are available.¹⁹⁹

Persons with mental disabilities are denied their financial independence, the opportunity to enter into contracts and cannot get married or adopt children. Core rights are removed and they have no way to challenge these violations due to procedural and substantive barriers to access to justice.

The Moldovan Government has taken some steps to adopt new legislation and policies to overcome the barriers people with disabilities face when exercising their autonomy. The most important amendments to legislation were adopted recently, in May 2015.²⁰⁰ Through these amendments, the usage, in laws, of derogatory terms such as “invalid” or “handicapped” was abrogated, such terms being replaced with “disability” and “people with disabilities”. Most importantly, the right to vote of people under guardianship was finally recognized and people with disabilities were finally awarded the right to appeal against the establishment of guardianship.

These reforms are however insufficient, with people with disabilities still being regularly placed under guardianship and being provided with little to no support in decision making. In 2011 the Ministry of Justice promised to initiate a reform of legislation related to legal capacity, and an inter-ministerial group was established to create a draft bill on supported decision-making for the exercise of legal capacity. After more than 3 years, the draft continues to be debated, with few hopes that the guardianship system will be abolished in Moldova.

Reform is therefore slow and piecemeal. The lack of comprehensive action by the Moldovan Government is in stark contrast to what has been achieved on the right to inclusive education. Abolition of the system of guardianship should now be its priority; people with mental disabilities must enjoy the full recognition of their legal capacity.

¹⁹⁷ Republic of Moldova, Penal Code no. 985 of 18 April 2002, Article 97.

¹⁹⁸ Articles 12 and 13 UN CRPD, and further elaborated in Committee on the Rights of Persons with Disabilities. General comment No. 1. Article 12: Equal recognition before the law, U.N. Doc. CRPD/C/GC/1, 2014, para. 39.

¹⁹⁹ Republic of Moldova, Civil Code, Law No. 1107 of 6 June 2002.

²⁰⁰ Law 36 of 8 May 2015 on amending and completing a number of legislative acts.

Recommendations

On the basis of the above, the following actions are recommended:

1. Abolish discriminatory legal provisions which allow for the restriction of legal capacity of people with mental disabilities. Adopt new legislation and policy, to ensure people with mental disabilities have the rights to:
 - a. access to support to exercise their legal capacity;
 - b. make decisions regarding their marital status, including marriage and divorce;
 - c. receive appropriate support and reasonable accommodation when exercising their right to vote (such as accessible voting facilities and procedures etc.);
 - d. access justice by ensuring, among others, that people with mental disabilities:
 - i. have legal standing in all legal proceedings, and that the initiation of legal proceedings are never contingent on guardians or other substituted decision-makers;
 - ii. receive appropriate support, reasonable, procedural and age-appropriate accommodations in judicial and legal processes; and
 - iii. benefit from legal aid.
2. Ensure that people with mental disabilities are guaranteed the right to control their financial and economic affairs, and can access support if they choose to do so.
3. Encourage and initiate pilot projects to develop a wide variety of forms of support, including supported decision-making.
4. Prevent any form of medical and scientific experimentation without the free and informed consent of the person in all cases, and ensure that consent can never be given on a substitute basis by a third party.
5. Ensure that disability-based discrimination is discouraged and punished.
6. Involve persons with mental disabilities, their representative organisations and other civil society organisation in law and policy reform processes.
7. Roll out awareness-raising programmes on the human rights of persons with disabilities, targeting relevant public officials, civil servants, judges, social workers, lawyers, police and other relevant professionals.
8. Collect and disseminate comprehensive and disaggregated data in relation to legal capacity (deprivation of legal capacity, people under guardianship, number of complaints introduced by people under guardianship and the issues they address, determinations and outcomes of such complaints, number of people for which guardianship has been terminated, people accessing support to exercise legal capacity, etc.).

3. My home, my choice

Introduction

The right to live independently and be included in the community emanates from the core human rights principle that all humans are born equal in dignity and rights. Through promoting enabling and inclusive environments for all – including persons with disabilities – it aims to prevent abandonment and segregation and to enable the full development of the personality and capabilities of persons with disabilities. It is founded on the general principles of the Convention on the Rights of Persons with Disabilities (CRPD), including the respect for the inherent dignity, individual autonomy and independence of persons with disabilities, and their full and effective participation and inclusion in the society.²⁰¹

In the same way as for people without disabilities, people with disabilities need may also need support to live in the community. Moldova is one the few remaining European countries where adult women and men with disabilities are segregated for care in residential state run institutions. Numerous country reports have surfaced alarming human rights abuses, including physical violence, restraints, absence of rehabilitative or other therapeutic activities, forced medication and violations of reproductive rights, which are committed against institutionalized adult people with psychosocial and intellectual disabilities on a daily basis.

Allegations of sexual abuse by staff in psychiatric residential institutions had been brought to the attention of the Government since at least 2008, when the Council of Europe Committee for the Prevention of Torture first raised concerns of torture and degrading treatment in social care institutions. Since 2013, OHCHR has become engaged in a criminal case of serial sexual assault, committed against 18 women with disabilities over a period of years, at the Balti psychiatric residential institution.

This chapter starts by critically analysing the policy and legislative framework relevant for the services available to people with disabilities, looking at both services provided in institutional settings and in the community. While positive developments are given recognition, the second part of this chapter is dedicated to explaining how current practices also perpetuate human rights abuses.

The CRPD states that all people with disabilities, including people with mental impairments, have the right to live independently and be included in the community (Article 19). The corollary is that people with disabilities should not be forced to live in institutions against their will simply because there are no other options available to them. The Convention also states that people with disabilities must be:

- provided with a genuine choice about where and with whom they live;
- the State must develop community-based disability-specific support services; and
- general public services are made available and accessible to people with disabilities.²⁰²

²⁰¹ Concept note, annual interactive debate on the rights of persons with disabilities, 28th session of the Human Rights Council

²⁰² For more details see Mental Disability Advocacy Center (MDAC), "Litigating the right to community living for people with mental disabilities. A handbook for lawyers, 2014. Available from http://www.mdac.org/sites/mdac.info/files/litigating_the_right_to_community_living.pdf.

People with disabilities have the right to the highest attainable standard of health, without discrimination on the basis of disability (Article 25). When providing medical care and other forms of support, States must ensure that the will and preferences of those who receive services are respected (Article 12).

Exploitation, violence and abuse, and other forms of cruel, inhuman or degrading treatment or punishment and torture against people with disabilities are strictly prohibited (Articles 15 and 16). Such acts are prohibited at all times and in all circumstances, including in institutions and in the provision of community services.

States also must ensure that people with mental disabilities have access to justice, meaning that all people must have at their immediate and personal disposal a just and timely remedy for any complaint they might have regarding violations of their rights (Article 13). The issues people might have complaints about include admission to psychiatric hospitals or social care institutions, forced psychiatric treatments and inadequate provision of support services.

The CRPD also makes clear that the existence of a disability shall in no case be sufficient to justify a deprivation of liberty (Article 14), such as for example, involuntary detention in psychiatric hospitals or other institutional setting. The Council of Europe's Committee for the Prevention of Torture has expressed concern in relation to the Moldovan practice of involuntarily admitting people with disabilities against their will to institutions, and urged the State back in 2012 to ensure that the consent of the person is always sought before placement.²⁰³

This chapter describes how current practices violate international law and why the Moldovan Government should strongly commit to deinstitutionalisation and implement its commitments. According to a thematic study on the right to independent living in the community for persons with disabilities conducted by OHCHR:

“Deinstitutionalisation plans should envisage a systemic transformation and the progressive increase of support and alternative services available in the community, and provide for a realistic time frame. This requires the reallocation of resources from institutions to community support services and an end to the creation of new institutions or structural refurbishment of those that exist. Where residential institutions do not exist, States should not reproduce outdated models but rather implement approaches that promote and protect the rights of persons with disabilities to live independently and be included in the community”.²⁰⁴

203 See, for example, Council of Europe, “Report to the Government of the Republic of Moldova related to the visit in Moldova of the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment”, 2012 with information about the Orhei Psycho-neurological home, paras. 123 and 137. Available [in French] from <http://www.cpt.coe.int/documents/mda/2012-03-inf-rum.pdf>.

204 United Nations Office of the High Commissioner for Human Rights (OHCHR), “Thematic study on the right of persons with disabilities to live independently and be included in the community. Report of the Office of the United Nations High Commissioner for Human Rights”, U.N. A/HRC/28/37, 2014, para. 53.

Law and policy analysis

Institutionalisation

Admission to a psychiatric hospital

It must be noted, that the report makes a clear distinction between psychiatric hospitals as a form of healthcare service provision for persons with mental impairments and institutionalization as a form of social care service provided to persons with disabilities.

In the Republic of Moldova residential social care institutions for persons with disabilities referred to as “psycho-neurological internats” are under the direct administration of the Ministry of Labor Social Protection and Family while the psychiatric hospitals are financed by the Ministry of Health. There is however, a palliative care institution in Pavlovca, a branch of the Balti Psychiatric Hospital which functions with the authorisation of the Ministry of Health, in relation to which the Special Rapporteur on Extreme Poverty and Human Rights witnessed outrageous violations of rights and urged the State to immediately close down this facility.²⁰⁵

There are also segregated residential schools for children with disabilities which are run by the Ministry of Education (see the inclusive education chapter).

According to the available official data published by the Ministry of Labour, Social Protection and Family, there are six psycho-neurological internats for persons with disabilities and a number of 2,365 persons with mental and intellectual impairments residing there.²⁰⁶

Psycho-neurological internats in the Republic of Moldova ²⁰⁷		
Northern part of the country	Nr. of beds	Type of institution
Brinzeni village, Edinet rayon	325	institution for adult men and women with mental and intellectual impairments
Badiceni village, Soroca rayon	492	institution for adult men and women with mental and intellectual impairments
Balti municipality	425	institution for adult men and women with mental and intellectual impairments
Central part of the country ²⁰⁸		
Hincesti town, Hincesti rayon	343	institution for girls with mental and intellectual impairments
Orhei town, Orhei rayon	332	institution for boys with mental and intellectual impairments
Cocieri village, Dubasari rayon	338	institution for adult men and women with mental and intellectual impairments

²⁰⁵ UN General Assembly, “Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona. Addendum. Mission to the Republic of Moldova (8–14 September 2013)”, U.N. Doc. A/HRC/26/28/Add.2, 2014, para. 50. Available from http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_28_Add_2_ENG.doc.

²⁰⁶ Data valid as of 1 August 2012.

²⁰⁷ Ministry of Labour, Social Protection and Family, “Annual Social report for the year of 2011”, 2012. Available [in Romanian] from <http://mpsf.gov.md/file/rapoarte/RSA%202011%202020.07.12MMPSF.pdf>.

²⁰⁸ In a recent report not yet published by UNDP there are different figures: Hincesti: 315, Orhei: 236.

People deprived of legal capacity can be placed in a psycho-neurological internat²⁰⁹ at the request of their guardian and with the consent of the local guardianship authority.²¹⁰ The consent of the person concerned is not required and in practice they are rarely consulted.

According to the data provided by the Ministry of Labour, Social Protection and Family the average length of stay in a psycho-neurological internat is approximately 10 years, however, there are many cases when the residents have spent their entire life in an institution.²¹¹

Testimony:²¹²

Of course I want to settle with a family and live in a cosy home of my own but the doctor said that I can leave the institution only if my relatives come and take me with them. But he knows that my parents have passed away and I have no other relatives. Who will take me out of here if nobody knows about my existence? (Natalia, woman in her twenties)

The law also allows for the police to handcuff people with mental or intellectual impairments who left the psycho-neurologic internats without the permission of the administration and bring them back to the institution.²¹³

209 Psycho-neurological internats are residential facilities for up to 500 people, designed for persons with psycho-social disabilities and persons with intellectual disabilities and are directly administered by the Ministry of Labour, Social Protection and Family.

210 Republic of Moldova, Law No. 1402 of 16 December 1997 on Mental Health, Article 40(1).

211 Ministry of Labour, Social Protection and Family, "Social Annual report for 2011", 2012, p. 104. Available from <http://mpsf.gov.md/file/rapoarte/RSA%202011%2020.07.12MMPSF.pdf>.

212 Interview with Natalia, July 2012.

213 Republic of Moldova, Law No. 1402 of 16 December 1997 on Mental Health, Article 29(3).

Human rights analysis

Every day is the same

Institutions in Moldova are characterised, as is often the case in institutions across Central and Eastern Europe,²¹⁴ by an absolute lack of control over almost all aspects of daily life.²¹⁵ Institutionalised living often means that residents are forced to sleep as a group, eat as a group, wash as a group, spend their day as a group and – to the extent that employment is possible in an institution – work as a group. There is no room for individual autonomy. The average length of stay in such institutions is 9.7 years.²¹⁶

Testimony:²¹⁷

They are keeping us here like in a jail. [...] They check our pockets and the gate is always closed. They let me go out because I have a big mouth and I fight with them every day. (Ms. T., in her twenties, living in an institution)

Living conditions

Testimony:²¹⁸

The food is very bad here. And when we complain they say: 'Don't complain or the food will get worse' [...] and they [staff] laugh at us and say: 'We came here to rest, not to work'. (Ms. T., in her twenties, living in an institution)

According to residents we interviewed, the overall environment in social care institutions is unsafe, with threats, fights, theft, suicide and murder happening on a regular basis.²¹⁹ It was also reported that staff and the police rarely conduct often adequate and efficient investigations.²²⁰

²¹⁴ See, for example, Mental Disability Advocacy Centre (MDAC), “Out of Sight Human Rights in Psychiatric Hospitals and Social Care Institutions in Croatia”, 2011. Available from http://mdac.org/sites/mdac.org/files/croatiareport2011_en.pdf.

²¹⁵ See, for example, Council of Europe, “Report to the Government of the Republic of Moldova related to the visit in Moldova of the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment”, 2012 with information about the Orhei Psycho-neurological home., paras. 111-163. Available [in Romanian] from <http://www.cpt.coe.int/documents/mda/2012-03-inf-rum.pdf>

²¹⁶ Ministry of Labour, Social Protection and Family, “Social Annual report for 2011”, 2012. Available from <http://mpsfc.gov.md/file/rapoarte/RSA%202011%2020.07.12MMPSF.pdf>.

²¹⁷ Interview with T., 17 December 2014.

²¹⁸ Interview with T., 17 December 2014.

²¹⁹ According to people interviewed for the purpose of this report.

²²⁰ According to people interviewed for the purpose of this report; see also, for example, Council of Europe, “Report to the Government of the Republic of Moldova related to the visit in Moldova of the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment”, 2008. Available [in French] from <http://www.cpt.coe.int/documents/mda/2008-39-inf-fra.pdf>.

Restraint

Mechanical restraint is sometimes used against as a measure of behaviour control and intimidation. In the presence of other patients, it has been reported that nurses and security guards tie people to their bed using bed sheets, with such immobilisation procedures lasting on average 20 minutes.²²¹ Patients have alleged that sometimes they are tied to their beds in the evening and immobilisation lasts until the next morning.

Chemical restraints are also often used (Haloperidol, Aminazin (chlorpromazine) and Dimedrol (diphenhydramine)), and are sometimes applied without the approval of a psychiatrist.²²² People in institutions have also complained that medication is used as a form of punishment or behavioural control. In addition, institutions often do not keep records of when, why, how and for how long they apply restraint measures.²²³

Testimony:²²⁴

The nurse injected me something and shortly afterwards my muscles became stiff and I lost all control over my body. Everything was floating like in a dream. I could not drag myself to the toilet and I urinated myself. I felt vulnerable and powerless. Never in my life was I so humiliated. They warned me to stay quiet and obedient, otherwise, I know well what expects me. (Nicolae, man, 28, recalling his first chemical restraint experience)

Verbal, physical and psychological violence

There are numerous reports of physical and psychological violence occurring in Moldovan institutions. Both residents²²⁵ and staff (such as medical staff, cleaners, and guards)²²⁶ are alleged to commit violent acts on a regular basis.

221 Centre for Human Rights of the Republic of Moldova, “Report on the observance of human rights in the Republic of Moldova in 2011”, 2012. Available [in Romanian] from http://ombudsman.md/sites/default/files/rapoarte/cpdom_raport_2011anexe_0.pdf.

222 Centre for Human Rights of the Republic of Moldova, “Report on the observance of human rights in the Republic of Moldova in 2011”, 2012. Available [in Romanian] from http://ombudsman.md/sites/default/files/rapoarte/cpdom_raport_2011anexe_0.pdf

223 See, for example, Council of Europe, “Report to the Government of the Republic of Moldova related to the visit in Moldova of the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishments”, 2012 with information about the Orhei Psycho-neurological home, para. 134. Available [in Romanian] from <http://www.cpt.coe.int/documents/mda/2012-03-inf-rum.pdf>. See also, Ombudsman in psychiatric institutions, “Activity Report for the period March-June 2012”, 2012.

224 Interview with Nicolae, Badiceni 2014.

225 Council of Europe, “Report to the Government of the Republic of Moldova related to the visit in Moldova of the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishments”, 2008. Available [in French] from <http://www.cpt.coe.int/documents/mda/2008-39-inf-fra.pdf>.

226 Centre for Human Rights of the Republic of Moldova, “Report on the observance of human rights in the Republic of Moldova in 2011”, 2012. Available [in Romanian] from http://ombudsman.md/sites/default/files/rapoarte/cpdom_raport_2011anexe_0.pdf; see also, Ombudsman in psychiatric institutions, “Activity Report for the period March-June 2012”, 2012.

Intimidation and abuse

According to people we interviewed, in psycho-neurologic internats it is common for staff to verbally abuse and threaten residents by shouting at them, talking to them disrespectfully or as if they are children or inferior. The use of disrespectful and humiliating language, such as calling people “deficient” or “unworthy”, was also cited as a frequent occurrence.

Physical abuse perpetrated by staff has been reported to take a variety of forms, including beating with rod, kicking and slapping. These practices are alleged to be used as a regular measure of behavioural control to stop residents from complaining, asking questions, refusing to do unpaid work, etc. Such abuse is allegedly perpetrated in front of other residents with the aim to intimidate.²²⁷ According to 8 people we interviewed during our research, when they complained to visitors about bad conditions, physical and verbal abuse, they faced retaliation from staff.

Testimony:²²⁸

The last time the Minister of Social Protection was here I complained about the small portions of food served to us, and afterwards I was injected with Aminazin. Afterwards I felt extreme pains through my whole body and fell asleep for a long period. They punish us with injections, and they also use injections to prevent us from complaining about abuse and neglect. (Svetlana, a woman in her thirties)

I do not feel secure enough to tell this because if the nurses find out that I am complaining they will inject me with Aminazin. The janitor often gets drunk and beats us with a metal pipe. (Valeriu, a man in his forties)

Testimony:²²⁹

They often come and do gynaecological check-ups of all the girls in here. Very often. Maybe once a week. They want to know that we were not doing silly things... And if they find something [pregnancy] they take you to the hospital and it is over. (Tatiana, woman in late twenties)

Impunity for perpetrators

When violence occurs among residents, the responses of staff are often insufficient or delayed, with staff failing to record specific allegations and informing the police.²³⁰

Where a person with a disability is the victim of an offence, Moldovan law regards this as an aggravating factor to be taken into consideration by the judge.²³¹ However, punishment of perpetrators has to be accompanied by efficient prevention and detection mechanisms, and by support for victims, followed by effective investigations. Where these elements are lacking, as is often the case in Moldova, perpetrators enjoy impunity.

²²⁷ See, for example, Centre for Human Rights of the Republic of Moldova, “Report on the preventive visit to the psycho-neurological home from the city of Balti”, 2013, p. 8. Available [in Romanian] from http://ombudsman.md/sites/default/files/rapoarte/vizita_psihoneurologie_balti_10.01.2013_-_kopiya_-_kopiya.pdf.

²²⁸ Interviews with Svetlana and Valeriu, July 2012.

²²⁹ Interview with Tatiana, 17 December 2014.

²³⁰ Council of Europe, “Report to the Government of the Republic of Moldova related to the visit in Moldova of the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment”, 2008. Available [in French] from <http://www.cpt.coe.int/documents/mda/2008-39-inf-fra.pdf>.

²³¹ Republic of Moldova, Penal Code no. 985 of 18 April 2002, Article 77.

Neglect and inappropriate care

It is common that staff fails to respond to requests for medical help made by patients. In some institutions, a lack of adequate medical equipment necessary to provide assistance to residents was identified as a significant issue.²³² Clinical guidelines on emergency interventions and therapy have not been updated for the last 20 years.

Even though all psychiatric hospitals have an ergo-therapy room,²³³ such rooms are often locked and out of use because hospitals lack specialists qualified to organise and implement activities. Group therapy rooms are also not used, with no registers of group session existing and these rooms. In some cases, they are used as restrooms for staff.²³⁴

Institutions also often have insufficient staff and high numbers of vacancies for nurses and doctors.²³⁵

Residents are routinely administered psychopharmacological treatments without any options for alternative therapies or rehabilitation activities.²³⁶ Residents with challenging behaviour or in crisis are kept in locked sections for months without being allowed outside and without being provided any therapies to help identify triggers or other factors that could prevent future crises. Some residents are required to perform cleaning work by staff, with this sometimes being referred to as 'occupational therapy'.²³⁷

Neglect and outdated medical treatments have received little attention from the responsible State institutions. The State fails to take adequate steps to protect the physical and mental integrity of people in the mental health care system.

People in institutions have their rights violated on a daily basis. The State is breaching the CRPD by not respecting the will and preferences of people (Article 12) and by failing to ensure they are not subjected to cruel, inhuman or degrading treatment or punishment, torture and physical and chemical restraints (Article 15). Other violations of rights for which the State is responsible include exploitation, violence and abuse (Article 16), neglect and lack of adequate care (Article 25) and failure to appropriately collect data in relation to complaints of human rights abuses (Article 31).

232 Council of Europe, "Report to the Government of the Republic of Moldova related to the visit in Moldova of the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment", 2008. Available [in French] from <http://www.cpt.coe.int/documents/mda/2008-39-inf-fra.pdf>.

233 Ergo therapy is "a method of treatment and rehabilitation, through occupational activities, of [...] [people] with mental and physical disabilities; it is the art and science of direct human answer to specific activities, aimed at promoting and maintaining health, preventing the regress in disability, evaluate behaviour and treat and train the person with physical or social deficiencies", (Ministry of Education, Youth and Sports of the Republic of Moldova, State University of Balti, "Course on Special Education", 2005, p. 12.

234 Ombudsman in psychiatric institutions, "Activity Report for the period March-June 2012", 2012.

235 Council of Europe, "Report to the Government of the Republic of Moldova related to the visit in Moldova of the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishments", 2012 with information about the Orhei Psychoneurological home, paras. 91, 119 and 123. Available [in Romanian] from <http://www.cpt.coe.int/documents/mda/2012-03-inf-rum.pdf>

236 Council of Europe, "Report to the Government of the Republic of Moldova related to the visit in Moldova of the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment", 2008. Available [in French] from <http://www.cpt.coe.int/documents/mda/2008-39-inf-fra.pdf>.

237 Council of Europe, "Report to the Government of the Republic of Moldova related to the visit in Moldova of the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishments", 2008. Available [in French] from <http://www.cpt.coe.int/documents/mda/2008-39-inf-fra.pdf>.

Lack of access to information

People with disabilities who are in psychiatric hospitals and social care institutions are often unaware of their rights regarding hospitalisation and treatment: they often do not know they can have free legal aid, that they can challenge court orders allowing forced interventions or that they can refuse to undergo treatment or require changes in treatment plans.²³⁸

Testimony:²³⁹

I did not know that we can leave the institution. I am here for a long time already and nobody alive has ever left this place. (Vitalie, a man in his forties)

Monitoring institutions

Moldova has two bodies officially responsible for monitoring institutions.

The **National Preventive Mechanism**²⁴⁰ undertakes regular visits to psychiatric hospitals and psycho-neurological social care institutions with a view to strengthening, if necessary, protection against torture and other cruel, inhuman or degrading treatment or punishment. The final observations and conclusions of monitoring teams are published on the website of the Office of the People's Advocate (the Moldovan Ombudsperson).²⁴¹

The second body is the **Ombudsperson for Psychiatric Institutions**,²⁴² functioning under the Ministry of Health. This position was established with the support of the UNPRPD Moldova in October 2014 and the State has officially institutionalized the mandate of the Ombudsperson for psychiatry and ensured appropriate funding from the state budget.

The Ombudsperson in psychiatric institutions is mandated to:

- conduct monitoring visits to psychiatric hospitals and issue reports with recommendations;
- arrange individual meetings with patients;
- receive allegations and complaints related to conditions of hospitalisation and treatment;
- help patients file complaints with relevant state authorities;
- bring cases before the court;
- represent victim; and
- ensure follow-up on the implementation of its recommendations.

There is however no officially recognized independent mechanism mandated to promote, protect and monitor implementation of the CRPD.²⁴³ There is an alliance of 26 organisations of persons with disabilities which considers itself an independent mechanism in alignment with Article 33(2) of the CRPD, but has no official mandate.

²³⁸ Ombudsman in psychiatric institutions, "Activity Report for the period March-June 2012", 2012.

²³⁹ Interview with Vitalie, July 2012.

²⁴⁰ Established due to the obligations the state assumed by ratifying, on 24 July 2006, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 17).

²⁴¹ Centre for Human Rights of the Republic of Moldova, "Report on the observance of human rights in the Republic of Moldova in 2011", 2012. Available [in Romanian] from http://ombudsman.md/sites/default/files/rapoarte/cpdom_raport_2011anexe_0.pdf.

²⁴² Officially Avocat al pacienților din staționarele de psihiatrie ("Advocate for patients in psychiatric units").

²⁴³ The CRPD requires all State parties to create one or more such mechanisms (Article 33(2)).

Community living

The right to live in the community for persons with disabilities is not enshrined in national legislation. The Law on Social Inclusion of Persons with Disabilities, which was adopted in March 2012, contained the relevant provision in an earlier draft, however this was not adopted.

The law is based on the principles of individual autonomy, including the freedom to make one's own choices, independence, full and effective participation, and inclusion in society.²⁴⁴ It sets out the obligations of the State to develop community-based services to respond to the needs of persons with disabilities.²⁴⁵

According to Moldovan law, persons with disabilities have full access to generally available social support services.²⁴⁶ Besides that, some people with disabilities and families with one or more children with disabilities have priority in accessing free public housing, in particular people with long-term mental impairments, people who have been discharged from residential institutions, and those whose legal capacity has been restored.²⁴⁷

In practice however the situation is quite different. With little to no resources allocated for this specific purpose,²⁴⁸ these provisions are rarely implemented, and many people with disabilities receive no material support to live in the community. The only option offered by the authorities is placement in a residential social care institution.

Deinstitutionalisation of adult women and men with disabilities

On 9 July 2007, the Government adopted the National Reform Strategy for Social Care Institutions for Children which prioritises the deinstitutionalisation of children from social care institutions and their reintegration into biological or foster families.²⁴⁹ Along with institutions for children not labelled as having disabilities, this reform also targeted the Orhei and Hincesti institutions. But there is no similar national deinstitutionalisation plan for adults.

On 8 June 2012, the Government adopted a Regulation on redirecting financial resources from residential institutions to community-based services and programmes (Regulation 351).²⁵⁰ Regulation 351 purports to prevent new entrants into institutional care and allows for people currently living in institutions to be relocated to the community. A noteworthy feature of the Regulation is the prioritisation of individualised care and support. It provides financial support for various types of housing arrangements (depending on the person's circumstances and choice) including reintegration with the family, foster care, supported living, and community homes. Additionally the Regulation provides for services like personal assistants, mobile teams, family support centres, and educational support services. There is therefore a framework that encourages deinstitutionalisation; some services in the community have been established and some people have been transferred from institutions to the community. However, in the absence of a plan for the deinstitutionalisation of all adults with disabilities, the process is slow. The services currently available in the community are also insufficient.

²⁴⁴ Republic of Moldova, Law on Social Inclusion of Persons with Disabilities No. 60 of 30 March 2012, Article 5.

²⁴⁵ Republic of Moldova, Law on Social Inclusion of Persons with Disabilities No. 60 of 30 March 2012, Article 3(2).

²⁴⁶ Republic of Moldova, Law on Social Inclusion of Persons with Disabilities No. 60 of 30 March 2012, Article 47.

²⁴⁷ Republic of Moldova, Code no. 306 of 3 June 1983 on Housing in the Republic of Moldova, Article 40.

²⁴⁸ Telephone interview with Dumitru Stoicev, Chisinau Mayoralty, Public Housing Directorate, conducted on 10 August 2012.

²⁴⁹ Through Republic of Moldova, Government Decision No. 784 of 9 July 2010.

²⁵⁰ Republic of Moldova, Government Decision No. 315 of 8 June 2012.

Services offered in the community

Starting with 2010, the Ministry of Labour, Social Protection and Family developed Community Housing, the Supported Living Services, “Respiro” centers and mobile teams²⁵¹ aimed at preventing the institutionalisation and fostering social inclusion of children and adults with mental or intellectual impairments.

Community Homes

Community Homes is a social service for persons with mental or intellectual impairments who need enhanced levels of support. This service provides individuals with disabilities the opportunity to live in a typical home in the community, where they receive support from different specialists depending on their individual needs and priorities. The service is supposed to provide the residents with support in acquiring necessary skills which would help them transition into independent housing arrangements. A community home can host up to 6 people simultaneously.

Supported living

Supported living is a placement service for which are eligible only the adult men and women with mental impairments who wish to increase their level of independence. Individuals are responsible for some of the costs of the service.

The service operates in a house located in the community, where up to two persons are sharing a room. Support specialists attend on a daily basis according to a pre-arranged schedule and assist beneficiaries in their daily activities while focusing on developing their independent living skills and facilitating access to professional and vocational training.

However, the placement into the service is conditioned on the beneficiary’s adherence to a prescribed psychiatric treatment, therefore those who discontinue the medication risk being expelled from the service.²⁵²

Personal assistance

According to national legislation, people with disabilities can receive in-home personal assistance for free.²⁵³ A person is entitled to receive up to 40 hours of personal assistance per week.²⁵⁴ The assistant can be a family member, in which case they can receive remuneration. Sometimes parents who take care of children with disabilities choose to place them under guardianship in order to make sure they fit the legal requirements to receive a personal assistant, in which case the parent will fill that position and receive the attached remuneration.

251 Through Republic of Moldova, Government Decision No. 711 of 9 August 2010 on the Framework Regulation on the organisation and functioning of the “Protected Housing” social service and on minimum quality standards; and Republic of Moldova, Government Decision No. 936 of 8 October 2010 on the Framework Regulation on the organisation and functioning of the “Community House” social service and on minimum quality standards.

252 Republic of Moldova, Governmental Decision No. 314 of 23 May 2012 for adopting the Regulatory Framework and Operational Standards of Personal Assistance Services, para. 53.

253 Republic of Moldova, Law on Social Inclusion of Persons with Disabilities No. 60 of 30 March 2012.

254 Republic of Moldova, Government Decision No. 314 of 23 May 2012 for adopting the Regulatory Framework and Operational Standards of the Personal Assistance Services.

Mobile teams

Mobile Teams provide social support, psychological assistance, speech therapy, medical care, and kinetotherapy services at the person's home with the participation of the family. Mobile Teams also facilitate the person's access to community-based services and assists with obtaining social benefits.

Mobile Teams are established within district Social Assistance and Family Protection Department, and they serve children and families within the entire district. Each Mobile Team can support 25-30 individuals at the same time.

“Respiro” services

“Respiro” centres provide short-term “respite care” for individuals with severe impairments in the event of a family emergency, or on a scheduled basis to offer families the opportunity to take a vacation or attend to other family needs. The specialised centres within which the services are delivered can offer placement for up to 6 beneficiaries at a time.

Placement is made either with the beneficiary's informed consent, or involuntarily with the consent of the guardian. The maximum period of stay cannot exceed 30 days per year.

Community Mental Health Centres

Community Mental Health Centres are integrated medico-social services designed to provide mental health care and psycho-social rehabilitation, as well as assistance and support required to mediate relationships with family and friends and integrate persons with mental or intellectual impairments into community life. They provide day programmes, inpatient care and emergency interventions. The support programmes last for a maximum period of three months.²⁵⁵

To be eligible for all these services, a person must have a certified moderate or severe impairment²⁵⁶ and an individualised rehabilitation and social integration plan developed by regional Commissions for Disability Determination²⁵⁷.

The creation and maintenance of services has been delegated at the local level which means that the local public authorities should collect the necessary data on the persons with disabilities, properly plan in advance the services which need to be delivered and come forward with financial requests to the Ministry of Finance.²⁵⁸

However, the civil society organisations working on advancing the rights of persons with disabilities have pointed out that the local public authorities are not very diligent at this. Moreover, because of the very high standards imposed by the regulatory framework it is problematic to obtain accreditation for establishing the services.²⁵⁹ Investment is clearly the key to these challenges.

²⁵⁵ Republic of Moldova, Governmental Decision No. 55 of 30 January 2012 for adopting the Regulatory Framework and Operational Standards of the Community mental health centers service.

²⁵⁶ According to an assessment made by the territorial Commissions for Disability Determination, as determined by the Republic of Moldova, Law on Social Inclusion of Persons with Disabilities No. 60 of 30 March 2012, Article 45.

²⁵⁷ Republic of Moldova, Law on Social Inclusion of Persons with Disabilities No. 60 of 30 March 2012, Article 45.

²⁵⁸ Republic of Moldova, Law No. 123 of 18 June 2010 on Social Services, Article 26.

²⁵⁹ Interviews with the administrators of “Supported Living”, and Community Homes from Calarasi, Orhei, Ungheni and Cantemir Rayons

Most services which are already in place were supported by an “Emergency Fund” created by the Open Society Fund, with a total value of \$2,419,900.²⁶⁰ However, there is no comprehensive information available on the number of people using community services.²⁶¹

There had also been no comprehensive mapping of existing services. The majority of services appear to be concentrated around Chisinau and Balti, which are the two largest cities of the country, along with the central and northern counties of the country which have been targeted by civil society organisations working on advancing disability rights.

By not collecting and disseminating appropriate information, including statistical and research data, Moldova had yet to meet the standards required by the CRPD (Article 31).

Institutionalisation of children

There is a national deinstitutionalisation plan relating to children,²⁶² however there are a number of problematic aspects.

Firstly, the Reform on the Deinstitutionalisation of Children was implemented mainly for children without disabilities. Since 2007 the total number of children living in residential institutions was reduced by 43 per cent,²⁶³ yet the rate is much lower for children with disabilities. Eight years after the reform was initiated, the two psycho-neurological homes for children (Orhei and Hincesti) continue to exist, having approximately 581 residents.²⁶⁴ In 2014, only 24 children with disabilities were transferred out of these institutions.²⁶⁵

Secondly, some of the services where children have been transferred are problematic because they continue to maintain segregation and impose forms of control and restrictions similar to the regimes in psycho-neurological institutions. These “alternative services” are actually smaller institutions.

Taking the example of the Orhei psycho-neurological home, since 2007 57 boys have been transferred out of the institution, yet 332 children still remain there.²⁶⁶ 43 of the boys who left Orhei were reintegrated with their families,²⁶⁷ and 14 were transferred to “Community Homes” maintained by an NGO named Keystone Human Services International Moldova Association (‘Keystone’).²⁶⁸

²⁶⁰ Keystone Human Services International Moldova Association, “Bridge Funding During the Global Economic Crisis”. Available from <http://www.kestonemoldova.md/en/projects/bridge-funding-during-the-global-economic-crisis.php> [last accessed on 5 June 2015].

²⁶¹ While such numbers are unknown, the Ministry of Labour, Social Protection and Family reported that in August 2012 there were 6 Community Mental Health Centres, 3 Community Homes, 9 Supported Living Services, 9 Mobile Teams, 26 Foster Care Services, 30 “Respiro” Services for families caring for persons with disabilities, 30 Specialised Social Services, 48 Educational Support Services and 25 Personal Assistance Services (Ministry of Labour, Social Protection, and Family, “Activity report for the first quarter of the 2012 year”, 2012. Available [in Romanian] from <http://mpsfc.gov.md/md/rapoarte/>). These figures must have changed in recent years.

²⁶² Republic of Moldova, Government Decision no. 784 of 9 July 2007 on approval of the National Strategy and Action Plan for the reform of the residential care system for children for the period 2007-2012.

²⁶³ UNICEF, “Republic of Moldova. Country programme document 2013-2017”, 2012. Available from http://www.unicef.org/about/execboard/files/Moldova-2013-2017-final_approved-English-14Sept2012.pdf.

²⁶⁴ National Bureau of Statistics of the Republic of Moldova, The situation of people with disabilities, 2013. Available [in Romanian] from <http://www.statistica.md/newview.php?l=ro&id=4253&idc=168>.

²⁶⁵ Ministry of Labour, Social Protection and Family, “Annual Activity Report for the year of 2014”. Available from <http://www.docdroid.net/qyzs/skmbt-22315020513160.pdf.html>.

²⁶⁶ Ministry of Labour, Social Protection and Family, Subordinate institutions, the Orhei psycho-neurological home for boys, 26 February 2015. Available from <http://www.mmpsfc.gov.md/md/internatorhei/>.

²⁶⁷ Keystone International Moldova Association, Family Support Services. Available from <http://www.kestonemoldova.md/en/what-we-do/family-support-services.php> (last accessed on 20 March 2015).

²⁶⁸ Keystone International Moldova Association, Community Homes. Available from <http://www.kestonemoldova.md/en/what-we-do/community-homes.php> (last accessed on 20 March 2015).

According to Keystone representatives,²⁶⁹ boys in Community Homes are encouraged to establish links with neighbours and other community inhabitants. However, these children are still highly isolated and segregated: they are provided with education in the Community Homes and mostly participate in activities that take place in the yard of the house.²⁷⁰ There is therefore a threat that institutional practices are transplanted into the new services.

Other aspects which raise concern among the specialists in relation to the transfer from institutional care to the community and to community based services, both for children and for adults, include the fusion of access to housing with access to supports that these children may require; the exclusion of persons with psycho-social and intellectual disabilities from having access to the same range of options and facilities available to the general public and the limited choice and control for people with disabilities over the kind of services they receive.

Conclusions and recommendations

Hundreds of children and adults with mental disabilities from Moldova continue to live segregated in institutions where they have no control over any meaningful aspect of their lives. Such institutions also perpetuate a variety of human rights abuses which include inadequate medical care and support, neglect, forced medical intervention and different forms of exploitation, violence and abuse.

In recent years, Moldova has established several mechanisms to monitor these institutions, with reports coming out on a regular basis and people with mental disabilities having more opportunities to complain about violations of their rights. At the same time, stigmatisation and prejudices continue to be widespread across society, including among public authorities and legal professionals. This often means that complaints fail to result in adequate investigations and people are denied access to effective remedies.

The deinstitutionalisation process has been slow and often inefficient. The legislative and regulatory framework of Moldova has been reformed and does allow for the transition from institutions towards community living. Yet, there is no official plan for the deinstitutionalisation of adults, and so the process is extremely slow. The community-based services that have been developed are frequently run by civil society organisations but receive little funding or supervision from the State.

Regarding children, the national plan for deinstitutionalisation of children has had little impact on children with mental disabilities, who continue to remain segregated in institutions in high numbers.

Forced admission of people with mental disabilities to psychiatric hospitals and social care institutions and forced psychiatric treatment remain the norm. Although the State has assumed an obligation to reform this legislation, amendments are yet to take place. There is a corresponding lack of awareness about rights and choices, with many people in search of support having institutionalisation as the only realistic option available.

Taking these issues into consideration, it can be concluded that both children and adults with disabilities frequently have their right to living independently and being included in the community (Article 19 CRPD) violated. While steps have been made to deinstitutionalise some people with disabilities, more is needed in order to ensure all people, of all ages and all abilities, are fully included in society.

²⁶⁹ Interview with Ludmila Malcoci, Director of the Keystone Human Services International Moldova Association, 12 April 2012.

²⁷⁰ Keystone International Moldova Association, Volunteering at Hansca Community Home, 23 September 2014. Available from <http://khsima.wordpress.com/>.

Recommendations

1. Ensure the right to independent living and inclusion in the community is guaranteed for all people with mental disabilities by:
 - a. Prohibiting deprivation of liberty on the basis of the existence of an impairment;
 - b. Setting out the right to live in the community in national legislation;
 - c. Adopting a plan for the deinstitutionalisation of adults with disabilities, with a detailed vision of services and coordination between different agencies and sectors involved in community-based care;
 - d. Encouraging, supporting and initiating the development of services in the community, which should be provided on the basis of individualised plans;
 - e. Monitoring the functioning of community services to ensure there is no transfer of institutional practices into them;
 - f. Involving people with disabilities and other ‘experts by experience’²⁷¹ to ensure that services maintain internationally-accepted standards;
 - g. Providing individual budgets which respond to the multiple needs of individual people with disabilities, rather than providing block-funding to institutions;
 - h. Devolving powers and responsibilities to individual service users via self-directed care arrangements; and
 - i. Prioritising support to families, including through direct or indirect financial support and counselling services, to reduce pressures for carers and make it more likely that people with disabilities can be supported by their families, if this is what they wish.
2. Ensure free and informed consent is always obtained in relation to the provision of all services (psychiatric treatment, admission to hospital, services in the community) by:
 - a. Adopting explicit legal provisions through which all procedures not based on free and informed consent consistent with the will and preferences of the person concerned are deemed to be involuntary and abolishing provisions naming such procedures as voluntary (voluntary hospitalisation, voluntary psychiatric treatment, etc.)
 - b. Abolishing legislation that authorises the institutionalisation of persons with psychosocial and intellectual disabilities without their free and informed consent; and
 - c. Provide training to medical staff on human rights standards and on developing healthy patient-doctor relationship, where patients are carefully explained the choices, possible consequences and alternatives available to them.
3. Prohibit through law the use of physical and chemical restraints on people with psychosocial and intellectual disabilities, for any period of time.
4. Ensure the human rights of people with disabilities receiving mental health care are effectively monitored by:

²⁷¹ Mansell J, Knapp M, Beadle-Brown J and Beecham, J. “Deinstitutionalisation and community living – outcomes and costs: report of a European Study”, Volume 2: Main Report (Canterbury: Tizard Centre, University of Kent, 2007). Available from https://www.kent.ac.uk/tizard/research/DECL_network/documents/DECLOC_Volume_2_Report_for_Web.pdf.

- a. Adopting regulations for control and supervision measures, with a view to preventing torture or ill-treatment;
 - b. Enabling and fostering the activity of the national preventive mechanism and other human rights monitoring bodies to systematically monitor, receive complaints and initiate prosecutions; and
 - c. Ensuring that the service of the Ombudsperson in Psychiatric Institutions is undertaken by the State and appropriately resourced from the public budget.
5. Ensure the rights of people with disabilities are respected by:
- a. Encouraging, stimulating and creating
 - b. programmes aimed at preventing any form of violence, exploitation and abuse of people with disabilities;
 - c. Conducting prompt, impartial and thorough investigations into all complaints made by people with disabilities, including in relation to allegations of torture and ill-treatment in mental health care facilities;
 - d. Strengthening accountability and redress mechanism for abuses in health care settings;
 - e. Ensuring perpetrators of crimes against people with disabilities are brought before the courts, subjected to effective investigations, and punished where found guilty; and
 - f. Amending the criminal law to classify the targeting of a victim on the basis of their disability as a hate crime. Crime statistics should be reported annually on the prevalence of hate crime against people with disabilities, the investigation of allegations and their disposal.
6. Develop a systematic method for collecting, analysing and disseminating disaggregated information on issues related to coercive procedures, institutionalisation and community services. Such data should be collected into a single source of information and regularly updated. Information should include:
- a. Up-to-date data on the number of residents in psychiatric hospitals and social care institutions.
 - b. Number of court orders issued to permit forced hospitalisation and forced treatment, and numbers of complaints or appeals against such orders;
 - c. Legal proceedings initiated by people with mental disabilities, by type;
 - d. Community-based services mapping;
 - e. Number of persons which require support for independent living, disaggregated (by age, gender, ethnicity, impairment) to ensure that everyone benefits from the transition away from institutions to alternatives in the community.





THE HUMAN RIGHTS OF PEOPLE WITH MENTAL OR INTELLECTUAL IMPAIRMENTS IN THE REPUBLIC OF MOLDOVA

This report discusses many of the struggles that people with mental and intellectual impairments experience in the Republic of Moldova.

It describes and assesses legislation, policies and practices relating to people with disabilities through the lens of international human rights law, with particular reference to the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which Moldova ratified in 2010.

The report focusses on three rights in particular: (1) the rights to inclusive education; (2) the right to legal capacity; and (3) the right to independent living in the community. The aim of this report is to provide human rights assessment of certain key areas of policy, law and practice in the Republic of Moldova, with a view to guiding reforms, as well as galvanizing improvement of the treatment of persons with disabilities.