



Written submission by the Global Initiative on Psychiatry,
Lithuanian Forum for the Disabled and the
Mental Disability Advocacy Center
to the Human Rights Committee,
105th Session 9-27 July 2012
With respect to LITHUANIA

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Mental Disability Advocacy Center
tel: +36 1 413 2730, fax: +36 1 413 27 39
email: mdac@mdac.info, web: www.mdac.info

Global Initiative on Psychiatry
tel: +370 5 271 5762, fax: +370 5 271 5761
email: vilnius@gip-global.org, web: www.gip-vilnius.lt

Lithuanian Forum for the Disabled
tel: +370 5 269 1309, fax: +370 5 269 1309
email: info@lnf.lt, web: www.lnf.lt



Introduction

The Global Initiative on Psychiatry (GIP) is non for profit making organisation actively working in an area of reforming mental health care and social care services, promoting and protecting human rights of people with psycho-social disabilities in Lithuania and the region of post soviet countries. Through lobbying, advocacy, capacity-building, consultations and representation GIP promotes and advances human rights of persons with intellectual disabilities and psycho-social disabilities.

Lithuanian Forum for the Disabled (LFD) is Lithuanian Umbrella organization for Disability Organisations. At the moment it has 14 national member organisations representing about 200 000 Lithuanian people with disabilities and their families. Primary aim of LFD is to advocate human and civil rights of Lithuanian people with various disabilities.

The Mental Disability Advocacy Center (MDAC) is an international human rights organization which advances the rights of children and adults with intellectual disabilities and psycho-social disabilities. MDAC uses law to promote equality and social inclusion through strategic litigation, advocacy, capacity-building and research.

GIP, LFD and MDAC make this written submission with a view to providing the Human Rights Committee with additional information about Lithuania's compliance with the International Covenant on Civil and Political Rights (ICCPR), with a special focus on how people with disabilities have access to equal enjoyment of those rights, with respect to the List of Issues published on 5 December 2011 and Replies from the Government of the Republic of Lithuania to the List of issues.

1. Violation of Article 16 of the ICCPR: Right to Legal Capacity

The submitting organisations invite the UN Human Rights Committee to find Lithuania in violation of Article 16 of the ICCPR because of its medieval legal capacity system. In previous concluding observations (in relation to Russia, which has very similar provisions to Lithuania), the Committee found that, "there is a lack of adequate procedural and substantive safeguards against disproportionate restrictions in their enjoyment of rights guaranteed under the Covenant".¹ The Committee previously endorsed the view that the deprivation of legal

¹ Concluding observations of the Human Rights Committee on the Russian Federation, adopted 28 October 2009. (CCPR/C/RUS/CO/6) para. 19.



capacity, and the process of doing so, engages Article 16 of the ICCPR.² We invite the Committee to clarify that this issue not only engages Article 16, but violates it.

Under Lithuanian law there are two ways in which the law affects legal capacity:

1. Deprivation of legal capacity which leads to the person being placed under plenary/total guardianship.
2. Restriction of legal capacity which leads to the person being placed under partial guardianship.

Both plenary and partial guardianship are based on substituted decision-making which means that guardians make decisions on behalf of the person concerned in all legally-important areas of life. The profound seriousness that a deprivation of legal capacity can have has recently been observed in a ruling of the Lithuanian Supreme Court:

a person declared legally incapacitated is deprived many of their rights, including the right to dispose his property and manage related matters, right to work, right to marry, right to vote, right to choose their place of living, right to apply to the court on any issues including a review of his incapacitated status, whereas a legal guardian appointed by a court, and/or a property administrator, become their legal representative for indefinite period of time, and deal with all issues related to a legally incapable person and his property without any special authorisation (Article 3.240 § 1 of the Civil Code).³

In conclusion, we invite the Committee to find that the system of legal capacity in Lithuania violates Article 16 of the ICCPR.

2. Violation of Article 7 of the ICCPR: abortions and sterilizations without consent

This section provides additional information related to paragraph 9 of the List of Issues regarding “the alleged use of forced abortions in institutions for persons with intellectual and psychosocial disabilities.” The submitting organisations submit that the Lithuanian law violates Article 7 of the ICCPR because **women with disabilities can have abortions and be sterilized against their will**. This practice has been previously condemned by the UN

² Concluding Observations of the Human Rights Committee on the Czech Republic, adopted on 25 July 2007. (CCPR/C/CZE/CO/2) para. 14.

³ Ruling of the Supreme Court of the Republic of Lithuania in the civil case No. 3K-3-166/2012 delivered on 12 March 2012 (Case Hearing No. 2-02; Categories of the Process’ Decision: 26.3; 123.4).



Human Rights Committee, the UN Committee on Economic, Social and Cultural Rights, the UN Committee on the Elimination of Discrimination against Women, and the UN Special Rapporteur on Torture.

In its Alternative report⁴ LFD and GIP allege that, “[w]omen with intellectual and psycho-social disabilities in many cases are forced to take contraception and have abortions against their will if pregnancy cases would appear in large institutions.”

The Lithuanian government’s response to the List of Issues, states that, “[c]onsent to a surgical operation shall be given in writing. Where a person is incapable [i.e. the person has been deprived of their legal capacity], such consent may be given by his guardian, however a court authorisation is necessary for castration, sterilisation, abortion, operation, and removal of an organ of an incapable person.” Thus, the Lithuanian legislation acknowledges that, when a person is labelled as incapable and is placed under guardianship, a substitute decision-maker may decide, *inter alia*, on abortion. There is no need for the free and informed consent of the person concerned. This provision currently on the statute books is a violation of Article 7 of the ICCPR.

In Lithuania, the legal capacity law is based on a binary nature of humanity: group A in humanity are people who have all mental functioning to make any decision at any time in their adult lives, and group B lacks mental functioning to make any decisions at any time in their adult lives. This schematic is clearly counter-factual, and from an former era, where people with disabilities are objectified rather than viewed as rights holders and provided – like others – with support if they are at a particular time not able to make a particular decision.

The **equal recognition before the law** is set out in Article 16 of the ICCPR. This concept, relating to people with disabilities, has been given more meaning by the ICCPR’s sister treaty, the Convention on the Rights of Persons with Disabilities (CRPD), which Lithuania ratified on 18 August 2010. One of the stated principles set out on the face of the CRPD is, “[r]espect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons.”⁵ As such, CRPD marks a shift away from surrogate decision-making, protectionism and paternalism, toward respect for autonomy, and enhancing people’s inherent capabilities to flourish as a human being.

The equal recognition before the law is set out in Article 12 of the CRPD as well, and Article 12(2) sets out the

⁴ Alternative Report to the Human Rights Committee on the occasion of its review of Lithuania’s Third Periodic Report under the International Covenant on Civil and Political Rights prepared by the Lithuanian Forum for the Disabled and the Global Initiative on Psychiatry, 27 July 2011. See in particular para. 4.

⁵ Article 3(a) of the CRPD.



right to legal capacity by recognising that, “persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.” This is a clear signal that substitute decision-making such as the current law in Lithuania, is contrary to CRPD intentions. The CRPD goes on to say in the same Article that “States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.” In other words, the CRPD does not propose that people make legally independent decisions throughout their lives. We may need the external environment to make adjustments so that we can participate in the community (e.g. braille voting slips to give effect to the right to vote). Or we may need someone to assist us in understanding issues and communicating our will and intent to the life-world.

The UN Committee on the Rights of Persons with Disabilities (CRPD Committee) has issued only three sets of concluding observations, and with regard to Spain it expressed concerns that, “no measures have been undertaken to replace substitute decision-making by supported decision-making in the exercise of legal capacity.”⁶ The Committee recommended that Spain, “take action to develop laws and policies to replace regimes of substitute decision-making by supported decision-making, which respects the person’s autonomy, will and preferences”.⁷ A very similar situation currently exists in Lithuania, and we encourage the Human Rights Committee to synthesise the CRPD standards into its own jurisprudence, to avoid a situation where the government is faced with two different recommendations from the UN system, and is then able to play one part of the UN against another part.

Without legal capacity one cannot make healthcare decisions. The **principle of free and informed consent** is closely linked to the right to legal capacity. In 2008, Manfred Nowak the (then) UN Special Rapporteur on Torture has noted that, “[p]ersons with disabilities are exposed to medical experimentation and intrusive and irreversible medical treatments without their consent (e.g. sterilization, abortion ...),”⁸ and has gone on to say that in certain situations such treatments can constitute torture. He encouraged national, regional and international level stakeholders to “review the anti-torture framework in relation to persons with disabilities,”⁹ before going on to highlight that “women and girls [with disabilities], continue to be subjected to forced abortion and sterilization without their free and informed consent inside and outside institutions.”¹⁰

⁶ Concluding observations of the Committee on the Rights of Persons with Disabilities on Spain, adopted on 23 September 2011, (CRPD/C/ESP/CO/1), para. 33.

⁷ *Ibid* para. 34.

⁸ Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, (A/63/175), 28 July 2008. para. 40.

⁹ *Ibid* para. 41.

¹⁰ *Ibid* para. 60.



In finding Lithuania in breach of its Article 7 ICCPR obligations, the **Human Rights Committee** is building on established jurisprudence where it has indicated that several treatments, including forced abortion, breach the provision.¹¹

In 2008, in a report on the nexus between disability and torture, the **UN Special Rapporteur on Torture** pointed out that torture or ill-treatment may occur where medical treatments are “enforced or administered without the free and informed consent of the person concerned”¹². Similarly, a classic statement articulating the absolute prohibition of torture and ill-treatment is set out in the 2006 CRPD and governments are specifically required to, “take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.”¹³ The notion that people should consent to treatment is further set out in the CRPD’s provision on the right to health.¹⁴

Lithuanian Law fails to meet these standards, as it allows for forced abortion, castration, sterilization, other medical operation, and forced removal of their organs as well.¹⁵

Our submissions are supported also by looking at this issue through the lens of the rights to private and family life and physical and mental integrity. The **UN Committee on Economic, Social and Cultural Rights** has said that,

[w]omen with disabilities also have the right to protection and support in relation to motherhood and pregnancy. As the Standard Rules state, ‘persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood’. (...) These rights are commonly denied to both men and women with disabilities worldwide. Both the sterilization of, and the performance of an abortion on, a woman with disabilities without her prior informed consent are serious violations of article 10(2).¹⁶

¹¹ General comment 28, para. 11.

¹² Interim report (A/63/175), *supra* note 8, para. 47.

¹³ Article 15(2) of the CRPD.

¹⁴ Article 25(d) of the CRPD.

¹⁵ Replies from the Government of the Republic of Lithuania to the list of issues (CCPR/C/LTU/Q/3) to be taken up in connection with the consideration of its third periodic report (CCPR/C/LTU/3), CCPR/C/LTU/Q/3/Add.1. 10 April 2012. para. 40.

¹⁶ General Comment number 5 of the UN Committee on Economic, Social and Cultural Rights on “Persons with disabilities” (1994), para. 31.



In its General Recommendation 19 on Violence Against Women, the **UN Committee on the Elimination of Discrimination against Women** stated that “[c]ompulsory sterilization or abortion adversely affects women’s physical and mental health, and infringes the right of women to decide on the number and spacing of their children.”¹⁷ This is a point referred to in the CRPD, which places an obligation on States Parties to ensure, “[t]he rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children.”¹⁸ The same paragraph of the CRPD obliges States Parties to provide access by persons with disabilities to age-appropriate information, reproductive and family planning education, and to the means necessary to exercise the right to marry and found a family. Indeed, the CRPD Committee says that it is particularly interested in States “report[ing] on [m]easures taken to protect persons with disabilities from medical (or other) treatment given without the free and informed consent of the person and measures taken to protect all persons with disabilities from forced sterilization, and girls and women from forced abortions”.¹⁹

In summary, we invite the Committee to find a violation of Article 7 of the ICCPR because the law allows women deprived of legal capacity to undergo forced abortions and sterilizations.

3. Violation of Article 14 of the ICCPR: Right to a fair trial

This section provides additional information related to paragraph 17 of the List of Issues regarding “the right to legal assistance of one’s own choosing, including free legal assistance for (...) persons with disabilities.” This issue speaks to the rights set out in Article 14 of the ICCPR.

Lithuania fails to provide compulsory, free and effective²⁰ legal representation of a person in a legal proceeding where her legal capacity may be deprived, and where therefore her civil and political rights are at risk of being removed. In its response to the List of Issues, the government noted that non means-tested free legal aid may be delivered for individuals asked to be deprived of their legal capacity and for individuals with “severe mental illness” in cases of their involuntary hospitalization and involuntary treatment.²¹ This statement is incorrect. The Civil Procedure Code does not provide legal representation of a person in a legal procedure where her legal capacity may be deprived. Rather, it states that a person who is deprived of legal capacity has no right to initiate a

¹⁷ General Recommendation number 19 of the UN Committee on the Elimination of Discrimination against Women on “Violence against women” (1992), para. 22.

¹⁸ Article 23(1)(b) of the CRPD.

¹⁹ Guidelines on treaty-specific document to be submitted by states parties under article 35, paragraph 1, of the Convention on the Rights of Persons with Disabilities, CRPD/C/2/3. 18 November 2009. para. C, Article 17.

²⁰ Alternative Report to the Human Rights Committee, *supra* note 4, paras. 38 and 41.

²¹ CCPR/C/LTU/Q/3/Add.1., *supra* note 15, para. 89.



procedure before the court requesting the restoration of legal capacity or the change of total deprivation of legal capacity to partial,²² and as there is no right to do so, there is no legal representation either. The Civil Procedure Code treats these procedures as non-contentious proceedings, which may be initiated by the person's spouse, parents, adult children, care institution or a public prosecutor.²³ These legal provisions fail to meet Lithuania's commitments under Article 14 of the ICCPR.

ICCPR provisions are supported by developments in other areas of UN human rights law. The CRPD contains relevant provisions concerning fair trial and legal representation. First, Article 12 on legal capacity (see above) is relevant because it sets out the right to legal capacity on an equal basis with others *in all aspects of life*, and a plain meaning this includes in legal aspects of one's life.²⁴ This includes the opportunity for each person independently, and without relying on the discretion of someone else (e.g. a relative or a prosecutor) to initiate proceedings before a court seeking a restoration of legal capacity, or for any other matter of fundamental rights. The CRPD says that people must have access to the support they may require in exercising their legal capacity – in this case, the State may need to provide support (e.g. an independent attorney trained in defending the rights of people with disabilities) to assist.²⁵

Legal systems, according to the CRPD, need to adjust their systems and procedures to accommodate the rights of people with disabilities, so that the disability is, in a sense, neutralized, and the person can access justice on an equal basis with others. This is the concept of "reasonable accommodation",²⁶ a denial of which constitutes disability-based discrimination.²⁷ Finally, Article 13 of the CRPD obliges States to "ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations."

In conclusion, we invite the Committee to find a violation of Article 14 of the ICCPR because Lithuanian legislation does not provide for compulsory representation of a person who is asked to be declared legally incapacitated. Even if the person concerned has legal representative before the court, this representation is often not free and not effective. Moreover, individuals declared legally incapacitated have no right to independently initiate a procedure before the court requesting the restoration of legal capacity or the change of full incapacitation to partial incapacitation.

²² Article 469 of the Civil Procedure Code.

²³ Article 463 of the Civil Procedure Code.

²⁴ Article 12(2) of the CRPD.

²⁵ See Article 12(3) of the CRPD.

²⁶ Reasonable accommodation is defined in Article 2 of the CRPD.

²⁷ Articles 2 and 5 of the CRPD.