



Jānis Bordāns
Minister of Justice
Ministry of Justice of the Republic of Latvia
Brīvības blvd. 36
Rīgā, LV1536
Latvia

5 December 2012

Dear Minister,

Re: Guardianship legislation

I am writing from the Mental Disability Advocacy Center ("MDAC"), an international human rights organisation, which advances the rights of children and adults with intellectual disabilities and psycho-social (mental health) disabilities. MDAC uses law to promote equality and social inclusion through strategic litigation, advocacy, capacity-building and research. MDAC has been working on guardianship issues since its foundation ten years ago, and has on several occasions had the pleasure of interacting with Latvian people with disabilities and other experts on legal capacity law reform in your country. In March 2011, MDAC and its Latvian partner NGO called Resource Center for People with Mental Disability, ZELDA co-organised a training event in Riga for policy-makers and NGOs on legal capacity law reform, and advised the Ministry of Justice on how they should develop new legislation.

On 29 November 2012, the Parliament adopted amendments to the Civil Code, Code of Civil Procedure and the Law on Orphan's Courts. MDAC welcomes the improvement of Latvian legal capacity legislation which includes the abolishment of plenary guardianship and the introduction of partial guardianship, temporary guardianship without restricting legal capacity and advanced directives.

While these developments are based on international human rights standards, the new legal provisions fail to include provisions on supported decision-making, a measure which MDAC considers elementary to comply with obligations under Article 12 of the UN Convention on the Rights of Persons with Disabilities (CRPD), to which Latvia is a State party.

The UN Committee on the Rights of Persons with Disabilities is the treaty body of the CRPD and has recommended with regard to implementation of Article 12 of the CRPD that governments "review the laws allowing for guardianship and trusteeship, and 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." (Concluding Observations on Spain, 23 September 2011. (CRPD/C/ESP/CO/1) Para 34.; See also: Concluding Observations on Hungary, 27 September 2012. (CRPD/C/HUN/CO/1) Para 26.)

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The Mental Disability Advocacy Center is an international human rights organisation which advances the rights of children and adults with intellectual disabilities and psycho-social disabilities. Our vision is a world of equality – where emotional, mental and learning differences are valued equally; where the inherent autonomy and dignity of each person is fully respected; and where human rights are realised for all persons without discrimination of any form.

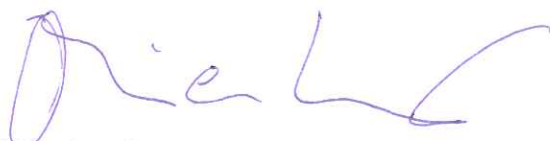
In order to rectify this situation, I urge you to instigate the introduction of supported decision-making in the Latvian legal system. In order to comply with the CRPD, MDAC suggests developing a law which recognises that persons with disabilities may require support in exercising their legal capacity. Like people without disabilities, people with disabilities may need assistance in understanding various options and communicating their decisions. This support is set out in Article 12(3) of the CRPD.

Supported decision-making is a cluster of various methods which give primacy to a person's will and preference means that a person's legal capacity remains intact. The law needs to establish structures to

- i. recognise that supported decision-making is built on relationships of trust;
- ii. assign clear roles to supporters to provide information to help the person with disabilities to make choices, and to assist the person to communicate these choices to third parties (such as banks, doctors, employers, etc.); and
- iii. put in place adult protection systems to prevent and remedy exploitation, violence and abuse, as outlined in Article 16 of the CRPD.

MDAC places a very high importance to countries which are undergoing in law reform in the legal capacity field which is a complex area and we remain at your service should any clarifications be needed. I look forward to hearing about your plans to ensure that Latvian law and practice fully complies with the CRPD.

Yours sincerely,



Oliver Lewis
Executive Director