



Response to Draft General Comment No. 1 on Article 12 UN Committee on the Rights of Persons with Disabilities

Submitted by: the Organisation for promotion and defending the rights of persons with psychosocial disabilities in the Republic of Moldova

The Organisation for promoting and defending the rights of persons with psychosocial disabilities is an officially formalised national group of (ex)users and survivors of psychiatry, advocating for the rights of persons with psycho-social disabilities and the right to equal recognition of legal capacity, in particular.

The team, comprising “experts by experiences” in discrimination and denial of equal rights on grounds of psycho-social disabilities, seeks to use the opportunity of a Draft General Comment on Article 12 to clarify State’s obligations in ensuring equal legal capacity and remediating the situation of men and women affected by substitute decision-making regimes and denial of legal capacity.

As regulated under the Moldovan legislation, adopted before the Convention’s entry into force, the institutions of incapacitation and guardianship divest persons with psychosocial and intellectual disabilities of their personhood and deprive them of the power to take control over their lives. Incapacitation is very frequently used as a tool for life-long institutionalization. Even where not institutionalized, a person placed under guardianship or otherwise declared “incapable” is deprived, pursuant to a court order to that effect, of the ability to engage in even basic socio-legal relationships, such as to vote, to marry, to divorce, to conclude a work contract, to own property, to claim social benefits, consent to medical treatment or even – the ultimate paradox – to have the standing before a court to appeal a guardianship order.

The Organisation is grateful to the Committee on the Rights of Persons with Disabilities for their comprehensive interpretation and guidance on ensuring equal legal capacity for persons with psychosocial and intellectual disabilities, as formulated into the Draft General Comment (GC) on Article 12 CRPD. We would also like to inform the Committee that the Moldovan Inter-ministerial Working Group on Legal Capacity Reform took guidance from the Draft General Comment, as publicised on the OHCHR web site, and in March 2014 presented their final resolution on abolishing substituted making regimes and establishing a national service of support in exercising legal capacity.

We are supportive to the view that every person should enjoy full respect for their dignity, free will and preference which means that deprivation of legal capacity to act upon one’s own decisions and choices shall be considered as severe human rights infringements and discrimination on grounds of disability status.



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We fully agree with the understanding that legal capacity includes the capacity to be both a holder of rights and an actor under the law. This understanding is very important, especially in the Moldovan context, where the person is recognised as a holder of rights, however, they are considered in to be in a “civil death” because the power to act is transferred to a third person, called guardian.

We consider especially valuable the clarification related to the distinction of the two concepts of “legal capacity” and “mental capacity”. We uphold the position that Article 12 of the Convention, prohibits denial of legal capacity on grounds of perceived or actual deficits in mental capacity. We also support the view on the access and not imposition of support in exercising legal capacity.

We urge the Committee to proceed with the adoption of the present Draft General Comment No. 1 on Article 12 as currently formulated.

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Head of the organization