

## METHODOLOGY

The organizations that have been involved in the development of the report (in the alphabetical order):

- „Speranța” Centre
- Association “Woman and Child– Protection and Support ”
- Association „Alliance of Organizations for Persons with Disabilities from Republic of Moldova”
- Association „Dezdna”, Sangerei
- Association „MOTIVATIE” Moldova
- Association „PRIMA”, Taraclia
- Association „Promotorii Noului”, village of Pelinei, Cahul
- Association for Support of Persons with Mental Disabilities "Dor"
- Association of Support of Children and Young People with Disabilities „Dorința”
- Association of Support of Children with Special Needs
- Association of Support for Children with Physical Disabilities from Peresecina
- Association of the Deafs of the Republic of Moldova
- Association of the Nongovernmental Organization for Children with Disabilities „STEAUA CALAUZA”
- Association of the People with Disabilities of the Republic of Moldova
- Centre of Early Intervention „Voinicel”
- Centre of Legal Assistance for People with Disabilities
- Keystone Human Services International Moldova Association
- Moldova Association for Deaf Children (MADC)
- Moldova Association of the Blind
- Moldovan Institute for Human Rights. (has contributed to Articles 12, 13, 14 and 15)
- Non- Governmental “Hope and Health”
- Non-governmental Association „Federation of Torball and Goallball of the Republic of Moldova”
- Non-governmental Association“Eco-Razeni”, Ialoveni
- Non-Governmental Organization for Young People with Disabilities „VIVERE”, Edineț
- Public Association Center for Rehabilitation and Social Integration of Children with Intellectual Disabilities “CULTUM”
- Public Association „SOS Autism”

## Implementation of accepted recommendations<sup>1</sup>

### Antidiscrimination issues

75.11. Continue efforts to adopt and implement the legislative framework to prevent, punish and eliminate all forms of discrimination, with special attention to gender equality and discrimination based on sexual orientation and disability (Mexico);

Discrimination remains to be the root cause for inequality and marginalization of persons with disabilities.

The Article 16 of the Constitution of the Republic of Moldova, which lists the prohibited grounds of discrimination, does not provide explicit protection against discrimination on grounds of disability. Article 51 of the Constitution reference to persons with disabilities as “handicapped” runs afoul of the human rights principles embedded in the Convention on the Rights of Persons with Disabilities. In addition, paragraph 2 of the Constitutional Article 51 allows for the non-consensual medical treatment of persons on grounds of their disabilities.

#### *RECOMMENDATIONS*

- Amend Art. 16 of the Constitution of the Republic of Moldova to introduce an explicit prohibition of discrimination on grounds of disability;
- Amendment of Art. 51 of the Constitution by replacement of the phrase „handicapped persons” with „persons with disabilities” in conformity with the Convention on the Rights of Persons with Disabilities;
- Abolish paragraph 2 of the Constitutional Article 51 to ensure that the consent to medical interventions for persons with disabilities is respected in all situations;

The Law nr.121 from 25.05.2012 on combating discrimination and the subsequent legal provisions do not explicitly recognize multiple and intersectional discrimination, therefore do not provide for adequate protection against discrimination on more than one ground, both in the context of determination of liability and remedies. The Law nr 121 from 25.05.2012 on ensuring equality omitted to provide for protection against discriminatory institutional segregation on grounds of disability. Also, the Law nr.121 fails to recognize the lack of accessibility for persons with disabilities as discrimination. Moreover, the Law nr 121 fails to recognize that institutional segregation on grounds of disability constitutes discrimination and provides protection only against racial segregation.

#### *RECOMMENDATIONS*

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<sup>1</sup> Prepared on the basis of the Draft report of the Working Group on the Universal Periodic Review - Republic of Moldova, 14 October 2011 (A/HCR/WG.6/12/L.16).

- Amend the Law nr.121 from 25.05.2012 on combating discrimination to introduce an explicit prohibition of multiple and intersectional discrimination;
- Amend the Law nr.121 from 25.05.2012 on combating discrimination to explicitly recognize that institutional segregation on grounds of disability constitutes discrimination *per se* and does not require for a comparator in order to be proven;
- Amend the Law nr.121 to introduce the necessary provisions that will recognize that lack of accessibility for persons with disabilities is discrimination.

## Accessibility

75.14. Develop, in compliance with CRPD, a legal framework that ensures an environment without barriers or obstacles, and includes access to goods and services (Spain);

Out of the total number of building and objects of public infrastructure in the capital city of Chisinau only 16% are accessible for wheel chair users. The rural and urban public and private infrastructure and services lack even the most basic accessibility measures, such as ramps. The number of the accessible buildings for the persons with sight impairments is less. There are only few accessible health care institutions in which persons with disabilities could exercise their rights to health. However, there is not a single gynaecological hydraulic chair or mammography available for women with disabilities in the health centres.

Overall, the legal and policy frameworks relating to accessibility in the Republic of Moldova are weak or not appropriately implemented. The national construction standards<sup>2</sup> approved by the Ministry of Regional Development and Construction are outdated and do not correspond to the European and international standards.

Moreover, even these standards are not implemented. The State has failed to put in place a monitoring and sanctioning mechanism regarding those who do not comply with the accessibility requirements.

### *RECOMMENDATIONS*

- Establish through law an efficient mechanism mandated to assess compliance with the accessibility requirements for both old and new buildings and sanctioning lack of compliance with the accessibility requirements;
- To adopt an actions plan on renovation of old buildings and public spaces in the view of ensuring the accessibility for the persons with disabilities, including road infrastructure, to create the conditions of accessibility of the public urban and interurban transport;

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<sup>2</sup> CP C.01.02-2014 (Design of the buildings and structures, with the due regard on accessibility for the persons with disabilities) and NCM C.01.06-2014 (General requirements on security for the construction objects on their use and accessibility for the persons with disabilities)

- To include the condition of ensuring accessibility in the legislation on public procurements;
- To include the mandatory condition of accessibility in the Audio-Visual Broadcasting Code;

## **Right to Health**

73.19. Eliminate discriminatory practices against persons with disabilities in the medical setting and ensure physical access of children with disabilities to educational and public institutions, as part of its implementation of the Strategy of social inclusion of persons with disabilities (Thailand);

According to the Law No. 1585-XIII on health insurance dated from 27.02.1998, medical expenses for persons with disabilities are covered by the National Company of Medical Insurance (NCMA). However, not all the necessary drugs and paramedical goods are being provided therefore, persons with disabilities have to make out-of-pocket payments for a number of essential drugs, such as certain anticonvulsive drugs, diapers and other medical consumables.

The persons with hearing impairments cannot independently contact the emergency medical services because the service is responding only to telephone calls. There have been cases when persons with hearing impairments have been found dead in their homes because they did not manage to call the emergency service. Also, doctors cannot communicate with the persons with hearing impairments because they do not master the sign language and there are only 9 licensed sign language interpreters around the country.

Persons with psycho-social or intellectual impairments are deprived of their right to provide consent to medical interventions, treatment and hospitalization. Their consent is replaced by the consent of a guardian. According to the Law on Mental Health nr 1402 from 16.12.97. persons with psycho-social or intellectual impairments can be involuntarily admitted to psychiatric institutions and exposed to non-consensual treatment for a period as long as 21 days.

### **RECOMMENDATIONS**

- To amend the Order of the Health Ministry No. 492/139 from 22.04.2013 on drugs compensated by the medical insurance funds with the purpose of ensuring that all essential drugs are covered, including the consumables such as ointments, diapers, etc.
- To implement a system that would enable persons with hearing impairments to access the emergency services, including medical assistance, by SMS;

- Amend the legislation to ensure that persons with disabilities have their right to provide consent to medical intervention, treatment and hospitalization is always respected, including for treatments and interventions related to the psychiatric care;

## **Social Protection**

75.13. Implement the Law on Social Protection of Disabled Persons as well as international obligations that Moldova has agreed regarding people who are disabled (Norway);

The institutional framework of the Republic of Moldova has been shaped by an outdated social protection system which focuses on defining a person's defect and separating those that are 'healthy' or 'normal' from those that are 'unfit' – resulting in exclusion and segregation. The disability certificates are provided based on the medical records without any consideration of the socially created barriers that hinder their full and effective participation in education, work, leisure, public and private life. The state therefore does not provide for mandatory measures necessary for dismantling these barriers and ensuring equal opportunities for all. At the beginning of the year 2016, the Government has expressed its intention to undertake a comprehensive revision of the disability certification process.

Moreover, by 2003 Law on Local Public Finances and the 2012 National Decentralization Strategy, the State has devolved the responsibilities for the establishment and financing of community services for persons with disabilities from the central level to the local public administrations without putting in place the necessary financial arrangements of transfer of funds from the central level to the local level. Due to the lacking resources at the local level, the services are under threat of discontinuing their activities and closing down their support for persons with disabilities.

### *RECOMMENDATIONS*

- To amend the disability determination procedure aiming at identifying the socially created barriers that hinder the full and effective participation of persons with disabilities in education, work, leisure, public and private life;
- Ensure that the Law on Local Public Finances and the National Decentralization Strategy are properly amended so as to provide for an efficient mechanism of redirecting money from the central budget towards the establishment and maintaining the activity of the community based services for persons with disabilities;

## **Employment**

75.22. Continue pursuing awareness raising campaigns aimed at eliminating stigmatisation of persons with disabilities, the difficulties they face at the labour market and in general, their

exclusion from social life (Slovakia);

Poverty affects Moldovan persons with disabilities in a disproportionate manner. Since persons with disabilities have limited access to education they end up relegated to low-level, low-paid jobs with little social and legal security, or segregated from the mainstream labour market. Non-implementation of the 5% employment quota provided for in the Law nr 60 on social inclusion of persons with disabilities perpetuates the exclusion of persons with disabilities from the labour market and prevents them from lifting out of poverty. Rather than promoting the participation in employment, persons with disabilities are provided disability pensions which barely cover half of the minimum subsistence costs.

The national Employment Code provides for an excessive protection of the persons with disabilities which are discouraging for the employers:

#### *RECOMMENDATIONS*

- Amend the Employment Code so as to encourage the employees to recruit persons with disabilities.
- To incorporate a chapter in the National Strategy on Employment in the Republic of Moldova dedicated to employment of the persons with disabilities.
- To enter the amendments to the Code of Administrative Offences that would comprise the sanctions for non-compliance with the obligatory 5% quota on employment of the persons with disabilities.

#### **Gender based violence and women with disabilities**

73.11. Strengthen its efforts in the prevention, punishment and eradication of all forms of violence against women and the adoption of comprehensive policies for the promotion and protection of the rights of the child, especially those relating to the prohibition of forced labour (Argentina);

Violence rates against women with disabilities are four times higher when compared to other vulnerable groups. Most vulnerable and exposed to violence are women with psychosocial or intellectual impairments. For example, the Law nr.45 from 01.03.2007 on combating domestic violence fails to address the situations of gender based violence in which victims are women and girls with disabilities. Moreover, the mainstream services for women victims of violence are not accessible for persons with physical impairments whereas women with mental or intellectual impairments are altogether denied accommodation in shelters and redirected instead to psychiatric hospitals for “treatment”.

In January 2013, criminal investigation concerning the cases of serial rapes and sexual assault against 18 women with disabilities at the hands of the attending doctor and other staffs of the

Balti and Cocieri neuropsychiatric residential institutions has been initiated. Three complaints, Ms. Pîntea and Ms. Mihalciuc and Ms. Platonenco, died in institution in 2014 and the prosecution declined to open criminal investigation on the cases. According to Ms. T's testimonies, the attending doctor has been constantly abusing her and another 17 women who initially were afraid to give testimony in connection with these acts. According to the information presented by the victims, one of them was a minor, two women became pregnant as a result of rape and been subjected to forced abortion. As of today the case is being heard by the Balti court, however, the court procedures are being seriously protracted, and the victims have little hope that they will receive adequate remedies at the national level. Allegations of sexual abuse by staff in residential institutions for persons with disabilities 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 or torture and degrading treatment in social care institutions.

#### *RECOMMENDATIONS*

- Ensure proper investigation and prosecution of all cases of violence against women with disabilities, including rape, thoroughly and within a timely manner.
- Ensure that the services for women victims of violence are accessible for persons with disabilities.

#### **Torture**

73.45. Investigate fully all allegations of torture and cruel, inhuman or degrading treatment impartially, thoroughly and within a timely manner; and ensure those responsible are brought to justice (United Kingdom);

Persons residing in the residential institutions are exposed to an imminent threat of mistreatment, neglect, restraint, forced medication and seclusion, as well as many forms of abuse and violence, including of gender-based nature. The Ombudsperson for Psychiatry, which is a mechanism of independent monitoring of institutions with the aim of preventing human rights abuses and providing the residents with efficient means of complaint has documented a number of serious human rights violations raising to the threshold of torture, however, the prosecution failed to investigate these case and bring the perpetrators to justice. Moreover, in an interview to a public television, the ex-Minister of Labour Social Protection and Family declared that allegations of abuse and ill-treatment raised by children with mental or intellectual disabilities are not credible and should not be taken seriously (see decision no. 090/14, 19.06.2014 of the Equality Council).

Furthermore, harmful practices against women with disabilities, including sexual violence, forced contraception, forced abortions and deprivation of reproductive rights, have been perpetuated with impunity. The legal framework on abortions adopted by the Ministry of Health allows for the non-consensual termination of a pregnancy on the grounds of psychosocial or intellectual impairment.

#### *RECOMMENDATIONS*

- Carry out the deinstitutionalization reform to ensure progressive closure of residential institutions and transfer of persons with disabilities into community based services;
- Investigate fully all allegations of torture and cruel, inhuman or degrading treatment against persons with disabilities thoroughly and within a timely manner and ensure those responsible are brought to justice;

#### **Acceding to bilateral international instruments**

- 76.2. Ratify or accede to, as appropriate, the Optional Protocol to ICESCR, CED, ICRMW, and the Optional Protocol to CRPD (Uruguay);
- 76.3. Sign and ratify the Optional Protocol to ICESCR and CRPD; and ratify CED (Spain);

The State has failed to comply with its international commitments and did not ratify either the Optional Protocol to ICESCR nor CRPD. Therefore, persons with disabilities which have suffered serious forms of human rights abuse and did not receive protection and redress at the national level cannot lodge complaints with the treaty Committees to pursue the restoration of justice in individual cases.

#### *RECOMMENDATIONS*

- Sign and ratify the Optional Protocol to ICESCR and CRPD;

### **PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND**

#### **Legal Capacity**

Currently there are approximately 4,000 people with disabilities which are deprived of their legal capacity. Incapacitation procedures are initiated in conformity with the article 24 (1) of the 2002 Civil Code, which provides that adults with disabilities may be declared incapable of exercising legal capacity on the basis of a “mental disorder (mental illness or intellectual impairment)”. Persons with disabilities who have been incapacitated are automatically deprived of all other fundamental human rights and placed under the institution of guardianship. 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 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.

On 7th of May 2015, the Parliament of the Republic of Moldova voted the law No. 87, which recognizes the right of persons under guardianship to vote and allows them to challenge decisions on their incapacitation in court. Later in the legislative process, however, the President, referring to an incorrect translation in Romanian of article 12 of the Convention, withheld approval of the legislation and returned it to Parliament for revision. In the Romanian text, the expression “legal capacity” is translated as “legal assistance” (asistentă juridică), whereas in the Russian text, the expression “legal capacity” is translated as “capacity to have rights” (правоспособность). Until today, incapacitated persons cannot access justice because the procedural laws prohibit examination of the petitions addressed by incapacitated persons.

Late 2015, the Ministry of Justice has put forward proposals for amending the Civil Code provisions on deprivation of legal capacity on grounds of psychosocial or intellectual impairments. However, in her communication to the Government, the Special Rapporteur on the Rights of Persons with Disabilities raises concerns that the draft law is inconsistent with the Article 12 requirements and she urges the State to take expedite measures to restore the legal capacity of people that have been deprived of it.

#### *RECOMMENDATIONS*

- Expedite the process of adoption in the third lecture of the law No. 87, which recognizes the right of persons under guardianship to vote and allows them to challenge decisions on their incapacitation in court;
- Abolish the Civil Code provisions on discriminatory deprivation of legal capacity on grounds of disability in line with article 12 of the Convention on the Rights of Persons with Disabilities;
- Develop legislative recognition and services for supported decision-making for persons with disabilities;
- Review, without delay, all cases of legal incapacitation with a view to restoring the legal capacity of the approximately 4000 persons which are currently under plenary guardianship;

#### **The right to independent living in the community**

The right to live in the community for persons with disabilities is not enshrined in national legislation. The initial draft of the Law nr 60 from 30.03.2012 on social inclusion of persons with disabilities contained a provision similar to the text of the article 19 CRPD, however, it was excluded later in the legislative process on grounds that this was a right of progressive realization and the country was not ready at that time to ensure full transition from institutions to community based supports. Moreover,

the national non-discrimination laws should explicitly recognize that institutional segregation on grounds of disability constitutes discrimination *per se* and does not require for a comparator in order to be proven. The Law nr 121 from 25.05.2012 on ensuring equality omitted to provide for protection against discriminatory institutional segregation on grounds of disability. As a consequence, approximately 2,365 children and adults with disabilities in Moldova that are confined to spend their life in institutions lack the legal ground for filing suits against institutionalization and cannot argue in court that failure to be provided with support services in the community setting is a violation of rights.

#### **RECOMMENDATIONS**

- Expedite the deinstitutionalization process and insure that persons with disabilities have access to a range of community based support as necessary for independent living and meaningful participation in society;
- Develop a mechanism to redistribute public funds from institutions to community services, and allocate sufficient resources from the central budget for the development of support services in local communities.

#### **The right to education**

The children and adults with disabilities continue to be discriminated and marginalized in exercising their right to high-quality education in the inclusive environment. During the monitoring visits performed at the institutions of general education it was observed that children with disabilities that attend the mainstream schools are neglected by the teachers and they are not involved completely in the educational process. Children and their parents do not receive sufficient support for ensuring that children will stay in school and will not drop out. There are no mechanisms of monitoring and evaluation of the education quality. At the same time 1307 children remain segregated in 17 special boarding schools.

The access of young persons with disabilities to the institutions of higher education is a problematic one. The small number of persons with disabilities that study in the universities, according to the data of the Ministry of Education, raises concern (249 persons) and colleges (404 persons). The young persons with visual and hearing disabilities study at the vocational schools subordinated to the Ministry of Education. The professions they obtain here are shoemaker, masseur, secretary-consultant do not enable them to get employed further at the labor market, since these professions are either outdated, or the market supply is limited.

Institutions of general education (including the preschool institutions) are not prepared to accept the children with disabilities, since the teachers /educators do not have the necessary abilities to work with the children with special educational needs, and due to the insufficiency of the support services for the children with disabilities.

Furthermore, almost 90% of schools and education facilities do not have even the basic accessibility, including ramps, accessible toilets or desks.

## *RECOMMENDATIONS*

- Ensure a proper sanctioning mechanism for teachers that discriminate against students with disabilities;
- Implement the National Strategy on Education for 2014-2020, and amend the 2014 Code on Education so that it reflects the full transition to inclusive education;
- Eliminate all barriers preventing access of children with disabilities to the education system, such as those relating to physical access, transportation and administrative procedures;
- Make additional efforts to guarantee access to quality education for deaf, deafblind and blind children, on an equal basis with others;
- Invest in inclusive pre-schooling for children up until the age of three years, to combat exclusion;
- Develop a systematic method to collect, analyse and disseminate disaggregated data on the inclusion and participation of children with disabilities in the educational sector.