

Mandate of the Special Rapporteur on the rights of persons with disabilities

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Excellency,

I have the honour to address you in my capacity as the Special Rapporteur on the rights of persons with disabilities pursuant to your Excellency's Government invitation to support the process of legal capacity reform and harmonization of the national regulatory framework with article 12 of the Convention on the Rights of Persons with Disabilities. In this connection, I would like to bring to the attention of your Excellency's Government my position on the draft bill amending the 2002 Civil Code provisions related to incapacitation and adult guardianship that the Deputy Minister of Justice, under the auspices of whom the reform process is taking place, has shared with me.

I acknowledge your Excellency's Government efforts to formulate new modern legislation on legal capacity, and commend the fact that the draft bill has been subjected to public consultations. This constitutes a positive signal of your Excellency's Government commitment to ensure greater respect for the rights of persons with disabilities. However, I am concerned that, in its current form, the draft bill remains tied to the outdated legal doctrine of substitute decision-making, which is discriminatory against persons with disabilities and calls into question a person's legal capacity based on a person's mental capacity.

In order to comply with its international human rights obligations, the Republic of Moldova must move away from this paradigm to one that is based on supported decision-making, equal respect for the inherent dignity, individual autonomy (including the freedom to make one's own choices) and independence of persons with disabilities in the legislative provisions related to the legal capacity.

Article 12 of the Convention on the Rights of Persons with Disabilities prohibits all types of legal incapacitation on the basis of disability, which is a non-derogatory obligation. Regardless of their impairments or decision-making skills, all persons with disabilities must enjoy full legal capacity on an equal basis with other members of society.

On the basis of the above, the proposed amendments to the 2002 Civil Code discriminate against persons with disabilities and are inconsistent with the Convention. I would therefore urge your Excellency's Government to remove and abolish all provisions allowing for incapacitation and guardianship of adults. I would also like to highlight that the General Comment No. 1 of the Committee on the Rights of Persons with Disabilities provides authoritative guidance on the interpretation of article 12 and proposes concrete recommendations for its application into national legislation and practice.

Another major concern I have relates to the lack of information regarding the involvement of the persons with disabilities, including women and girls with disabilities, in developing the draft bill despite the Convention's obligation requesting States to consult and engage with representative organisations of persons with disabilities in all relevant policy and legislative processes. I would therefore urge your Excellency's Government to take concrete steps to meaningfully engage with persons with disabilities in conceptualising the legislative reform on legal capacity and devising the necessary support services.

Finally, I would like to stress that, to be successful, a legal capacity reform process has to be closely interlinked with the deinstitutionalisation process. This requires having a procedure in place to ensure the re-establishment of the legal capacity of persons with disabilities living in residential institutions and moving them in community-based settings. Additionally, support services for persons with disabilities who do not have experience in living independently need to be created, as well as for those who do not have access to support to exercise their right to decision-making.

In the interim, I would strongly urge your Excellency's Government, as indicated in my country visit report (A/HRC/31/62/Add.2), to adopt a series of measures of immediate effect, to suspend the process of legal incapacitation, end practices requesting incapacitation for certain administrative procedures (such as receiving a disability certificate or a pension), and identify ways to promptly restore the legal capacity for those who have been deprived of it.

I am supportive of your Excellency's Government willingness to make progressive amendments to the Moldovan legislation and would strongly encourage the taking of additional steps towards guaranteeing full legal capacity for all people in the Republic of Moldova.

For your information, this communication as well as your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Catalina Devandas Aguilar
Special Rapporteur on the rights of persons with disabilities