

# REPUBLIC OF MOLDOVA'S 2ND UNIVERSAL PERIODIC REVIEW (UPR) 2016

## RIGHTS OF PERSONS WITH MENTAL DISABILITIES IN THE REPUBLIC OF MOLDOVA

In Moldova, persons with mental disabilities face gross human rights violations with multiple legislative and practical loopholes existing in the observance of fundamental rights. After the first cycle of the Universal Periodic Review (UPR), Moldova committed itself to implement recommendations which focus on critical issues related to persons with disabilities.



## EMERGING ISSUES

### DEPRIVATION OF LEGAL CAPACITY

#### DESCRIPTION

In Moldova people can be legally deprived of their legal capacity based on article 24 of the Civil Code because of a psychological disorder. There is a direct relation between deprivation of legal capacity and long-term institutionalization and most persons declared incapacitated are placed in psychiatric institutions. Persons deprived of legal capacity are denied numerous fundamental rights and freedoms, including the right to marry, the right to property, the right to manage their finances, the right to leave a will, the right to work, or the right to freedom of association.

#### RECOMMENDATION

The Republic of Moldova should immediately abolish the system of guardianship for persons with mental disabilities. It should replace this with a system of supports that enable persons with disabilities to exercise their legal capacity on an equal basis with others, in compliance with Article 12 of the UN Convention on the Rights of Persons with Disabilities.

### LIVING INDEPENDENTLY AND BEING INCLUDED IN THE COMMUNITY

#### DESCRIPTION

Segregation in institutions and the social exclusion of persons with disabilities remains an "ordinary" practice in Moldova, with the right to live in the community not being explicitly acknowledged in national law. Segregation in residential institutions is an obsolete approach that contributes to isolation and stigmatization and breaches international law.

#### RECOMMENDATION

Include the right of persons with disabilities to live independently and to be included in the community in national legislation.

Adopt a nationwide deinstitutionalization policy, with a five year time limit for completing the process. The strategy should clearly set out annual quantitative, qualitative and budgetary indicators which assess progress in achieving the closure of residential institutions, development of individualized community-based services and accommodation, and improved accessibility of mainstream services.

## INHUMAN AND DEGRADING TREATMENT

### DESCRIPTION

Investigation of cases of torture and inhuman treatment and other forms of abuse is made in accordance with general practices, without taking into account the specificity of crimes committed within psychiatric institutions or of dealing with persons with mental disabilities, who were subjected to abuse. As a result, widespread abuses continue to take place under a culture of impunity.

### RECOMMENDATION

Take measures that ensure prevention and identification of human rights violations against persons with mental disabilities. Ensure that investigations are speedy and effective. Procedural and age-appropriate adjustments should be made and support should be available to persons with disabilities throughout investigations and judicial procedures.

## ACCESS TO JUSTICE AND MECHANISMS FOR REPORTING ABUSES

### DESCRIPTION

People in psychiatric facilities can complain of violations to the Ombudsman, but have to fill the complaint at the administration of the healthcare facility. It means that persons who wish to complain about abuses at the hands of staff are supposed to rely on the same staff to handle any complaints. Moreover, they can only complain against abuses in connection with the provision of healthcare services.

### RECOMMENDATION

Ensure that persons with disabilities in residential institutions have immediate access to effective and independent complaint mechanisms, as a transitional measure during the deinstitutionalization process.

## RIGHT TO LIBERTY AND SECURITY AND FORCED TREATMENTS

### DESCRIPTION

Criminal law establishes possibilities for forced hospitalization of arrested persons for psychiatric examination. The deprivation of freedom for psychiatric examination is performed without a verification and control mechanism and without the necessity of having a periodic review of the need for the person to remain hospitalized. Also, the Mental Health Law admits forced inpatient treatment, allowing the healthcare facility not only to confine a person with disabilities, but also to subject him/her to forced treatment with no control mechanism in place for such situations.

### RECOMMENDATION

Abolish legislation that allows arbitrary deprivation of liberty for persons with disabilities and adopt a legislative and policy framework that:

- Ensures provision of mental health treatment and services only on the basis of free and informed consent, respecting the manner in which a person exercises their legal capacity.
- Prohibits civil or forensic psychiatric detention on the basis of only a psychiatric diagnosis and/or perceived risk of harm to oneself or others.
- Prohibits forced treatment, meaning treatment without informed consent, respecting that emergency health treatment as regulated under law is justified.

### NOTE:

*Roughly 100,000 people with mental and behavioural disorders are registered in Moldova, some of which are placed in medical or residential institutions. For example 2500 persons with mental disabilities are placed in "psycho-neurological" facilities in the Republic of Moldova. They are captured in a legal trap and convicted to isolation and tremendous abuses.*