



## **Terms of Reference**

**Job Title:** National consultant to provide legal services to potential victims of incapacitation, to promote alternatives to guardianship and defend their interests before courts

**Project reference:** UN Human Rights Adviser (Office of the UN High Commissioner for Human Rights)

**Contract type:** Individual Contract, Part Time

**Duration of assignment:** 20 January 2014 – 30 May 2014

**Duty station:** Chisinau, Moldova

**Deadline for applications:** 15<sup>th</sup> of January 2014

### **Background**

The Republic of Moldova ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2010. A Law on the Social Inclusion of Persons with Disabilities entered into force on 1 January 2013. In 2012, Moldovan Parliament adopted Law 121/2012 on Ensuring Equality, aiming to transpose a number of international requirements in this area into the domestic legal order. All of the above mentioned international and national legislative acts explicitly recognize the right of persons with psychosocial and intellectual disabilities to enjoy legal capacity on an equal basis with others and access support in decision making when individuals concerned consider it necessary.

Guardianship ("tutelă" or "opekunstvo"), as provided and applied under the Moldovan Civil Code, similar to many countries of the region, removes a person's legal capacity and places it with another person or institution, named as the "guardian". Persons placed under guardianship or otherwise declared "incapable" are deprived, pursuant to a court order to that effect, of the ability to engage in both basic socio-legal relationships or complicated legal relationships which might require specialized knowledge, such as to marry, to divorce, to conclude a work contract, to own property, to claim social benefits, consent to medical treatment, to conclude financial transactions, to sell property or even – the ultimate paradox – to have the standing before a court to appeal a guardianship order.

The logic of these arrangements was stood on its head by the entry-into-force in 2007 of the Convention on the Rights of Persons with Disabilities. This sets out, at Article 12

paragraph 2 and 3, the following: *“States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.”*

The European Court of Human Rights has followed these developments, increasingly reading equal legal capacity requirements into the provisions of the European Convention on Human Rights, and in a row of recent cases, finding Council of Europe Member States in violation of the Convention. At least one case in this regard is pending before the Strasbourg Court against the Republic of Moldova.

The United Nations Office of the High Commissioner for Human Rights (OHCHR), within the UNPRPD project **“Paradigm Shift: UNCT Moldova Strategic Action Supporting CRPD Implementation”** jointly implemented with UNDP, WHO and UNICEF, is supporting the efforts of the state to reform the guardianship system according to the requirements of the article 12 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD), providing a legal reform moving from substituted towards supported decision making. An inter-ministerial working group was set to work on the amendments to the civil code and relevant legislation and a model of services for supported decision making. In 2013, OHCHR and UNDP have conducted nationwide training sessions on the right to legal capacity and standards under the UN CRPD at which judges, prosecutors, social assistants, directors of residential social care homes, medical doctors, guardianship bodies, persons with disabilities and their leaders had the opportunity to participate and learn about the requirements under the current law, policy and practice. As a main achievement of the combined efforts of the UN experts and national institutions, including judges, free legal aid lawyers and guardianship body, incapacitation and placement under guardianship could be avoided in a recent case adjudicated by the Cahul district court. OHCHR through its Human Rights Adviser arrangement is committed to further provide full support to the implementation of article 12 UNCRPD in Moldova.

## **Scope of work**

The incumbent will provide support to the UN Human Rights Adviser by:

- Establishing official relations and liaison with local authorities, guardianship bodies and courts in connection with the incapacitation and guardianship cases;
- Locating and providing legal assistance and representation to individuals under the threat of incapacitation for prevention of guardianship and facilitate the discussion around alternatives of support;
- Providing legal expertise and support to the social assistants and guardianship bodies in the field on cases related to legal capacity for persons with psychosocial and intellectual disabilities;
- Building the capacities and providing mentorship to other lawyers, especially activating in the free legal aid network, working on similar cases;

- Fostering knowledge exchange between organizations, lawyers and civic activists, who are working on strategic litigation;
- Increasing awareness of the legal capacity standards and supported decision making concept before the national courts in Moldova and of the proposed social and legal transformations to enhance rule of law;

In the implementation of his assignments the incumbent is expected to travel within the country depending on the location of the particular case which needs examination. In general, travel expenses should be covered by the consultant's own resources. In the case of unforeseeable travel, reimbursement of reasonable transport costs related to the filed missions should be agreed with the Human Rights Adviser.

He/she will implement measures to maintain strict security and confidentiality of all information received and follow-up inquiries.

On the basis of the identified facts, concrete recommendations for addressing identified threats, defined in human rights terms, to persons with mental or intellectual disabilities that benefit from support in exercising legal capacity or otherwise threatened with incapacitation, need to be developed. The recommendations should be based on the core premise that:

- (a) Supported decision-making must be available to all.
- (b) All forms of support to exercise legal capacity must be based on the will and preference of the individual, not on the perceived/objective best interests of the person.
- (c) An individual's mode of communication must not be a barrier to obtaining support in decision-making.
- (d) Legal recognition of the supporter(s) chosen by the individual and mechanisms for third parties to verify the identity of a support person as well as a mechanism for third parties to challenge a decision of a supporter if s/he believes the supporter is not acting based on the will and preference of the individual must be available.
- (e) Support measures are not imposing any additional expenditures or costs on persons with disabilities.
- (f) Support in decision-making must not condition the access to other fundamental rights of persons with disabilities.
- (g) The person must have the right to refuse support and end or change the support relationship at any time they choose.
- (h) Safeguards for all processes connected to legal capacity and supports to exercise legal capacity must ensure that the person's will and preferences are being respected.

The consultant may be asked to undertake other tasks, related to the incapacitation, guardianship and legal capacity procedures, in the framework of the current consultancy.

The incumbent will carry out his/her work under the direct supervision of the UN Human Rights Adviser (Office of the United Nations Resident Coordinator in Moldova and United Nations Office of the High Commissioner for Human Rights (OHCHR)) and in close collaboration with the OHCHR National Human Rights Officer. The Secretary of the Inter-ministerial Working Group on Legal Capacity Reform and UNDP Health and Human Rights Consultant is to be closely consulted within the duration of the assignment.

At the end of the assignment a number of individuals are expected to be taken out of the risk of incapacitation and benefit from supported decision making arrangements. Also, the data and information acquired during the work will serve as foundations for detailing advancements of the legal and practical frameworks.

**Deliverables and terms:**

<b>Deliverable</b>	<b>Terms</b>
Consultation meeting with UN and national civil law experts	January, 25
Elaboration of the methodology of work and litigation strategies to contribute to the implementation of Article 12 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in individual cases	February, 10
Kick-off meeting at the Ministry of Labor Social Protection and Family to discuss the concept of supported decision making and development of national and international legislation in the field	February, 25
At least 15 consultations (phone, online, personal) provided and direct work with the social assistants and guardianship bodies in the field on cases related to legal capacity for persons with psychosocial and intellectual disabilities	By March, 15
Locating and providing legal assistance and representation to individuals under the threat of incapacitation for prevention of guardianship and facilitate the discussion around alternatives of support. At least 15 individuals have benefited from assistance.	By March, 15
Representing potential victims of incapacitation before courts of law	Throughout the duration of the contract
Consultation meeting UN and national civil law experts. Alternative measures discussed. Further analytics.	March, 15

Intermediary activity report	April, 01
Building the capacities and providing mentorship to other lawyers, especially activating in the free legal aid network, working on similar cases	Throughout the duration of the contract
At least 5 consultations between the consultant and other interested parties (phone, online, personal, focus groups) regarding (a) current standards of legal capacity (b) the use of standardized procedures for handling cases before courts;	By April, 15
At least 3 meetings and interviews with stakeholders in the field of human rights journalism dissemination of success stories to the public;	By May, 30
Final activity report	By May, 30

### **Qualification Criteria**

- University degree in law, social sciences, human rights or other relevant field;
- At least 3 years of practical experience in human rights domain, monitoring activities, conducting research. Practical work in the area of the rights of persons with disabilities will be considered an advantage;
- Legal and technical expertise and knowledge;
- In-depth knowledge of international law and policy as concerns persons with disabilities;
- In-depth knowledge of the political and institutional arrangements in Moldova concerning the treatment of persons with mental and intellectual disabilities, as well as others threatened with institutionalization and/or loss of legal capacity;
- Understanding of anti-discrimination law and/or rights of persons with disabilities law as set out under international, European and domestic law of the Republic of Moldova;
- Proven ability to exercise judgment, initiative and discretion in working with local court authorities, NGOs, government representatives, etc.;
- Capable to develop clear goals that are consistent with agreed strategies; identifies priority activities and assignments; adjusts priorities as required; allocates appropriate amount of time and resources for completing work; foresees risks and allows for contingencies when planning; monitors and adjusts plans and actions as necessary; uses time efficiently;
- Excellent communication and persuasion, negotiation and teamwork skills;

- Fluency in Romanian and English. Working knowledge of one or more additional languages relevant for Moldova, including Russian, Bulgarian, Gagauzian, Romani, Ukrainian or sign language is an asset;
- Adhere to the core values of the United Nations; in particular, is respectful of differences of culture, gender, religion, ethnicity, nationality, language, age, HIV status, disability, and sexual orientation, or other status.

### **Documents to be included in the proposal**

Interested persons should submit the following documents:

1. A detailed curriculum vitae of relevant experience or P11;
2. A written statement of not more than 1000 words:
  - (i) Explaining why you are the most suitable for the work;
  - (ii) Providing a brief methodology on how you would approach and conduct the work;
3. A financial proposal.