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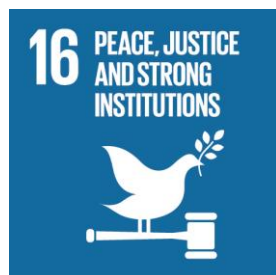
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## FEASIBILITY STUDY

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on the ratification of the Optional Protocol  
to the UN Convention on the Rights of Persons with Disabilities

Developed by: Andrei Brighidin



Chisinau 2016

CZU

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**Descrierea CIP a Camerei Naționale a Cărții**

**Studiu de fezabilitate privind ratificarea Protocolului opțional la Convenția ONU privind drepturile persoanelor cu dizabilități = Исследование по вопросу целесообразности ратификации Факультативного протокола к Конвенции ООН о правах инвалидов = Feasibility study on the ratification of the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities / Andrei Brighidin - Ch.: "Sinectica Com" SRL, 2016. – 39; 43; 37**



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This study was produced with the support of the United Nations Development Programme (UNDP) within the “Strengthening Rule of Law and Human Rights Protection in Moldova” Project, funded by the Federal Ministry for Europe, Integration and Foreign Affairs of Austria, co-funded and implemented by UNDP Moldova in cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR). The content of this report does not necessarily reflect the views and the policies of the UNDP, Federal Ministry for Europe, Integration and Foreign Affairs of Austria or the OHCHR.



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The study was proofread in collaboration with Elena Samonova, an online volunteer mobilized through [www.onlinevolunteering.org](http://www.onlinevolunteering.org)

**ISBN:**

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## **Abbreviations**

CAT – UN Convention Against Torture

CEDAW – Convention on the Elimination of all Forms of Discrimination Against Women

ICERD – International Convention on the Elimination of All Forms of Racial Discrimination

CRPD – UN Convention on the Rights of Persons with Disabilities

CRPD Committee – Committee on the Rights of Persons with Disabilities

OPD – Organisation of Persons with Disabilities

ECHR – European Convention on Human Rights and Fundamental Freedoms

Equality Council – Council for the Prevention and Elimination of Discrimination and Ensuring Equality

ICCPR – International Covenant on Civil and Political Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

NEA – National Employment Agency

OHCHR – Office of the United Nations High Commissioner for Human Rights

OP CRPD – Optional Protocol to the UN Convention on the Rights of Persons with Disabilities

UNDP – United National Development Programme

## **Acknowledgements**

This study was prepared with the support of United National Development Programme in Moldova (UNDP Moldova) and Office of the High Commissioner for Human Rights (OHCHR) at the request of the Ministry of Labour, Social Protection and Family. Preparation of this study would not have been possible without the support and collaboration of the Ministry of Labour, Social Protection and Family, the Ministry of Justice, the Ministry of Health, the Ministry of Foreign Affairs and European Integration, as well as members of key civil society organizations including Centre of Legal Assistance for Persons with Disabilities, Keystone Human Services Moldova, and others.

The author is grateful for the support, guidance and assistance provided by Mr. Evghenii Alexandrovici Goloșceapov, Justice and Human Rights Programme Analyst, UNDP Moldova, Ms. Natalia Voronova, Project Manager, Justice and Human Rights Project Management Unit, UNDP Moldova, Mr. Claude Cahn, Human Rights Adviser, the Office of the United Nations Resident Coordinator in Moldova and OHCHR, Ms. Alina Grigoraș, Human Rights Officer, OHCHR, and Mr. Arcadie Astrahan, Health and Human Rights Expert.

## **Executive Summary**

This study examines the feasibility for the Republic of Moldova to ratify the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities (OP CRPD). Pursuant to an overview of the Protocol, it examines the Moldovan legislation and case law against the provisions of the covenant. The study further analyses the opportunities and obstacles to ratification.

The CRPD is the main treaty in the United Nations human rights system to advance the rights of persons with disabilities. The CRPD focuses on the actions State must take to ensure that persons with disabilities enjoy these rights on an equal basis with others. Ratification of CRPD entails legally binding obligations to respect, protect and fulfil the human rights recognized under the treaty.

The OP CRPD creates an individual complaint procedure. The admissibility criteria are comparatively strict. While the function of the CRPD Committee in considering individual communications is not, as such, that of a judicial body, the views issued by the Committee under the OP exhibit some important characteristics of a judicial decision.

To date, the CRPD Committee has adopted views on eight individual communications, finding violations in five of them and declaring two inadmissible. The decisions are arrived at in a judicial spirit, including the impartiality and independence of Committee members, the considered interpretation of the language of the Covenant, and the determinative character of the decisions.

The preliminary findings point to the fact that ratification is feasible. The Republic of Moldova has an advanced legal framework on the rights of persons with disabilities. The national system of human rights is based on the Constitution of the Republic of Moldova of July 29, 1994, the national legislation and international instruments, which the Republic of Moldova is a party to. The Republic of Moldova developed comprehensive national policies to advance the rights of persons with disabilities. Moldova has also set up genuine quasi-judiciary institutions working to prevent and combat discrimination, including on the ground of disability. The case-law cited above shows that both the Council for the Prevention and Elimination of Discrimination and Ensuring Equality and courts are sufficiently empowered to review complaints and provide remedies for persons with disabilities who are victims of discrimination.

During meetings with relevant stakeholders in Moldova, a number of benefits for the Republic of Moldova as a State party of the OP CRPD have been identified both at the national and international level. At the international level the ratification of the OP will strengthen the international legal system and affirm Moldova's place as a good faith participant in the international system of human rights protection, as well as confirm its commitment to promote the principle of equality and non-discrimination and ensure respect for human rights and human dignity.

Accordingly, the ratification of this document by Moldova can reaffirm its commitment to engagement in constructive and participatory process created by individual complaints mechanisms within the international system of human rights protection and ensure equal access to international individual complaints procedures with regard to all human rights. By ratifying the OP CRPD, Moldova can take a leadership position in the region on the inclusion and protection of persons with disabilities.

Moldova can also play a role in the development of the international rights jurisprudence on the rights of persons with disabilities. A particular advantage thereof would be further clarification and concretization its positive duties set out in the CRPD. The concretization of the obligations and legal clarity can improve awareness and understanding of human dignity, equality and non-

discrimination and equal opportunities in Moldova. Better understanding helps in strengthening the implementation of and compliance with those rights.

The ratification of the OP CRPD will push forward the country's European Integration process. CRPD has been ratified by about 90% of the EU Member States. Moldova is already a party to the European Convention on Human Rights and Fundamental Freedoms. However, additionally to the decisions of the ECtHR, which have an individual approach, the decisions of the CRPD Committee can help Moldova develop systemic solutions that would contribute to solving structural issues affecting persons with disabilities.

Through the complaints procedure, the government can also be encouraged to take steps towards full incorporation of the rights set out in the CRPD into domestic law and policies. It is worth noting that an individual complaints mechanism foreseen in the OP requires moving from abstract principles to concrete cases. Thus, the procedure based on the Committee's decisions concerning real-life situation could be used by the government as valuable means for identifying and suggesting solutions to actual problems on the ground.

Article 2(d) of the OP CRPD requires the exhaustion of all available domestic remedies (judicial and quasi-judicial) before a complaint can be heard by the Committee on the Rights of Persons with Disabilities (CRPD Committee). This requirement encourages the use, development and strengthening of an effective remedies system at the national level, rather than facing the prospect of a negative outcome of an international procedure. Accordingly, the necessity to exhaust domestic remedies will require that individuals and groups are better informed about the situation in Moldova, their rights and the interaction between the two. In many cases, they will learn about the limits as well as the possibilities for demanding attention to the rights of persons with disabilities in their domestic context. In this manner, the individual complaints mechanism is also an important tool for the civil society empowerment. Using the complaints mechanism, individuals can often discover that their government is in fact fulfilling its obligations or at least making a good faith effort to do so. Individuals cannot only get a lesson on empowerment, they can also be educated on the limits of their claims as well.

As far as the costs of ratification are concerned, it should be noted that the ratification does not imply additional cost for Moldova, since the OP CRPD does not provide for any new substantive obligations above those already recognized by the Republic of Moldova becoming the Party to the CRPD. Accordingly, this instrument provides for strict admissibility criteria such as strict time limits on claims, exhaustion of remedies at national level, the prevention of duplication of claims between treaty bodies. Taking into account arguments outlined above, and efforts made by Moldova to and the principle of equality and non-discrimination, as well as the experience of Moldova with similar individual communication procedures within other UN human rights treaty bodies, there is little reason to assume that accession to the Protocol can result in a large number of complaints. Consequently, the ratification of the OP CRPD cannot create additional problems for the Republic of Moldova in terms of increasing workload and expenses.

It should be also underlined, that besides benefits for a State as a party of the OP, the individual complaints mechanism brings clear and positive benefits for persons with disabilities and the persons associated with them.

## Introduction

On 13 December 2006, the UN General Assembly adopted the UN Convention on Rights of Persons with Disabilities (CRPD) and the Optional Protocol to the Convention (OP CRPD) that provides the Committee with competence to receive and consider communications, including individual complaints in relation to the scope of the CRPD.

During the first Universal Periodic Review (UPR) of the Republic of Moldova in 2011, the following OP CRPD related recommendations were made: Ratify or accede to, as appropriate, the OP to ICESCR, CED, ICRMW, and the OP CRPD;<sup>1</sup> sign and ratify the OP to ICESCR and CRPD; and ratify CED.<sup>2</sup>

In December 2012 the Parliament of the Republic of Moldova adopted a revised National Human Rights Action Plan (NHRAP) 2011-2014, aiming to incorporate Moldova's UPR recommendations into the Plan. The revised NHRAP includes, as an action, completion of a feasibility study on possibilities to ratify the OP to the CRPD during 2014. The Ministry of Labor, Social Protection and Family, Ministry of Finance, Ministry of Health, Ministry of Education, Ministry of Informational Technologies and Communication, Ministry of Regional Development and Construction, Parliamentary Committee on Human Rights and Interethnic Relations, and Ministry of Foreign Affairs and European Integration are listed as responsible parties for this action. The United Nations Development Programme (UNDP) and the Office of the High Commissioner for Human Rights (OHCHR) have made commitments to support this work.

Against this background, this paper is considering the question whether it is feasible to ratify the OP CRPD. As of 30 March 2015, the OP CRPD was ratified by 86 States<sup>3</sup>. The OP CRPD permits individual victims to make complaints to the CRPD Committee if a member State had failed to observe its obligations under the CRPD. Before sending a communication to the CRPD Committee, domestic remedies must be exhausted and strict admissibility criteria must be met. While the function of the CRPD Committee in considering individual communications is not, as such, that of a judicial body, the views issued by the CRPD Committee under the OP CRPD exhibit some important characteristics of a judicial decision.

The study questions addressed by this report are:

- Does the national legal framework incorporate the rights enshrined in the CRPD?
- Are remedies available at national level in case of violations of the rights of persons with disabilities? Is there any relevant case law?
- What are the challenges and opportunities regarding the ratification of the OP CRPD?
- If ratification is feasible, what should be done to facilitate the ratification process? What actions are required in order to provide an efficient and workable complaint mechanism?

This paper is structured into three parts. The first part provides an overview of the UN framework on the rights of persons with disabilities. Specifically, it considers the rights enshrined in the CRPD, the nature of Moldova's obligations under the CRPD, and provides an overview of the OP CRPD and the available case law.

The second part examines the national legal framework from the perspective of the rights enshrined in the CRPD. It considers remedies available in case of violations of the rights of persons with disabilities and relevant case law.

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<sup>1</sup> Recommendation no. 76.2., made by Uruguay

<sup>2</sup> Recommendation no. 76.3., made by Spain

<sup>3</sup> [http://indicators.ohchr.org/maps/OHCHR\\_Map\\_CRPD-OP.pdf](http://indicators.ohchr.org/maps/OHCHR_Map_CRPD-OP.pdf)



The third part provides a comprehensive analysis of the challenges perceived by national actors and opportunities regarding the subsequent ratification of the complaints procedure. The final part of the paper provides a brief overview of the main findings and recommendations.

## Chapter 1. The UN Framework on the Rights of Persons with Disabilities

This chapter will provide a short overview of the UN framework on the rights of persons with disabilities. The first section will look into the rights enshrined in the CRPD and the nature of Moldova's obligations under the Convention. The second part provides an overview of the OP CRPD. The last section offers an overview of the case law under the complaints procedure.

### *1.1. Overview of the UN CRPD*

The CRPD was adopted by consensus by the General Assembly on 13 December 2006 along with its Optional Protocol. Since 30 March 2007 the Convention and the OP are open for signing at United Nations Headquarters in New York. Article 1 of the CRPD states that the purpose of the Convention is “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.” The Republic of Moldova ratified the CRPD on 21 September 2010. As of 1 December 2015, the treaty was ratified by 163 states.<sup>4</sup>

The CRPD is not the first human rights instrument to deal with disability concerns. However, unlike its predecessors, it offers persons with disabilities an unprecedented level of protection. The CRPD details the rights that all persons with disabilities should enjoy and the obligations of States and other actors in this regard.

The Convention promotes and protects the human rights of persons with disabilities in economic, social, political, legal and cultural life. It calls for non-discriminatory treatment and equality in access to justice, treatment by the courts and the police, and in undertaking administrative tasks by providing the necessary reasonable, procedural and age-appropriate accommodations, in education, health care, the work-place, family life, cultural and sporting activities, and in participation in political and public life. The CRPD ensures that all persons with disabilities are recognized before the law. It also prohibits torture, exploitation, violence and abuse, and protects the life, liberty and security of persons with disabilities, their freedom of movement and expression and respect for their privacy.

The Convention does not explicitly define the word “disability”. The Preamble of the CRPD acknowledges that “disability” is an evolving concept. Nor does the Convention define the term “persons with disability.” However, the treaty does state that the term includes persons who have long-term physical, mental, intellectual or sensory impairments that, in the face of various negative attitudes or physical obstacles, may prevent those persons from participating fully in society.<sup>5</sup>

The Convention's approach to disability emphasizes the significant impact that attitudinal and environmental barriers in society may have on the enjoyment of the human rights of persons with disabilities. In other words, a person in a wheelchair might have difficulties using public transport or gaining employment, not because of his/her condition, but because there are environmental obstacles such as inaccessible buses or staircases in the workplace that impede his/her access.

The general principles provide guidance to States and other actors on interpreting and implementing the Convention. The eight general principles are:

- i. Respect for the inherent dignity, autonomy, including the freedom to make one's own decisions and independence of persons;
- ii. Non-discrimination;
- iii. Full and effective participation and inclusion in society;

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<sup>4</sup> [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en)

<sup>5</sup> Article 1, CRPD

- iv. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- v. Equality of opportunity;
- vi. Accessibility;
- vii. Equality between men and women;
- viii. Respect for the evolving capacities of children with disabilities and for the right of children with disabilities to preserve their identities.

Actions to be undertaken by States Parties include the following:

- Adopt legislative and other measures to abolish discrimination;
- Protect and promote the rights of persons with disabilities in all policies and programmes;
- Stop any practice that breaches the rights of persons with disabilities;
- Ensure that the public sector respects the rights of persons with disabilities;
- Ensure that the private sector and individuals respect the rights of persons with disabilities; undertake research and support development of accessible goods, services and technology for persons with disabilities and encourage other actors to undertake such research;
- Provide accessible information about assistive technology to persons with disabilities;
- Promote training on the rights included in the Convention to professionals and staff who work with persons with disabilities;
- Consult with and involve persons with disabilities in developing and implementing legislation and policies and in decision-making processes that concern them<sup>6</sup>.

As affirmed in Article 4 of the Convention, a Government that ratifies the Convention agrees to promote and ensure the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind. Each State must take measures to realize economic, social and cultural rights progressively, using the greatest amount of available resources to do so. This obligation, commonly referred to as progressive realization, acknowledges that it often takes time to realize many of these rights fully, for example, when social security or healthcare systems must be created or improved. While progressive realization gives States Parties, particularly developing countries, some flexibility in achieving the objectives of the Convention, it does not absolve States Parties of the responsibility to protect these rights.

As in other human rights treaties, ratification of the UN CRPD entails legally binding obligations to respect, protect and fulfil the rights recognized under the treaty.<sup>7</sup> The *obligation to respect* means that States Parties must refrain from interfering with the enjoyment of the rights of persons with disabilities. For example, States must not perform medical experiments on persons with disabilities without their consent or exclude a person from school on the basis of a disability. The *obligation to protect* means that States Parties must prevent violations of these rights by third parties. For example, States must require private employers to provide just and favourable working conditions for persons with disabilities, including by providing reasonable accommodation. States must be diligent in protecting persons with disabilities from mistreatment or abuse. The *obligation to fulfil* means that States Parties must take appropriate legislative, administrative, budgetary, judicial and other actions towards the full realization of these rights.

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<sup>6</sup> Article 4 of the CRPD

<sup>7</sup> See also UN (2007). *From exclusion to Equality: Realising the Rights of Persons with Disabilities*. Geneva: SRO-Kindig. Pp. 21-22, available online at <http://www.ipu.org/PDF/publications/disabilities-e.pdf>

## 1.2. Overview of the Optional Protocol

The OP CRPD came into force on 3 May 2008. It recognizes the competence of the Committee on the Rights of Persons with Disabilities (CRPD Committee), a body of independent experts, to receive and consider communications from or on behalf of individuals or groups of individuals who claim to be victims of a violation of the rights recognized and protected by the Convention. As of 01 December 2015, 88 States have ratified or acceded to the OP CRPD<sup>8</sup>.

The OP CRPD does not grant any additional substantive rights above those already recognized in the CRPD. The CRPD Committee can only receive and examine complaints using the above procedures if a State has ratified both the CRPD and its Optional Protocol.

There are several factors to take into account before making a decision to lodge a complaint to the CRPD Committee. For example, whether the complaint will be registered (in compliance with the preliminary criteria for a *prima facie* case) and deemed formally admissible by the Committee; the duration of the procedure; the result of the procedure; whether the complaint can be made to another adjudicatory mechanism, and others.

Complaints can only be brought against a State party which has ratified the OP CRPD. The CRPD Committee is only mandated to examine complaints, which allege a violation of one or more of the CRPD's substantive rights.

The violation complained of must relate to an incident which took place after the CRPD and the OP CRPD entered into force in that country. There is an exception to this relating to continuing violation of rights. In cases in which the facts leading to the violation of the rights of an individual or group of individuals took place before the entry into force of the CRPD and the OP CRPD, but which continues upon their entry into force, a complaint can be made.<sup>9</sup>

Complaints may be lodged by the victim him/herself, or the group of victims themselves. Complaints may also be lodged by third parties such as lawyers, NGOs including OPDs, on behalf of individuals or a group of individuals claiming to be victims of human rights violations under the CRPD. In such cases, consent of the individual (or of each individual belonging to a group) must be obtained to authorise representation in the written form of a power of attorney or an authority to act.

Where it is rendered impossible to obtain the consent of an individual under the circumstances (e.g. access to the alleged victim(s) is obstructed), the requirement of written consent is not compulsory. It will be necessary to set out the concrete circumstances, which prevent the plaintiff from obtaining consent and it will be up to the CRPD Committee to accept the complaint or not.

In cases where the individual or group of individuals may be considered to lack legal standing in domestic jurisdiction (e.g. being deprived of or restricted in legal capacity), the CRPD Committee made it clear that it will apply Article 12 of the CRPD to recognise the legal capacity of the author or victim regardless of whether this capacity is recognized in the State party concerned.<sup>10</sup>

Complaints cannot be lodged anonymously.<sup>11</sup> If there is a wish to maintain one's anonymity before the public, a request can be made to the CRPD Committee not to reveal the identity of the concerned individual(s) in the final decision. The CRPD Committee may also decide to guard anonymity before the public by its own initiative. The identity of the author(s) of the complaint will therefore be represented by initials or a letter. While one's identity will not be revealed to the public upon request, the identity of the author will always be shared with the State party concerned.

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<sup>8</sup> [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15-a&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&lang=en)

<sup>9</sup> See *Sankara et al v Burkina Faso* (1159/03) – the Optional Protocol to the ICCPR entered into force 12 years after violation giving rise to the case.

<sup>10</sup> See Rule 68(2) of the Rules of Procedure of the CRPD, CRPD/C/1, 5 June 2014

<sup>11</sup> Article 2(a), OP CRPD

Complaints will not be considered by the CRPD Committee if the same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement or by another regional adjudicatory mechanism such as the European Court of Human Rights.

In order for a complaint to be deemed admissible, all domestic remedies must have been exhausted in the State concerned before bringing the claim to the Committee. This is the principle of subsidiarity. National mechanisms must have the opportunity to examine allegations of violations and to provide a remedy if violations are found before the complaint is taken to the international level. Individuals or a group of individuals therefore must exhaust all available and effective domestic remedies before addressing their complaint to the CRPD Committee.

However, there are limited exceptions to the rule. The following kinds of remedies are exceptions to the admissibility requirement of exhaustion of domestic remedies:

- ineffective, inadequate, futile or dangerous remedies;
- exceptional remedies (including highly discretionary remedies);
- unduly prolonged remedies.

Complaints are to be submitted in writing or in an alternative format that enables a legible copy of its content to be transmitted to the State party.<sup>12</sup> Once a complaint has been registered, the case is transmitted to the State party concerned which is given an opportunity to provide its observations on the admissibility and merits of the communication. The State party is given a deadline of six months for its observations on admissibility and merits and two months for the observations on admissibility only. Once the State party submits its observations, they are transmitted to the author for comments. Upon receiving the author's comments, the case is ready for consideration by the Committee.

Decisions on admissibility and/or the merits are determined within the Committee by simple majority and are transmitted to the author of the complaint and the State party simultaneously. If the Committee finds that the State party failed to fulfil its obligations to the individual or group of individuals, it will set out recommendations to the State party to provide a remedy for the individual or group concerned and will request that the State provide follow up information within six months. The Committee's final decision on the merits of a case or of a decision of inadmissibility is posted on the OHCHR website as part of the Committee's jurisprudence.

At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned, for its urgent consideration, a request that it take interim measures to avoid irreparable damage to the victim or victims of the alleged violation.<sup>13</sup>

The State party is invited to provide information on the implementation of the Committee's views within six months of the decision. The Committee shall designate for follow-up on views a Special Rapporteur or working group to ascertain the measures to be taken by States parties to give effect to the Committee's views.

The OP CRPD also establishes **an inquiry procedure** (Article 6), which allows the Committee, upon receipt of reliable information, to initiate inquiries into grave or systematic violations by a State party of the rights set forth in the CRPD. Whereas the individual communication mechanism aims to provide individual redress for human rights violations, the inquiry mechanism

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<sup>12</sup> See Fact sheet on the procedure for submitting communications to the Committee on the Rights of Persons with Disabilities under the Optional Protocol to the Convention, 12 April 2012, CRPD/C/5/2/Rev.1, para 4.

See Rules 24 and 55(3) of the Rules of Procedure of the CRPD, CRPD/C/1, 5 June 2014.

<sup>13</sup> It must be understood that the CRPD Committee cannot grant measures that are permanent rather than provisional (interim) in nature, as this would act to prejudice the outcome of the examination of the communication by the Committee.

seeks to provide remedies for systematic human rights abuses within a State. The inquiry procedure is confidential. Once the findings of the inquiry have been considered by the full Committee and comments and recommendations have been formulated, these are sent to the State which has six months to comment on them.

### **1.3. Relevant case law**

As of December 2015, the CRPD Committee adopted views on eleven individual communications, finding violations in seven of them and declaring three inadmissible.<sup>14</sup> A summary of some complaints is provided below.

#### ***Ms. S.C. vs. Brazil (CRPD/C/12/D/10/2013) – inadmissibility***<sup>15</sup>

The plaintiff claimed that Banco do Brasil's policy providing for demotion of employees after three months of medical leave is discriminatory on the basis of disability and resulted in her demotion in 2009, when she remained on medical leave for over three months due to an injury permanently impairing her knee. She also alleges that violations also occurred in 2010, when Banco do Brasil denied her disability-based request to be transferred to an office closer to her home.

The Committee noted the State party's assertion that the author's knee injury is not a disability under Article 1 of the Convention as, at the time of the facts under review, she had been diagnosed with a temporary incapacity to work and did not provide qualifying evidence of a long-term impairment, and therefore her communication does not fall within the *ratione materiae* competence of the Committee. The Committee noted the State party's assertion that the author's transfer request was denied on the basis of a surplus of employees in the office in question and not on the basis of any disability, and that her claim is therefore not substantiated. The Committee noted the State party's argument that the author has not exhausted domestic remedies since she has not brought a claim that her demotion was linked to a disability before domestic courts.

#### ***Ms. Marie-Louise Jungelin vs. Sweden (CRPD/C/12/D/5/2011) – non-violation***<sup>16</sup>

The communication is submitted by Marie-Louise Jungelin, a Swedish national born in 1970. She claims to have been the victim of violations by Sweden of Articles 5 and 27 of the CRPD. The author has had a severe sight impairment since birth. She attended an ordinary school, holds a Bachelor of Laws degree from Stockholm University and has many years' experience in different types of jobs. In May 2006, she applied to the Social Insurance Agency to work as an assessor/investigator of sickness benefit and sickness compensation applications. On 25 August 2006, the author was informed that, although she fulfilled the competence, experience and reference requirements, she had not been considered for that vacant post because the Social Insurance Agency's internal computer systems could not be adapted for her sight impairment. The plaintiff reported the case to the Swedish Disability Ombudsman that filed an application at the Labour Court on her behalf. On 17 February 2010, the Labour Court dismissed the Ombudsman's claims.

The CRPD Committee considered that the Labour Court thoroughly and objectively assessed all the elements submitted by the plaintiff and the Social Insurance Agency before reaching the conclusion that the support and adaptation measures recommended by the Ombudsman would constitute an undue burden for the Social Insurance Agency. The Committee further expressed the view that the author did not provide any evidence that would enable it to conclude that the assessment conducted was manifestly arbitrary or amounted to a denial of justice. In the circumstances, the Committee stated that it could not conclude that the decision made was not, at the time of the Labour Court judgment, based on objective and reasonable considerations.

<sup>14</sup> <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Jurisprudence.aspx>

<sup>15</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD-C-12-D-10-2013&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD-C-12-D-10-2013&Lang=en)

<sup>16</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD-C-12-D-5-2011&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD-C-12-D-5-2011&Lang=en)

Consequently, the Committee expressed the view that it cannot establish a violation of Articles 5 and 27 of the CRPD.

***Liliane Gröninger et al. vs. Germany (CRPD/C/D/2/2010) – violation<sup>17</sup>***

The plaintiff is Liliane Gröninger, a French national, who submitted it on behalf of her son, her husband and herself. Her son is a German national, born on 14 May 1979, and is a person with a disability. She claims that her son is a victim of violations by Germany of his rights under Articles 3, 4, 8 and 27 of the Convention on the Rights of Persons with Disabilities. The OP CRPD entered into force for Germany on 26 March 2009.

The plaintiff maintained that her son had been registered with the employment agencies since 2002. In October/November 2009, he also attended and successfully completed a vocational cashier course, but the employment agency refused to provide financial support with the argument that the training was not cost-effective. The plaintiff submits that the lawsuit initiated on that issue has been pending in the Social Court of Cologne for over three years. In March/April 2010 and April/May 2011, the plaintiff's son took part in a bookkeeping and accounting course and the family covered the cost again, since neither the training nor financial support were forthcoming from the employment agency. The plaintiff maintained that the aim of the employment agency was to disadvantage disabled persons so that after a few years of unemployment they were no longer able to offer anything to the labour market and could then be "pushed away into a workshop for the disabled". The author also maintained that every measure the employment agency took was bound to fail because under section 219 of book III of the Social Code her son is eligible for an integration subsidy only if his full working capacity can be restored within three years.

The Committee took note of the author's allegations that the provisions of the social legislation related to granting an integration subsidy are discriminatory, since they are applicable only to persons with disabilities whose full working capacity may be restored within 36 months; that they create no rights for the disabled person, since the right to claim such a subsidy belongs exclusively to the employer; and that the manner in which discretion is applied in implementing those provisions by the employment agencies leads to further discrimination. The Committee noted the author's submission that the integration subsidy was the only affirmative action available to assist her son for his inclusion in the labour market. The Committee observed that Article 27, paragraph 1 (d) and (e) of the CRPD enshrines the rights to benefit from appropriate measures of promotion of employment opportunities, such as to have effective access to general placement services as well as assistance in finding and obtaining employment. The CRPD Committee was of the view that the measures taken by the responsible authorities of the State party to assist the integration of the author's son into the labour market did not meet the standard of the State party's obligations under Article 27, paragraph 1 (d) and (e), read together with Article 3 (a), (b), (c) and (e), Article 4, paragraph 1 (a) and (b) and Article 5, paragraph 1, of the CRPD.

***Mr. X. v. Argentina (CRPD/C/11/D/8/2012) – violation<sup>18</sup>***

The plaintiff is Mr. X, an Argentine national, born on 26 November 1952. He was held in pre-trial detention facility in San Martin. With the authorization of the Court, on 27.01.2010 he underwent spinal surgery to replace a cervical disc. The next day suffered a stroke which resulted in left homonymous hemianopsia, a sensory balance disorder, a cognitive disorder and impaired visuospatial orientation. Later, with the authorization of the Federal Criminal Court, the author was transferred to the FLENI Institute in Escobar, where his condition was stabilized and he began an inpatient rehabilitation programme. On 7 April 2010, the Federal Criminal Court was informed by the FLENI Institute that the plaintiff was fit to continue his rehabilitation programme

<sup>17</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/D/2/2010&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/D/2/2010&Lang=en)

<sup>18</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/11/D/8/2012&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/11/D/8/2012&Lang=en)

as a day patient. On the same date, the plaintiff applied to have his pre-trial detention converted to house arrest, contending that he needed a living space adapted to his disability and that the distance between the detention centre and the rehabilitation hospital impede his access to rehabilitation, thereby infringing his right to medical care. On 6 August 2010, the Federal Court rejected his application for house arrest and ordered his transfer to the central prison hospital of the Buenos Aires Federal Penitentiary Complex, where the necessary arrangements would be made for the author to undergo the prescribed rehabilitation therapy from that location.

The author alleged that the courts did not take into account his situation and ordered his imprisonment despite medical information supporting his application for house arrest or for a custodial arrangement in hospital. More specifically, the courts arbitrarily dismissed his claims that travel between the Ezeiza Prison and the rehabilitation hospital was prejudicial to his health and could pose a serious risk, given the instability of his spine. The author maintained that determination of the appropriateness of holding him in a prison, including a prison hospital, should have taken into account his state of health, the lack of infrastructure, medical services and care, and the extent to which his imprisonment adversely affects his health.

The CRPD Committee recalled that, under Article 14, paragraph 2, of the CRPD, persons with disabilities deprived of their liberty have the right to be treated in compliance with the objectives and principles of the Convention, including by provision of reasonable accommodation. In the case under review, the Committee acknowledged the accommodations made by the State party in order to remove the barriers that impeded the author's access to areas within the physical environment of the prison.

The CRPD Committee stated that it is aware that the statements of the plaintiff and the State party regarding the quality and quantity of the author's rehabilitation treatments while in prison were contradictory. Given the particular circumstances of this case, the CRPD Committee did not have sufficient evidence before it to conclude that violations of Articles 25 and 26 of the Convention have occurred.

The CRPD Committee took note of the author's claims that authorities have seriously endangered his life and health by confining him in a prison and obliging him to accept outpatient treatment that entails frequent ambulance transfers, which pose a serious risk to his life and health. The CRPD Committee, acting under Article 5 of the OP CRPD, was of the view that the State party has failed to fulfil its obligations under Article 9, paragraphs 1 (a) and (b), Article 14, paragraph 2, and Article 17 of the Convention.

The CRPD Committee's recommendations included the obligation to provide redress for the breaches of the author's rights under the Convention by making accommodations in his place of detention to ensure his access to prison facilities and services on an equal basis with other prisoners. The CRPD Committee also recommended the State party to reimburse the author for the legal costs associated with the submission of the communication. In addition, bearing in mind the author's delicate health, the CRPD Committee requested the State party to ensure that, while patients are free to consent to or refuse medical treatment, the author has access to suitable, timely health care that is in keeping with his state of health as well as full access to suitable rehabilitation therapy on a regular basis.

***Zsolt Bujdosó and five others v. Hungary (CRPD/C/10/D/4/2011) – violation<sup>19</sup>***

The six plaintiffs claimed to be victims of a violation by Hungary of their rights under Article 29 of the CRPD. All six authors suffer from intellectual disability and were placed under partial or general guardianship pursuant to judicial decisions. As an automatic consequence of their placement under guardianship, the plaintiffs' names were removed from the electoral register, pursuant to Article 70, paragraph 5, of the Constitution of the State party that was applicable at

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<sup>19</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/10/D/4/2011&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/10/D/4/2011&Lang=en)



the time, which provided that persons placed under total or partial guardianship did not have the right to vote. Due to this restriction on their legal capacity, the authors were prevented from participating in the Hungarian parliamentary elections held on 11 April 2010 and the municipal elections held on 3 October 2010. They maintained that they remain disenfranchised to date and cannot therefore participate in elections.

The CRPD Committee observed that the State party has merely described, in the abstract, the new legislation applicable to persons under guardianship, stating that it has brought it into conformity with Article 29 of the CRPD, without showing how this regime specifically affects the authors, and the extent to which it respects their rights under Article 29 of the Convention. The Committee recalled that Article 29 of the CRPD requires States Parties to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, including by guaranteeing their right to vote. The CRPD Committee further recalled that under Article 12, paragraph 2 of the CRPD, States Parties must recognize and uphold the legal capacity of persons with disabilities “on an equal basis with others in all aspects of life”, including political life, which encompasses the right to vote. The CRPD Committee therefore found that the State party has failed to comply with its obligations under Article 29, read alone and in conjunction with Article 12 of the Convention.

The Committee made a number of recommendations to the State party, including the obligation to remedy the deletion of the authors’ names from the electoral registers, including by providing them with adequate compensation for moral damages incurred as a result of being deprived of their right to vote in the 2010 elections, as well as for the legal costs incurred in filing the authors’ communication.

***Szilvia Nyusti, Péter Takács v Hungary (CRPD/C/9/D/1/2010) – violation<sup>20</sup>***

The plaintiffs are persons with severe visual impairments. Independently of each other they concluded contracts for private current account services with the OTP Bank Zrt. credit institution (OTP), according to which they are entitled to use banking cards. However, they were unable to use the automatic teller machines (ATMs) without assistance, as the keyboards of the ATMs operated by OTP were not marked with Braille, nor did the ATMs provide audible instructions and voice assistance for banking card operations. The authors maintained, they pay annual fees for banking card services and transactions equal to the fees paid by other clients. However, they are unable to use the services provided by the ATMs at the same level as sighted clients, therefore they receive less services for the same fees.

On 11 April 2005, the authors’ legal representative lodged a complaint with OTP, requesting changes to the ATMs in the proximity of his clients’ homes. The complaint was rejected by OTP on 16 June 2005. On 5 August 2005, the authors brought a civil action under Articles 76 and 84 of Act IV of the 1959 Civil Code (the Civil Code) to the Metropolitan Court. On 14 May 2007, the Metropolitan Court ruled that OTP had violated the authors’ right to human dignity and equal treatment. The Metropolitan Court held that OTP had to ensure that its clients with visual impairment could access the information necessary for using the ATMs. The Court ordered OTP to retrofit within 120 days at least one of its ATMs in the capital towns of each county. The Metropolitan Court also granted pecuniary damages in the amount of 200,000 Hungarian Forint to each author.

On 2 July 2007, the authors appealed the first instance decision to the Metropolitan Court of Appeal, requesting that all ATMs be made accessible, and that the amount of compensation be raised to 300,000 Hungarian Forint each. On 10 January 2008, the Metropolitan Court of Appeal rejected the authors’ appeal and accepted the argument of OTP that, due to the increased personal safety risks, retrofitting would not ensure that the authors could use the ATMs on their own.

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<sup>20</sup> [http://www.ohchr.org/Documents/HRBodies/CRPD/Jurisprudence/CRPD-C-9-D-1-2010\\_en.doc](http://www.ohchr.org/Documents/HRBodies/CRPD/Jurisprudence/CRPD-C-9-D-1-2010_en.doc)

On 14 April 2008, the authors submitted a request for an extraordinary judicial review to the Supreme Court, in which they asked the Court to alter the decision of the Metropolitan Court of Appeal. The Supreme Court delivered its decision on 4 February 2009, rejecting both the request for judicial review by the authors and the request for judicial review by OTP.

The CRPD Committee recalled that under Article 4, paragraph 1(e), of the CRPD, States Parties undertake “to take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise”. To this end, States Parties are required pursuant to Article 9 of the Convention to take appropriate measures to ensure that persons with disabilities have equal access *inter alia* to, information, communications and other services, including electronic services, by identifying and eliminating obstacles and barriers to accessibility. States Parties should, in particular, take appropriate measures to develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public (art. 9, para. 2(a), of the Convention), and ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities (art. 9, para. 2(b)).

The CRPD Committee’s recommendations included the following: to remedy the lack of accessibility for the authors to the banking card services provided by the ATMs operated by OTP; to provide adequate compensation to the authors for the legal costs incurred during domestic proceedings and the costs incurred in filing this communication.

#### ***1.4. Conclusions***

The CRPD is the main treaty in the United Nations human rights system to advance the rights of persons with disabilities. The CRPD focuses on the actions States must take to ensure that persons with disabilities enjoy these rights on an equal basis with others. Ratification of CRPD entails legally binding obligations to respect, protect and fulfil the human rights recognized under the treaty.

The OP CRPD creates an individual complaint procedure. The admissibility criteria are comparatively strict. While the function of the CRPD Committee in considering individual communications is not, as such, that of a judicial body, the views issued by the Committee under the OP exhibit some important characteristics of a judicial decision.

To date, the CRPD Committee has adopted views on eight individual communications, finding violations in five of them and declaring two inadmissible. The decisions are arrived at in a judicial spirit, including the impartiality and independence of Committee members, the considered interpretation of the language of the Covenant, and the determinative character of the decisions.

## Chapter 2. The rights of Persons with Disabilities in Moldova

This chapter analyzes the national legal framework on non-discrimination and the rights of persons with disabilities in the Republic of Moldova. The first part will consider the extent to which the right to non-discrimination and the rights of persons with disabilities are incorporated into the national legislation. The second part will consider the relevant case law at national level and remedies available at the national level.

### 2.1. National legislation

The national system on human rights is based on the Constitution of the Republic of Moldova of July 29, 1994, the national legislation and international instruments, which the Republic of Moldova is a party to. Through Article 4 the Constitution ensures the supremacy of international norms on human rights standards in relation to national legislation.<sup>21</sup>

The Republic of Moldova ratified the CRPD on 09 July 2010. Since then, a comprehensive framework on anti-discrimination and inclusion of persons with disabilities was adopted. The first step towards implementing the Convention was to develop and promote the Social Inclusion Strategy for Persons with Disabilities (2010-2013), adopted by Parliament by the Law no. 169-XVIII of 09.07.2010.<sup>22</sup> The Strategy defines the state policy recast in the field of disability and includes guidelines for activities that various public and private actors shall accomplish.

In 2012 the Parliament adopted the Law no. 60 of 30.03.2012 on the social inclusion of persons with disabilities.<sup>23</sup> The law provides for ensuring the rights of persons with disabilities equally with the rights of other citizens to social security, health care, rehabilitation, education, employment, public life, physical environment, transportation, technology and information systems, communication and other utilities and services accessible to the general public.

The principles of non-discrimination, universality and equality of rights are provided by the Constitution and represent the basis of the system of human rights protection in Moldova. Article 16 (2) of the Constitution prohibits discrimination on such criteria as race, nationality, ethnicity, language, religion, social origin, sex, opinion, political affiliation, personal property or social origin. These constitutional norms are strengthened through the Law on Ensuring Equality of 25 May 2012 which guarantees equal rights to all people residing in Moldova, “irrespective of race, color, nationality, ethnic origin, language, religion or belief, sex, age, disability, opinion, political affiliation or any other similar criteria”. Article 2 of the law provides the definition of reasonable accommodation as any modification, and necessary and adequate adaptation, which do not impose a disproportionate or unjustified task when it is needed, in a particular case, for assuring to each person, in cases established by law, exercising on equal conditions with others, its fundamental rights and liberties.<sup>24</sup>

The Law also provides for the establishment of the Council for the Prevention and Elimination of Discrimination and Ensuring Equality (Equality Council). The Moldovan Equality Council started its activity in October 2013. As of 31 December 2015, the Council found discrimination on the ground of disability in 26 cases.<sup>25</sup>

The national legal framework prohibits discrimination against women with disabilities. In accordance with art. 8 para (12) and art. 42 para. (12) of the Law no. 60 of 30.03.2012 on social inclusion of persons with disabilities, the State takes measures to ensure that persons with disabilities, including women and girls with disabilities, are not subjected to multiple discrimination, and enjoy all the human rights and fundamental freedoms. The Law no. 5-XVI of

<sup>21</sup> [http://lex.justice.md/document\\_rom.php?id=44B9F30E:7AC17731](http://lex.justice.md/document_rom.php?id=44B9F30E:7AC17731)

<sup>22</sup> <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=336276>

<sup>23</sup> <http://lex.justice.md/md/344149/>

<sup>24</sup> <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=343361>

<sup>25</sup> For further information see [www.egalitate.md](http://www.egalitate.md)

09.02.2006 on Ensuring Equal Opportunities for Women and Men guarantees equal access of women and men in holding public positions in governing bodies, submitting applications for holding of functions in the electoral lists and provides a range of social and economic obligations, especially at employment, as well as some obligations on the side of the employer. The law also introduces the notion of affirmative actions.<sup>26</sup>

Moldova is a party to the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) and has ratified the OP CEDAW in 2006, allowing the Committee on the Elimination of Discrimination against Women to hear complaints from individuals or inquire into grave or systematic violations of the Convention.

The Constitution of the Republic of Moldova ensures the respect for the rights and freedoms of all persons, including children with disabilities, by providing benefits and other forms of social protection (Article 50 para. (1) - (5)). These Constitutional provisions are enforced through the Law no. 60 of 30.03.2012 on social inclusion of persons with disabilities, which stipulates the prohibition of discrimination and prioritizes the best interests of the child when adopting different decisions on children as well as guarantees against discrimination of children with disabilities (Article 8 para. (10) - (13), art. 10).

The strategy on the social inclusion of persons with disabilities (2010-2013), adopted by the Law no. 169 of 09.07.2010, provides steps for increasing public awareness on the issues and the rights of persons with disabilities. Thus, the State authorities together with the social partners have committed to implement the organization of annual awareness campaigns / social campaigns with reference to the rights and opportunities for social integration of persons with disabilities.

The Law on the social inclusion of persons with disabilities for the first time introduced into the national legislation such concepts as accessibility, universal design and reasonable accommodation. Thus, this law contains a number of provisions on State policy in the field of accessibility (art. 17), the design and construction of social infrastructure facilities respecting the needs of persons with disabilities (art. 18), planning of social infrastructure objects to be used by persons with disabilities (art. 19), ensuring access of persons with disabilities to public transportation (art. 20), planning accommodation spaces to be used by persons with disabilities (art. 21), ensuring access to persons with disabilities to cultural and tourist attractions, and sports buildings (halls) (art. 23), as well as access to information by all means (art. 25).

The right to life is guaranteed by the Constitution of the Republic of Moldova and Healthcare Law no. 411 of 28.03.1995 with subsequent amendments, without any distinction between disabled and non-disabled persons. Persons with disabilities from birth have the right to life and no one can be deprived of this right arbitrarily.<sup>27</sup> Law no. 60 of 30.03.2012 on social inclusion of persons with disabilities (art. 7) stipulates the rights of persons with disabilities, including equality before the law without discrimination and the right to life, liberty and personal security. According to the Criminal Code no. 985 of 18.04.2002, killing a disabled person is considered an aggravating circumstance and draws tougher punishment (art. 77 para. (1) and art. 145 para. (2)).<sup>28</sup> Based on the provisions of Article 77 para. (1) of the Criminal Code, killing of a person on the grounds of social hatred towards of people with disabilities is considered an aggravating circumstance. Article 145 para 2 (e) include in aggravating circumstances a crime committed against a person by abusing his/ her obvious state of helplessness due to a disease or physical or psychological disorders.

In Article 20 (para 1 and 2) the Moldovan Constitution provides that every citizen has the right to obtain effective protection from competent courts of jurisdiction against actions infringing on his/her legitimate rights, freedoms and interests. No law may restrict the access to justice. Article

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<sup>26</sup> <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=315674&lang=1>

<sup>27</sup> <http://lex.justice.md/index.php?action=view&view=doc&id=312823>

<sup>28</sup> <http://lex.justice.md/index.php?action=view&view=doc&id=331268>

46 of the Constitution guarantees the right to private property and its protection and Article 55 states that "every citizen shall exercise his/her constitutional rights and freedoms in good faith, without infringing the rights and freedoms of others". Law no. 60 of 30.03.2012 on Social Inclusion of Persons with Disabilities states that "[p]ersons with disabilities have the right to be recognized, wherever they are, as persons with rights under the law. Persons with disabilities enjoy their legal capacity on an equal basis with others in all aspects of life and, where appropriate, safeguards, and legal assistance in exercising their legal capacity provided by law." (art. 8 para. 1 and 2). Property rights, income and other assets management and the measures that the authorities take for ensuring these rights are set out in Article 9(2) of the Law.

However, the Civil Code of the Republic of Moldova, Law no. 1107 of 06.06.2002, regulates the declaration of the deprivation of legal capacity of an individual as well as the limitation of the legal capacity (art. 24).<sup>29</sup> In order to adjust the legislation in force, in particular the provisions of the Civil Code and Civil Procedure Code, the provisions of Article 12 of the CRPD, and respectively the law on social inclusion of persons with disabilities, by the inter-ministerial order (Ministry of Health, Ministry of Labour, Social Protection and Family, Ministry of Justice) of 9 December 2011, an inter-sectoral working group was set up. The working group consists of representatives of line ministries and civil society, including representatives of the Ombudsman Office, and aims at reforming the institution of legal capacity.

According to Article 20 para. (1) and (2) of the Constitution "Every person has the right to obtain effective protection from competent courts of jurisdiction against actions infringing on his/her legitimate rights, freedoms and interests. No law may restrict the access to justice". Code of Civil Procedure, no. 225 of 30.05.2003, establishes access to justice, the right to legal assistance, equality before the law and justice (art. 5, 8, 22), with no distinction between persons with and without disabilities.<sup>30</sup> Criminal Procedure Code, no. 122 of 14.03.2003, establishes the right to equality before the law and authorities, the inviolability of the person, safeguarding the right of defence, free access to justice (art. 9, 11, 17, 19).<sup>31</sup> The use of interpreter or written form in the proceedings for participants with disabilities is provided for in Article 219 of the Code of Civil Procedure, cited above.

The Constitution guarantees the right to life and security of the person. The Constitution establishes that the search, detention or arrest of a person shall be permitted only in the cases and under the procedure provided by law. The Mental Health Law no. 1402 of 16.12.1997 as amended, provides that "It is not permitted to limit the rights and freedoms of individuals suffering from mental disorders only based on psychiatric diagnosis, dispensary surveillance cases, the fact that they are or were in the inpatient psychiatric treatment or in a psycho-neurological institution" (art. 5 para. 3).<sup>32</sup>

At the same time, the Mental Health Law contains some provisions which authorize hospitalization without free consent of the person or his legal representative, before the issuance of the judgment, if the mental disorder is serious and conditioning a direct social threat or serious injury to his/her health (art. 28). These provisions are to be reviewed and there shall be established clear protection mechanisms for emergency medical circumstances, to exclude arbitrary hospitalization risk for persons with psychosocial disabilities. The Criminal Code no. 985 of 18.04.2002 and the Criminal Procedure Code no. 122 of 14.03.2003 provide that deprivation of liberty, arrest, forced confinement of a person in a medical institution are permitted only on the basis of an arrest warrant or a motivated court decision.

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<sup>29</sup> <http://lex.justice.md/md/325085/>

<sup>30</sup> <http://lex.justice.md/index.php?action=view&view=doc&id=286229>

<sup>31</sup> <http://lex.justice.md/md/326970/>

<sup>32</sup> <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=312970&lang=1>

According to the Constitution, "No one may be subjected to torture or to cruel, inhuman or degrading punishment or treatment" (art. 24 para. 2). The Mental Health Law no. 1402 of 16.12.1997 as amended provides that treatment of mental disorders of individuals, including those subjected to coercive treatment, by surgery and other methods that have irreversible consequences, and the application of the new drugs, scientifically founded, but still not admitted towards mass use, is inadmissible (art. 11, para. 5).<sup>33</sup> Healthcare Law no. 411 of 28.03.1995 contains certain provisions which are not in line with the UN Convention on the Rights of Persons with Disabilities, making psychosocial disabled persons liable to forced treatment. (art. 42, para. 3).

Law no. 45-XVI of 01.03.2007 on combating domestic violence establishes the legal and organizational framework for preventing and combating domestic violence, authorities and institutions responsible for preventing and combating domestic violence, the mechanism for identifying and solving cases of violence.<sup>34</sup> These are enforced through the Government Decision no. 1200 of 23.12.2010 on the minimum quality standards for social services provided to victims of domestic violence, without discrimination on various grounds provided by law, including disability.<sup>35</sup>

In the Republic of Moldova, persons with disabilities, like other citizens, are entitled, to the protection of physical and psychological integrity, which is a right guaranteed by the Constitution. Healthcare Law no. 411 of 28.03.1995 with subsequent amendments, contains a number of provisions such as patient's consent for any medical performance (art. 23, para. 1), voluntary surgical sterilization performed only with the consent of the person (art. 31, para. 1), voluntary pregnancy disruption (art. 32). In the case of a person incapable of discernment, there are special provisions. According to the Healthcare Law, the consent of a patient incapable of discerning is given by his/her legal representative; in his/her absence, by the closest relative (art. 23, para. 3). In case of imminent danger of death or serious threat to health, the consent of the patient incapable of discernment, temporary or permanent, is assumed and is not required (art. 23, para. 4). According to the provisions of the Law no. 60 of 30.03.2012 on the social inclusion of persons with disabilities, persons with disabilities shall provide their consent on the medical intervention personally, filling the voluntary informed consent or refusal in accordance with the current legislation (art. 42, para. 8).

The right to citizenship and the right to freedom of movement are enshrined in the Constitution of the Republic of Moldova. According to the provisions of Article 17(2) of the Constitution, "No one may be deprived arbitrarily of his/her citizenship or the right to change it". Article 27 of the Constitution guarantees the right to free movement within the country to every citizen, and the right to establish domicile or residence anywhere in the country, to leave, to emigrate and return to the country. There are no legal provisions that restrict these rights for people with disabilities. Law on Citizenship of the Republic of Moldova no. 1024 of 02.06.2000 as subsequently amended contains provisions for granting citizenship by naturalization to persons with disabilities (art. 18 par. (2). B).<sup>36</sup>

In order to facilitate the mobility of people with disabilities, the legislation provides support in the form of benefits and services. According to the provisions of Article 49 (1-2) of Law no. 60 of 30.03.2012 on social inclusion of persons with disabilities, persons with severe and pronounced disability, children with disabilities and persons accompanying a person with severe disability or a disabled child shall be allocated compensations from local budgets for travel in the urban, suburban and interurban transportation.

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<sup>33</sup> <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=312970&lang=1>

<sup>34</sup> <http://lex.justice.md/md/327246/>

<sup>35</sup> <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=337208>

<sup>36</sup> <http://lex.justice.md/md/311522/>

According to the Constitution (art. 32 para. (1)), "[a]ll citizens are guaranteed the freedom of opinion as well as the freedom of publicly expressing their thoughts and opinions by way of word, image or any other means possible. Article 34(1) of the Moldovan Constitution guarantees "the right of the individual to have access to any information of public interest". By Law no. 60 of 30.03.2012 on social inclusion of persons with disabilities, access to information of persons with disabilities is also guaranteed (art. 25

The Constitution establishes that "[t]he State shall respect and protect private and family life". The domicile is inviolable. Criminal Procedure Code, no. 122 of 14.03.2003, sets out procedures regarding respect of human rights, freedoms and dignity, also the right to inviolability of the person, home, property, privacy, etc., in cases of criminal proceedings, with no distinction between persons with and without disabilities (art. 10-15).<sup>37</sup> Law no. 123 of 18.06.2010 on social services sets out "respect for personal dignity and privacy of the recipient of services", for persons with disabilities placed in residential institutions.<sup>38</sup>

The right to family is a constitutional right. However, the right to marry is not recognized to persons declared incapacitated by the court (for people with intellectual and severe psychosocial disabilities). Thus, the Family Code provides that "marriage is not permitted between persons of whom at least one was deprived of legal capacity" (art. 15 para. 1, letter f).<sup>39</sup>

The right to education is enshrined in Article 35 (1) of the Constitution. Law no. 60 of 30.03.2012 on the social inclusion of persons with disabilities, provides that persons with disabilities have access to education at all levels on equal terms with other citizens (art. 27(1)) and the obligations of public authorities and educational institutions are to ensure reasonable accommodation (art. 27(6)(a)), alternative modes of communication (art. 27(6)(b-d)), conditions to develop and promote an inclusive education system. Through the Decision no. 523 of 11.07.2011 the Moldovan Government approved the inclusive education program in the Republic of Moldova for 2011-2020. The program places inclusive education to the rank of educational priorities, and foresees the provision of conditions for inclusion of children deinstitutionalised from the residential education and enrolment and inclusion of children with special needs in general schools.<sup>40</sup>

The right to health is provided in Article 36 of the Moldovan Constitution. According to Law 1585 of 27.02.1998 on compulsory health insurance, the Government has the quality of insurer for (i) children, (ii) people with disabilities, (iii) people who take care at home of a disabled child with severity I, or an immobilized person with disabilities from the childhood of I degree and other disadvantaged persons.<sup>41</sup> Law no. 60 of 30.03.2012 on Social Inclusion of persons with disabilities states that "[d]uring the medical examination and treatment, the disabled person is entitled to request information about the medical procedures he/she is subjected to, the potential risk posed by those, their therapeutic effectiveness and about alternative methods, but also about the diagnosis, prognosis and progress of treatment and prophylactic recommendations in an accessible format." (art. 42 para. 11). The Government adopted the Regulation-Framework for the Community-based Mental Health Center and for the minimum quality Standards by the Government Decision no. 55 of 30.01.2012<sup>42</sup>, and by Order no. 482 of 13 July 2010 the Ministry of Health approved the Regulation for the National Center for Mental Health.<sup>43</sup>

Law no. 60 of 30.03.2012 on social inclusion of persons with disabilities establishes the right to medical and social recovery of persons with disabilities, including measures related to disability

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<sup>37</sup> <http://lex.justice.md/md/326970/>

<sup>38</sup> <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=335808&lang=1>

<sup>39</sup> <http://lex.justice.md/index.php?action=view&view=doc&id=286119>

<sup>40</sup> <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=339343>

<sup>41</sup> <http://lex.justice.md/md/311622/>

<sup>42</sup> <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=342072>

<sup>43</sup> [http://www.somato.md/index2.php?option=com\\_docman&task=doc\\_view&gid=40&Itemid=48](http://www.somato.md/index2.php?option=com_docman&task=doc_view&gid=40&Itemid=48), p. 191

prevention, early intervention, individual program of rehabilitation and social inclusion. The individual program of rehabilitation and social inclusion sets out general recommendations for activities and services in the medical, social, educational and professional fields, needed by the person in the social inclusion process.

Constitution of the Republic of Moldova (art. 43, para 1), enshrines the right of every person to freely choose his/her work, and to benefit from equitable and satisfactory working conditions as well as to be protected against unemployment. By Law no. 60 of 30.03.2012 on the social inclusion of persons with disabilities the state guarantees the integration into the labour market of persons with disabilities (art. 33 - 40), including the right to employment, the employment forms, employer's obligations regarding the employment of persons with disabilities, working time and holidays, vocational orientation, training and rehabilitation. Law on employment and social protection of job seekers, no. 102-XV of 13.03.2003 provides that persons with disabilities who are seeking employment are entitled to benefit from active measures to foster employment provided by the National Employment Agency: information, professional consultation, labour mediation, guidance and vocational training.<sup>44</sup>

According to the Constitution of the Republic of Moldova (art. 47 paras (1), (2)), "[t]he State is obliged to take action aimed at ensuring that every person has a decent standard of living, whereby good health and welfare, based on available food, clothing, shelter, medical care, and services are secured for that person and his/her family. All citizens have the right to be insured against such adversities as unemployment, disease, disability, widowhood, old age or other situations where, due to causes beyond one's control one loses the source or means of obtaining the necessities of life". The provisions are enforced through the Law no. 156-XIV of 14.10.1998 on State Social Insurance Pensions,<sup>45</sup> the Law no. 499-XIV of 14.07.1999 on state social allocations,<sup>46</sup> the Law on social aid, no.133-XVI of 13 June 2008,<sup>47</sup> and others.

Under current Constitutional provisions, "[e]xcept for the persons banned from voting by law, all the citizens of the Republic of Moldova having attained the age of 18 on or by the voting day inclusively have the right to vote", and "[t]he right of being elected is granted to all citizens of the Republic of Moldova enjoying the right of voting" (art. 38, Paras 2 and 3). Article 7 of the Law on the social inclusion of persons with disabilities provides for the right of persons with disabilities to effectively and fully participate in political and public life on equal terms with other citizens. Art. 29 of the Electoral Code provides that precinct offices are arranged so that they will facilitate the access of elderly and disabled persons. Through the amendments to the electoral Code, adopted on 7 May 2015, the Parliament abrogated provisions on the limitations for persons declared incapacitated by a final decision of a court of law.<sup>48</sup>

The right to take part in cultural life is recognized and ensured in accordance with Article 10 (2) of the Constitution of the Republic of Moldova. According to Law no. 60 of 30.03.2012 on the social inclusion of persons with disabilities, central and local public authorities, public associations and legal persons of public law or private law are obliged to facilitate the access of persons with disabilities to cultural values, the objectives of heritage, tourism, sports and leisure places (art. 23).

The Republic of Moldova developed comprehensive national policies to advance human rights, including the rights of persons with disabilities. The Moldovan Parliament passed the National Human Rights Action Plan for 2011-2014 (NHRAP), through decision 90 of 12 May 2011. Following the Universal Periodic Review Recommendations, the NHRAP was amended on 27

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<sup>44</sup> [http://lex.justice.md/document\\_rom.php?id=2EBC3ACD:03933854](http://lex.justice.md/document_rom.php?id=2EBC3ACD:03933854)

<sup>45</sup> <http://lex.justice.md/md/313291/>

<sup>46</sup> <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=311676>

<sup>47</sup> <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=329197&lang=1>

<sup>48</sup> <http://inprofunzime.md/stiri/politic/in-premiera-persoanele-cu-dizabilitati-mintale-vor-putea-vota---955441.html>



December 2012 with provisions designed to advance the rights of vulnerable groups, including the rights of persons with disabilities.<sup>49</sup>

Moldova has also set up a comprehensive **institutional framework for human rights protection** including the following:

*The National Council for Child's Rights Protection* – governmental body intended to provide guidance and monitoring of central and local public authorities and of the civil society in order to ensure observance of the rights of children in the Republic of Moldova.

*National Council for the Social Inclusion of Persons with Disabilities* – consultative body set up in order to develop and promote state policy, programs, plans and actions for prevention and rehabilitation of persons with disabilities and ensure their equal opportunities with other citizens of Moldova in order to help them enjoy their constitutional rights and freedoms.

*National Commission for the Implementation of the National Human Rights Action Plan* – body that coordinates, monitors and evaluates implementation of NHRAP

*The People's Advocate Office (Ombudsman)* is the National Human Rights Protection Institution. The Ombudsperson shall ensure observance of the Constitutional rights and freedoms of individuals in their relations with central and local public authorities, organizations, and enterprises, regardless of the type of ownership, public associations and persons in positions of responsibility at any level.

*Council for the Prevention and Elimination of Discrimination and Ensuring of Equality* - is a collegial statutory body established to ensure protection against discrimination and equality of all persons who consider themselves to be victims of discrimination.

Moldova has already ratified a number of treaties which enable international human rights bodies to review individual communications. Moldova is a party to the OP to the Convention on the Elimination of All Forms of Discrimination Against Women, OP to the Convention Against Torture, OP to the International Covenant on Civil and Political Rights. The Moldovan Government deposited the declaration of Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) on May 8, 2013. This will enable the UN Committee on the Elimination of All Forms of Racial Discrimination to review individual complaints and petitions, provided that the subject matter of the complaints is not under review by another international body. In addition, the Government submitted a positive opinion on the ratification of the Protocol 12, the draft is pending approval by the Parliament.

## 2.2. *Relevant case-law*

The previous section demonstrated that the Republic of Moldova has an extensive legal and institutional framework on the Rights of persons with disabilities and has already ratified a number of treaties, which enables individuals to submit individual complaints to international human rights treaty bodies. This section considers the relevant cases at national level and corresponding remedies.

As of 31 December 2015, the Council for the Prevention and Elimination of Discrimination and Ensuring Equality of Moldova (Equality Council) issued 26 decisions finding discrimination on the ground of disability. The analysis of the decisions points to the fact that discrimination is most frequently in in access to public goods and services available to the public –(15 decision), 5 decisions found discrimination in the area of education, 3 decisions found discrimination in access to justice, 2 decisions found discrimination at the workplace, 1 decision found instigation to discrimination. Out of the total number of decisions, 6 were contested in the administrative order. Consequently, 1 decision was maintained by the courts, 1 decision was annulled, 4 cases are pending court examination.

<sup>49</sup> <http://lex.justice.md/md/339395/>

Some of illustrative cases and decisions issued by the Equality Council are provided below. The case-law is illustrative, given that decisions in many cases were not challenged or were upheld by the courts.

***Case 004/13 lodged by V.U. against the Professional High School no. 1 from Chisinau on discrimination in education and harassment based on disability and social origin (orphan child)***<sup>50</sup>

The complaint was submitted by the petitioner's mother, B.L. and by the petitioner V.U., invoking discriminatory attitude based on disability and social origin, by the administration of the *Professional High School no. 1 from Chisinau* and author's colleagues. The author complained that the administration of the institution had a hostile attitude towards her from the very moment when she applied to be enrolled in the institution. She complained that the administration created various impediments during the enrolment, by obliging her to consult the neurologist and to present the document confirming that she is able to study. In addition, the author invoked that the administration provided a place in the institution's student hostel only after submitting an additional request to the Ministry of Education. The room provided later by the institution was crowded, the provided bed was placed close to the window, and did not correspond to the physiological needs of the author. The plaintiff maintains that the administration failed to ensure reasonable accommodation of her living conditions in the hostel. Finally, the plaintiff invokes that was illegally expelled from the institution.

Pursuant to the examination of the evidence on the case, the Equality Council issued the decision on 22.11.2013, finding that the actions and inactions of the administration represent discrimination and harassment based on disability and social origin. The Council recommended to the administration to provide redress to the victim by re-enrolling her in the institution and ensuring reasonable accommodation in the educational process and accommodation. The threats expressed by the administration of the institution towards the plaintiff during the hearing session were qualified by the Council as victimisation. In relation to this fact, the Council recommended to the Ministry of Education to initiate a disciplinary procedure against the deputy director and deputy training director in light of Articles 67(1) of the Law on Education no. 547 of 21.07.1995 and Article 12(j) of the Law 121 on ensuring equality. The defendant contested the Equality Council's decision. The Botanica Court dismissed the action as unfounded. The Court of Appeals maintained the decision of the Botanica Court.

***Case 083/14 lodged by M.O. in the interests of her son M.T. on discrimination in access to preschool education and refusal to provide reasonable accommodation***<sup>51</sup>

The plaintiff claimed that her child was discriminated by a group of preschool teachers in a kindergarten specialised for children with disabilities, by refusing reasonable accommodation to her child.

Pursuant to the examination of the evidence on the case, the Equality Council issued the Decision on 28.06.2014 finding discrimination on the ground of disability and recommended to the administration of the speech therapeutic kindergarten to take all necessary measures in order prevent similar situations in the future. Specific recommendation included immediate implementation of the recommendations of the Republic Medico – Pedagogic Commission on development of the individualised education plan for the respective child. In addition, the Council recommended to the Ministry of Education to develop instructions for amending the internal regulations of the pre-school institutions, thus ensuring quality of education for and integration of children with individual educational needs. The Council also recommended provision of initial and continuous training for teachers and auxiliary personnel involved in the organisation of the

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<sup>50</sup> [http://egalitate.md/media/files/files/2013\\_decizie\\_cauza\\_004\\_13\\_ursu\\_valentina\\_final\\_3196018.pdf](http://egalitate.md/media/files/files/2013_decizie_cauza_004_13_ursu_valentina_final_3196018.pdf)

<sup>51</sup> [http://egalitate.md/media/files/files/decizie\\_cauza\\_083\\_depersonalizat\\_1357797.pdf](http://egalitate.md/media/files/files/decizie_cauza_083_depersonalizat_1357797.pdf)

educational process on the individualised approach towards children with special educational needs.

***Case 176/14 lodged by V.S. against the Centru Court and Chisinau Court of Appeal on alleged discrimination in access to justice and lack of reasonable accommodation***<sup>52</sup>

The plaintiff maintains that he cannot seek redress of the rights enshrined in the national legislation because the buildings of the courts do not provide reasonable accommodation. Pursuant to the examination of the case, the Council observed the need to ensure the accessibility of the courts for persons with physical disabilities in order to ensure access to justice. Through the Decision of 30.12.2014 the Centru Court and Appellate Court from Chisinau were recommended to undertake immediate and adequate measures to ensure reasonable accommodation of its building for persons with disabilities, including justice seekers and professionals within 6 months.

***Case 017/13 lodged by E.C. on refusal of the local public administration to provide reasonable accommodation of the locative space***<sup>53</sup>

The author, a person suffering from epilepsy, claims that she is discriminated by the Chişinău mayoralty, because the mayoralty does not ensure locative space tailored to her state of health, thus refusing reasonable accommodation. The plaintiff maintains that she lives in a hostel with common facilities and is the victim of negative, humiliating attitudes of her neighbours during the accesses of epilepsy. In addition, she claims that epilepsy crises in common facilities are resulting in bruising, burns and other material damages.

Examining the materials, the Council found that the petitioner's room requires reasonable accommodation in order to ensure her right to corporal integrity. The Council recommended to the Chisinau Mayoralty to adapt her room with shower and corresponding toilet facility, which would be within the proportional limit of reasonable accommodation.

The mayoralty communicated to the Council that it was ready to provide the reasonable accommodation as recommended in its decision. However, the mayoralty informed that the plaintiff was categorically against the proposed changes, maintaining that she wants a new locative space. Under such circumstances, the Council issued a new decision, withdrawing its recommendation to the Chisinau mayoralty on the provision of reasonable accommodation.

### **2.3. Conclusions**

The Republic of Moldova has an advanced legal framework on the rights of persons with disabilities. The national system of human rights is based on the Constitution of the Republic of Moldova of July 29, 1994, the national legislation and international instruments, which the Republic of Moldova is a party to. The Republic of Moldova developed comprehensive national policies to advance the rights of persons with disabilities. Moldova has also set up genuine quasi-judiciary institutions working to prevent and combat discrimination, including on the ground of disability. The case-law cited above shows that both the Council for the Prevention and Elimination of Discrimination and Ensuring Equality and courts are sufficiently empowered to review complaints and provide remedies for persons with disabilities who are victims of discrimination.

<sup>52</sup> [http://egalitate.md/media/files/files/decizie\\_\\_176\\_14\\_2356598.pdf](http://egalitate.md/media/files/files/decizie__176_14_2356598.pdf)

<sup>53</sup> [http://egalitate.md/media/files/files/decizie\\_conf\\_din\\_20\\_12\\_2013\\_cauza\\_017\\_2013\\_e\\_c\\_2094521.pdf](http://egalitate.md/media/files/files/decizie_conf_din_20_12_2013_cauza_017_2013_e_c_2094521.pdf)

## **Chapter 3. Challenges and benefits regarding the ratification of the OP UNCRPD**

This chapter examines the challenges articulated by various actors at the domestic level and seeks to respond to them. It also considers the opportunities that may arise pursuant to the ratification of OP CRPD.

### **3.1. Perceived challenges**

During meetings the representatives of the relevant governmental institutions mentioned some obstacles and practical impediments as well as fears. They are presented below with some explanations how they can be overcome or mitigated.

#### **“An unfeasible financial burden for Moldova as a result of a complaints procedure”**

Some actors raised concerns that a complaint procedure foreseen in the OP CRPD would impose large financial burdens on Moldova. This concern is a result of misunderstanding of the character of the OP CRPD as a procedural instrument, and the nature of different types of obligations related to the rights enshrined in the CRPD. The OP CRPD as a procedural instrument does not provide for any new substantive obligations above those already recognized by the Republic of Moldova by becoming the State party to the CRPD. Also, the CRPD does not impose unreasonable resource-related obligations upon States. According to Article 4(2) of the CRPD the State party undertakes to apply measures to the maximum of its available resources and, if needed, within the framework of international cooperation with a view to achieving the full realization of these rights progressively, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law. Accordingly, not all of obligations immediately set out in the CRPD require large amounts of financial resources. As mentioned in Section 2.1. (supra) the CRPD provides for three different types of obligations on States: the obligation to respect, protect and fulfil the rights of persons with disabilities. In many instances, the realization of economic and social rights set out in the CRPD only requires governments to abstain (e.g. abstaining from certain behavior) or to regulate the actions of third parties (e.g. health professionals).

Taken into account information presented above, in particular the provision of Article 4 of UN CRPD and the nature of obligations set out in the CRPD, we can conclude that this fear is ungrounded.

#### **“The OP CRPD creates new rights of persons with disabilities, hence additional obligations for the State”**

A concern that the OP CRPD creates new rights is another one heard often. As mentioned above, the OP CRPD is a procedural protocol, thus it does not impose any new obligations on States above those already recognized in the CRPD.

#### **“There is a danger of a large number of complaints”**

Some interlocutors seem to be concerned that there is a danger of a large number of complaints. In addressing the issue, there are key factors that should be taken into account. First, as already mentioned, the OP CRPD does not impose new substantive obligations. The substantive norms are in the CRPD – and they were accepted by Moldova and are part of the domestic legal order. Second, the OP provides for strict admissibility criteria such as strict time limits on claims, exhaustion of remedies at national level, the prevention of duplication of claims between treaty bodies. Third, as mentioned in Chapter 2, the Republic of Moldova made efforts to promote the implementation of the right to non-discrimination and inclusion of persons with disabilities. Finally, experience of Moldova with similar individual communication procedure within other UN human rights treaty bodies has not resulted a flood of complaints. Thus, the ratification of the

OP CRPD is unlikely to subject the Government of Moldova to a drastically larger number of complaints.

### **“Ratification can be expensive”**

A concern also arose that the ratification of the OP CRPD can be expensive. In fact, the concern is ungrounded since the OP CRPD could be ratified with relative ease taking into account current legal system in the Republic in Moldova and will not impose any direct costs. Accordingly, there is little reason to assume that accession to the Protocol will result in a large number of complaints. Thus, it is unlikely that the ratification of the OP CRPD will create significant problems for the Republic of Moldova in terms of increasing workload and expenses.

### **“Judicial remedies are not effective in realizing the rights of persons with disabilities”**

Interlocutors sometimes argue that judicial or quasi-judicial remedies alone are not able to trigger systematic changes necessary for the realization of the rights of persons with disabilities. It should be noted that the judicial or quasi-judicial remedies are aimed at providing adequate redress to victims of human rights violations as well as to guarantee non-repetition of the violation in question. Thus, remedies may sometimes be limited in terms of their ability to address or change an entire situation in the country. Nevertheless, decisions of the CRPD Committee as part of individual complaints mechanism could provide guidance to governments, courts and civil society as to what constitutes human rights compliance. Above all, the Committee’s decisions can be highly valuable for bringing added value to legislative changes and understanding of the rights set out in the Covenant.

## **3.2. Benefits**

Based on meetings and online consultations with the representatives of relevant ministries, governmental institutions and non-governmental organizations in Moldova various benefits of the ratification of the OP CRPD for the Republic of Moldova were identified.

### **Affirming by the Republic of Moldova of the principle of equality and non-discrimination and ensuring respect for human rights and human dignity of persons with disabilities**

The CRPD and the OP CRPD are in fact the “response of the international community to the long history of discrimination, exclusion and dehumanization of persons with disabilities. It is historic and groundbreaking in many ways, being the fastest negotiated human rights treaty ever and the first of the twenty first century. The Convention is the result of three years of negotiations involving civil society, Governments, national human rights institutions and international organizations. After adopting the Convention in the United Nations General Assembly in December 2006, a record number of countries demonstrated their commitment to respecting the rights of persons with disabilities by signing the CRPD and the OP CRPD they opened for signature in March 2007.”<sup>54</sup> Therefore, the ratification of the OP CRPD by the Republic of Moldova would re-affirm the country’s commitment to uphold human dignity and ensuring equal opportunities for persons with disabilities.

### **Complementing and strengthening the protection of rights of persons with disabilities in Moldova**

Through the communications procedure, the Government would be encouraged to take steps towards the full incorporation of the CRPD into domestic law and policies. Individual complaints mechanisms at the international level have been associated with rights improvements. “The

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<sup>54</sup> Joint statement of Sha Zukang, Under-Secretary-General Department of Economic and Social Affairs; Louise Arbour, former United Nations High Commissioner for Human Rights; Anders B. Johnsson, Secretary General Inter-Parliamentary Union, available online at <http://www.un.org/disabilities/default.asp?id=214>

possibility that an individual right of standing before a body of experts helps improve rights outcomes on average provides a strong rationale for ratification”<sup>55</sup>.

### **Improving awareness and understanding of the rights of persons with disabilities through engagement of the government in constructive and participatory process created by the OP CRPD**

Even though the Committee has done a considerable amount of work to this end, especially in its General Comments, the recommendations of the Committee as part of the individual complaints mechanism could bring added value for Governments to identify their obligations under the Covenant with more precision. The concretizations of the obligations and legal clarity will further improve the implementation and compliance with the rights enshrined in the CRPD. The OP CRPD could also create an additional platform for groups, social movements and civil society to mobilise and enhance public understanding of the CRPD rights.

### **Reaffirming Moldova’s commitment to constructive engagement with the international system of human rights protection**

Moldova has already committed to allowing individual complaints procedures under the ICCPR, the Convention Against Torture (CAT), ICERD and CEDAW. The ratification of the OP CRPD by Moldova reaffirms its commitment to engagement in constructive, participatory and capacity building process created by individual complaints mechanism within the UN human rights system. Accordingly, Moldova could seize the opportunity to ensure equal access to international individual complaints procedures with regard to all human rights. In this context, it is also noteworthy that it is a basic principle of international human rights law that the obligation to respect, protect and fulfil human rights includes a duty to provide effective remedies to victims where their rights have been breached.

### **Playing a role in the development of the international rights jurisprudence made by the CRPD Committee**

The OP CRPD offers an important venue for the development of international jurisprudence on CRPD rights. The experiences of individual complaints and inquiry procedures within other UN treaties showed that they helped in developing more specific findings that give a fuller expression to universally applicable principles. A particular advantage would be further clarification and concretization of the positive obligations in the CRPD. It is important to note that this jurisprudence will need to respect the terms of the CRPD, which provides for the progressive realization of rights with maximum available resources.

### **Using the individual complaints mechanism as an important complement to the dialogue between the CRPD Committee and our Country**

Allowing individuals to lodge complaints can be an important part of the process of gradually coming to a clearer understanding about the content of the rights of persons with disabilities entail and what constitutes a good faith effort on the part of States Parties to comply with their international legal obligations under the CRPD. The individual complaints mechanism is an important complement to the dialogue between the oversight committee and each State party. Individual complaints require the discussion of rights to move from abstract principles to concrete cases. The rationale of the procedure is to help states to fulfil their obligations under the Covenant by considering individual cases and decisions based on real-life situations. The decisions will provide guidance in situations that States face in practice. The views of the Committee will highlight issues that the state possibly overlooked or misinterpreted. Any State that is serious about good faith fulfilment of international obligations will welcome the individual complaints mechanism as valuable means of helping identify and suggest solutions to actual problems on the

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<sup>55</sup> Simmons, B (2009). Should states ratify? Process and consequences of the Optional Protocol to the ICESCR. 27(1) Nordic Journal of Human Rights, p. 66.

ground. This will be an indication both for the governments and the international community of what kind of issues to address.

### **Enhancing accountability for the Government's actions relating to ensuring the rights of persons with disabilities**

A complaint-based system can act as a systematic warning device. The outcomes of the individual complaints mechanism can support better democratic governance and policy-making by highlighting problems in the design and implementation of policies. A good example is the case *Zsolt Bujdosó and five others v. Hungary (CRPD/C/10/D/4/2011)*<sup>56</sup>, presented in Section 1.3.

### **Encouraging government to take the rights of persons with disabilities into account in their development and social planning**

The ratification of the OP CRPD could encourage government to consider the consequences for CRPD rights of all their actions and to devise concrete plans for furthering the realization of social rights in its policy and decision-making processes. In this way, the OP CRPD has strong potential to lead the Government in mainstreaming non-discrimination on the ground of disability into all its activities. Thus, the OP CRPD can strengthen domestic implementation of the CRPD. This also implies that allowing individual adjudication of social rights is not an expensive way to achieve justice for individuals. On the contrary, at most times the decision will have a systemic effect. Besides providing a possible remedy for the actual petitioner, states will have a chance to adjust their practices which will often positively affect a much wider population.

### **Encouraging the development and use of domestic remedies**

Article 2 of the OP CRPD requires the exhaustion of all available domestic remedies (judicial and quasi-judicial) before a complaint can be heard by the Committee on the Rights of persons with Disabilities. This encourages the use, development and strengthening of effective remedies system at the national level, rather than facing the prospect of a negative outcome of an international procedure. In addition, the necessity to exhaust domestic remedies will require individuals and groups to become much more informed about human rights. In many cases, persons with disabilities will learn about the limits as well as the possibilities for demanding attention to their rights in the national context.

### **Strengthening national mechanisms for the enforcement of rights of persons with disabilities**

Individual cases could encourage the Government to change/amend public policies and priorities and develop domestic remedies. The findings of the Committee could also be useful for the domestic civil society groups in framing demands to the Government of Moldova and legislatures in terms of the rights of persons with disabilities.

### **Empowering individuals and civil society**

The individual complaints mechanism is an important form of civil society empowerment. As Simmons rightly points out, “[n]ew evidence on human rights treaty effects suggests that ratification of agreements has consequences in domestic politics, mobilizing publics to view their rights and roles in new ways, focusing and legitimating demands, and creating new possibilities for domestic coalitions”.<sup>57</sup> Being involved in individual complaints mechanism individuals will often realize that our Government is in fact fulfilling its obligations or at least making a good faith effort to do so. Individuals will not only get a lesson on empowerment, they will also be educated on the limits of their claims as well.

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<sup>56</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/10/D/4/2011&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/10/D/4/2011&Lang=en)

<sup>57</sup> Simmons, B (2009); Should states ratify? (...), p. 69.



### Encouraging other States to ratify this document

States tend to ratify the Optional Protocols when their neighbouring peers do so. Modest peer pressure could encourage other countries to ratify and broaden the access of individuals to an international complaints procedures.<sup>58</sup> By ratifying the OP CRPD Moldova can take a leadership position in the region as well as within the Eastern Partnership in advancing the rights of persons with disabilities.

### 3.3. Conclusions

Any decision on ratification should rest on the weighing of the challenges and benefits. In order to facilitate the process an overview of the arguments for and against the ratification is presented below.

Arguments against ratification	Arguments in favour of ratification
<p>An unfeasible financial burden for Moldova as a result of a complaints procedure</p>	<p>OP CRPD ratification does not imply additional costs due to the following reasons:</p> <ul style="list-style-type: none"> <li>(i) The OP CRPD does not provide for any new substantive obligations above those already recognized by the Republic of Moldova becoming a Party to the CRPD;</li> <li>(ii) The implementation of economic and social rights enshrined in the CRPD is subject to the resources available in Moldova.</li> <li>(iii) Under the doctrine of “reasonable accommodation”, if the accommodation required would impose a disproportionate or undue burden on the person or entity expected to provide it, then a failure to do so would not constitute discrimination.</li> </ul>
<p>The OP CRPD creates new rights of persons with disabilities, hence additional obligations for the State</p>	<p>The OP CRPD is a procedural protocol, and thus it does not impose any new obligations on States above those already recognized in the CRPD.</p>
<p>Large number of potential complaints against Moldova</p>	<p>Ratification is an opportunity to strengthen the national mechanism for enforcing the rights of persons with disabilities:</p> <ul style="list-style-type: none"> <li>(i) OP CRPD requires the exhaustion of all available domestic remedies before a complaint can be submitted to the Committee;</li> <li>(ii) The OP CRPD provides for strict admissibility criteria;</li> <li>(iii) The Republic of Moldova makes efforts to promote the implementation of the rights of persons with disabilities;</li> </ul>

<sup>58</sup> Simmons, B (2009); Should states ratify? (...), p. 80.



	(iv) The experience of Moldova with similar individual communication procedure within other UN human rights treaty bodies points to a small number of complaints.
Excessive costs of the ratification	The OP CRPD could be ratified with relative ease taking into account current legal system in the Republic of Moldova and will not impose any direct costs, as well as significant problems in terms of increasing workload and expenses.
Judicial remedies are not effective in realization the rights of persons with disabilities	(i) Judicial remedies can be useful in defining what constitutes human rights compliance as well as bring added value to legislative changes and understanding of CRPD rights. In case of Zsolt Bujdosó and five others v. Hungary the Committee's Decision brought structural changes leading to the full realisation of the electoral rights of persons with disabilities. (ii) Moldova is already a party to the European Convention on Human Rights and Fundamental Freedoms. However, additionally to the decisions of the ECtHR, which have an individual approach, the decisions of the CRPD Committee can help Moldova develop systemic solutions that would contribute to solving structural issues affecting persons with disabilities.
	The ratification of the OP CRPD will push forward the country's European Integration process. CRPD has been ratified by about 90% of the EU Member States.
	OP CRPD ratification could affirm Moldova's commitment to the principle of non-discrimination and equal protection of persons with disabilities.
	OP CRPD ratification can improve awareness and understanding of rights of persons with disabilities.
	OP CRPD ratification can reaffirm Moldova's commitment to constructive engagement with UN treaty bodies.
	By ratifying the OP CRPD, Moldova can play a fundamental role in the development of the international rights jurisprudence made by the CRPD Committee.

	OP CRPD ratification can encourage the development and use of domestic remedies.
	OP CRPD ratification can empower individuals and civil society.
	OP CRPD ratification could offer new possibilities for combating exclusion and poverty.
	OP CRPD ratification will encourage other States to ratify this document.

## General Conclusions

Many of Moldova's obligations under the CRPD do not require large amounts of financial resources. As in the case of other treaties to which Moldova is already a party, the obligation to fulfil the rights of persons with disabilities may require the use of significant amounts, but is limited to the available resources.

The OP CRPD does not provide for any additional substantive rights. While the function of the CRPD Committee in considering individual communications is not, as such, that of a judicial body, the views issued by the CRPD Committee under the OP CRPD portray some important characteristics of a judicial decision. The admissibility criteria are comparatively strict.

The Republic of Moldova has an advanced legal framework on non-discrimination and protection of the rights of persons with disabilities. There is extensive case law, pointing to the to an appropriate system of remedies available at the national level.

Comprehensive analysis of the concerns raised vis-à-vis the prospects of ratification shows that the arguments against do not stand. The reasons in favour of ratification include, but are not limited to the following:

- OP CRPD ratification does not imply any additional costs;
- OP CRPD ratification will help to further develop the system of judicial remedies, which are extremely useful in addressing individual violations, but also in defining what constitutes compliance under the treaty;
- Ratification is an opportunity to strengthen the national mechanism for enforcing the principle of equality and non-discrimination;
- The OP CRPD is a procedural protocol, and thus it does not impose any new obligations on States above those already recognized in the CRPD;
- OP CRPD ratification will affirm Moldova's commitment to the equal protection of persons with disabilities and to upholding human dignity;
- Ratification will strengthen the international legal system and affirm Moldova's place as a good faith participant in the international system of human rights protection;
- OP CRPD ratification will improve awareness and understanding of the rights of persons with disabilities;
- OP CRPD ratification will reaffirm Moldova's commitment to constructive engagement with UN treaty bodies;
- By ratifying the OP CRPD, Moldova can play a fundamental role in the development of the international rights jurisprudence made by the Committee;
- OP CRPD ratification will empower individuals and civil society;
- OP CRPD ratification will encourage other States to ratify this treaty.

## **General Recommendations**

In light of the aforementioned, it is recommended to pursue ratification of the OP CRPD. Specific recommendations include:

- Adjust the Civil Code and Civil Procedure Code to the provisions of Article 12 of the CRPD;
- Amend the Article 28 of the Law on Mental Health no. 1402 of 21.05.1998 to establish clear protection mechanisms for emergency medical circumstances and exclude arbitrary hospitalization risk for persons with psycho-social disabilities;
- Adjust the provisions of the Family Code to ensure the right to marry and to found a family as stated in Article 23 of the CRPD;
- Ratify the OP ICESCR;
- Advance the added value of new instrument, in order to enhance the realization of the rights of persons with disabilities and to involve all relevant entities within the government in order to fulfil recommendations of the CRPD Committee;
- Conduct training for judges in order to disseminate international and regional jurisprudence related to the rights of persons with disabilities and corresponding decisions of the Moldovan Equality Council and Courts;
- Strengthen cooperation between the government and NGOs in terms of drafting, planning and the realization of policy, law, action plans as to the protection of the rights of persons with disabilities.

## **Annex 1. List of meetings and consultations**

### **Government:**

Ministry of Labor, Social Protection and Family;  
Ministry of Education;  
Ministry of Foreign Affairs and European Integration;  
Ministry of Health;  
Ministry of Informational Technologies and Communication;  
Ministry of Regional Development and Construction;  
Ministry of Justice.

### **Parliament:**

Legal Department of the Moldovan Parliament.

### **Human Rights Institutions**

People's Advocate Office (Ombudsman) ;  
Council for the Prevention and Elimination of Discrimination and Ensuring Equality.

### **NGOs:**

Centre of Legal Assistance for Persons with Disabilities;  
Moldovan Institute for Human Rights;  
Legal Resources Center;  
Infonet;  
Alliance of OPDs;  
National Mechanism for Monitoring the CRPD;  
Keystone Human Services;  
Promo-Lex.

### **Independent experts:**

Arcadie Astrahan, Health and Human Rights Expert.

### **International organizations:**

UNDP Moldova;  
OHCHR.