



**Analysis of the legal, normative and
institutional framework on
sexual and reproductive rights
of persons with disabilities
in the Republic of Moldova**

**REPORT
(short version)**

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LIST OF ABBREVIATIONS AND ACRONYMS

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPEDEE	Council on the Prevention and Elimination of Discrimination and Ensuring Equality
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
UNFPA	United Nations Population Fund
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women

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LEGAL, REGULATORY AND INSTITUTIONAL FRAMEWORK REGARDING SEXUAL AND REPRODUCTIVE RIGHTS OF PERSONS WITH DISABILITIES IN RM

This chapter evinces the results of the legislative analysis focusing mainly on women and girls with disabilities, considering the high probability of their sexual and reproductive rights infringements and taking into consideration the national regulatory framework, as well as the social, legal and economic context. The chapter also analyzes a few of the major sexual and reproductive rights infringements women and girls with disabilities in the Republic of Moldova are confronted with. The analysis does not examine *in general* the infringements of the rights of persons with disabilities, but refers exclusively to the issue of sexual and reproductive rights observance, without advancing in the research of the situation in other specific domains. The research also studies sensitive aspects related to gender, which cannot be ignored, and have repeatedly been highlighted by international observers, including by the Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, Juan E. Méndez, who concluded that discrimination plays an important part in the analysis of reproductive rights violation, as forms of torture or mistreatment, since prejudice regarding sex and gender usually forms the basis of these violations, aspects that are valid also for the Republic of Moldova¹.

The aim of the research is to analyze the compatibility of the legislation in the Republic of Moldova in the field of the observance of sexual and reproductive rights of persons with disabilities, in keeping with international standards. The report focuses on highlighting the legislation and, implicitly, deficient practices that favor various forms of abuse of persons with disabilities' specific rights. The present report is to contribute to consolidating the capacity of competent authorities in monitoring, reporting, but also preventing and combating violations of sexual and reproductive rights infringed upon persons with disabilities.

1. General international standards

The Republic of Moldova has signed and ratified most Conventions in the system of UN treaties on human rights, the stipulations of which are relevant for the protection of sexual and reproductive rights of persons with disabilities.

Although Moldova has ratified 7 of the 9 UN core human rights instruments, the reports of the State parties are often submitted with delay, and a report to the Committee against Torture (CAT) is delayed at this very moment. The UN human rights instruments ratified by Moldova are:

- The International Covenant on Civil and Political Rights (ICCPR);
- The International Covenant on Economic, Social and Cultural Rights (ICESCR);
- The International Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- Convention on the Rights of Persons with Disabilities (CRPD);
- Convention on the Rights of the Child (CRC).

The ratification of international treaties by the Republic of Moldova has resulted in an improved status in several human rights fields and created a series of obligations which the state has committed to, including positive commitments to ensure that all persons should be able to exercise their fundamental rights and freedoms in an equal and non-discriminatory manner.

For the first time in the case of a convention on human rights, which has a legally binding nature,

¹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez / A/HRC/22/53/1 February 2013, p. 36

the *Convention on the Rights of Persons with Disabilities* (CRPD)², which entered into force on May 3, 2008 and was ratified by the Republic of Moldova through Law no. 166 of 07.09.2010, stipulates that the fundamental human rights and freedoms are applicable for all persons with disabilities. In addition to other aspects, CRPD obliges State parties: to protect persons with disabilities from violence, exploitation and abuse (including gender-based aspects of these violations) (CRPD art. 16); to ensure that persons with disabilities enjoy legal capacity on an equal basis with others (CRPD art. 12), enjoy access to justice (CRPD art. 13), are not subjected to arbitrary or unlawful interference in their private life (CRPD art. 22) and family life (CRPD art. 23), including in all matters relating to marriage, family, parenthood and relationships; to guarantee to persons with disabilities, including children (CRPD art. 7), the right to retain their fertility; shall take all appropriate measures to ensure that women and girls fully enjoy all human rights (CRPD art.6); and ensure that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability, including in sexual and reproductive health and public health programs (CRPD art. 25).

Persons with disabilities may submit individual complaints to several bodies set up on the basis of international treaties, in connection with human rights violations in general, but also of other special rights, among which sexual and reproductive rights.

- The Human Rights Committee under the first Optional Protocol to the ICCPR;
- The Committee for the Elimination of Racial Discrimination under Art. 14 of CERD;
- The Committee on the Elimination of Discrimination against Women under the Optional Protocol to CEDAW and Committee against Torture under the Optional Protocol to CAT.

2. Right to equality and nondiscrimination

Equality and nondiscrimination represent fundamental principles established by the Universal Declaration of Human Rights and other international treaties, binding for the Republic of Moldova, so that incorporating these principles into the national legislation has become a priority for the authorities in recent years. The Republic of Moldova, signatory to several international treaties listed above, has committed to implement, as part of the national legal system, a legal framework apt to ban all acts of discrimination and offer efficient protection to all persons in this respect. The principles of equality and nondiscrimination in the Republic of Moldova are ensured, first and foremost, by the Constitution of the Republic of Moldova, but also by a series of special laws that regulate various social spheres.

The Constitution of the Republic of Moldova

The Constitution of the Republic of Moldova is the supreme legislative act. It was adopted on July 27, 1994 and came into force on August 27, 1994. The Constitution dedicates article 1 to the supreme value of human dignity, but also to the fundamental human rights and freedoms. However, the Constitution does not include expressly a few positive measures specific to persons with disabilities, but it does contain provisions that favor the inclusion of such measures in special laws. For example, Article 51 is a norm which favors the establishment of some positive obligations: "*Handicapped persons benefit from **special protection** on behalf of the entire society. The State ensures for them normal conditions of treatment, readaptation, education, training and social integration.*" Nevertheless, article 51 of the Constitution uses language (*handicapped or handicapped persons*) that does not correspond to the Convention on the Rights of Persons with Disabilities and the phrase *normal conditions* is not specific enough and leaves room for various interpretations.

Law no. 121 of 25.05.2012 on Ensuring Equality

The basic legal act in the field of nondiscrimination in the Republic of Moldova is the Law

² Convention on the Rights of Persons with Disabilities
<http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

no.121/2012 on Ensuring Equality³. The spheres of application of the Law on Ensuring Equality are *political, economic, social, cultural and other spheres of life* and are contained in article 1. The phrase *and other spheres of life* is very important due to the fact that it allows for expanding the sphere of application of the law over other domains, and is very useful for the practical enactment of the Law. Additionally, article 1 of the Law also establishes the list of protected characteristics, which are: "*race, color, nationality, ethnic origin, language, religion or beliefs, sex, age, disability, opinion, political affiliation or any other similar criterion.*"

Law no. 5/2006 on ensuring equal opportunities for women and men⁴.

The scope of the Law, set in Article 1, pertains to ensuring the exercise by women and men of their equal rights in the political, economic, social, cultural, and other spheres of life, with a view to preventing and eliminating all forms of discrimination based on the criterion of sex. Thus, from the text of the first article of the Law it is clear that its basic objective is to balance the status of women and men in all spheres of life. Also, the Law sets only one protected characteristic, that of sex. For the first time, the Law on equal opportunities defines the notion of sexual harassment, which represents *all forms of physical behaviour, verbal or nonverbal, of a sexual nature that harms a person's dignity or creates an unpleasant, hostile, degrading, humiliating or insulting atmosphere*. The Law does not include expressly any provisions specific to persons with disabilities.

Law No. 60 of 30.03.2012 on Social Inclusion of People with Disabilities

After ratification by the Republic of Moldova of the Convention on the Rights of Persons with Disabilities⁵ (hereinafter the Convention) there appeared the necessity of adopting legislative measures to transpose the provisions and safeguards of the Convention. Thus, on 30 March 2012 Law No. 60 of 30.03.2012 on Social Inclusion of People with Disabilities was adopted (hereinafter the Law). The Law defined several notions which, up until that moment, either did not exist in national legislation, or were wrongly addressed. Law nr.60/2012 on Social Inclusion of People with Disabilities represents a powerful legislative instrument with a view to safeguarding the observance of fundamental rights and freedoms of persons with disabilities.

At the same time, the illusive and incomplete regulation of some norms, and also the lack of a mechanism for implementation and penalties of violations results in the limited applicability of the law and inefficiency of covenants. The Law does not expressly include any provisions specific for the sexual and reproductive rights of persons with disabilities.

Law on Mental Health No. 1402, of 16.12.1997⁶ is the basic normative act which regulates the rights of persons with mental disabilities, how to manage the medical treatment, psychiatric assistance and hospitalization and, at the same time, establishes several significant restrictions of these rights. Although *de jure* it offers additional covenants, among which the right to medical secret, informed consent and non-admissibility of arbitrary forced hospitalization, the same law contains provisions that severely limit these covenants. Thus, the Law, at article 11, (1) establishes the possibility of administering the treatment to persons with mental disorders only with their free written consent. However, the article also stipulates certain exceptions, set at article 11, (4) which refers to two situations, a) application of coercive medical measures, in keeping with the Penal Code stipulations and b) in the case of hospitalization without free consent, in keeping with Article 28. This runs counter the Convention on the Rights of Persons with Disabilities (*article 14 and 15*) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (article 1).

Non-discrimination provisions in other legislative acts

³ Law no.121 of 25.05.2012 on ensuring equality, published on 29.05.2012 in the Official Monitor No. 103, art. 355. Date of coming into force: 01.01.2013

⁴ Law no. 5 of 09.02.2006 on ensuring equal opportunities for women and men, Published on 24.03.2006 in the Official Monitor No. 47-50, art.200

⁵ Convention on the rights of persons with disabilities, of 13 December 2006 in New York, ratified through Law no. 166-XVIII of 09.07.2010

⁶ Law on Mental Health No. 1402, of 16.12.1997 Published on 21.05.1998 in the Official Monitor No. 44-46, art.310

Besides specific normative acts in the field of non-discrimination, various legislative acts in the Republic of Moldova contain provisions that directly or indirectly refer to the principles of non-discrimination and equality. These provisions are regulated both in the codified legislation (*Penal Code, Penal Processual, Civil, Civil Processual, Contravention Code, Labor Code, Education a.o.*) as well as in organic and ordinary laws of the Republic of Moldova. The present subchapter represents a succinct analysis of the respective provisions and of their compatibility with international standards.

3. The right to marriage and forging a family

International standards

- .. Universal Declaration of Human Rights, article 16;
- International Covenant on Civil and Political Rights, article 23;
- International Covenant on Economic, Social and Cultural Rights, article 10;
- Convention on the Elimination of All Forms of Discrimination Against Women, article 16;
- European Convention of Human Rights, article 12;
- Convention on the Rights of Persons with Disabilities, article 23:

State Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:

- The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;
- The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided.
- Persons with disabilities, including children, retain their fertility on an equal basis with others.

States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

National Standards

Family Code of RM

The Family Code⁷ sets, similarly to other legislative acts previously examined, the principles on which marriage relationships are based (Article 2); they are:

- *freely-consented marriage between a man and woman,*

⁷ The Family Code of the Republic of Moldova No. 1316 of 26.10.2000, Published on 26.04.2001 in the Official Monitor No. 47-48, art. 210

- *equal rights of spouses in the family.*

The Family Code, unlike other special legislative acts, does not ensure the principle of equality of rights of persons in marriage relationships. The principle of equality has a limitative interpretation, thus the Code sanctions only the spouses' equality of rights. At the same time, Article 2 legislates that marriage can only be valid between a man and a woman, thus excluding same sex or transgender persons. Article 15 (h) legislates that marriage between same sex persons is not admissible. However, the Family Code virtually contains no guarantees regarding equality, non-discrimination and tolerance. In this respect, only articles 5 and 16 sanction the equality of spouses in marriage relationships. Article 5 stipulates: *"All married persons have equal rights and obligations in family relationships, irrespective of de sex, race, nationality, ethnic origin, language, religion, opinion, political affiliation, wealth and social origin."*

In addition, Article 62 decides that parents are obliged to exercise their rights by methods that shall rule out discrimination. Nevertheless, although the Code does not include special guaranties concerning equality and non-discrimination, their application is possible on the basis of Article 1, which stipulates that should there be divergences between the Code and the conventions and treaties that govern family relationships the Republic of Moldova is a signatory to, international regulations shall take precedence.

4. The right to reproductive health, family planning, maternal health services, information and education

International standards

- Universal Declaration of Human Rights, adopted in 1948, articles 2 and 25;
- International Covenant on Economic, Social and Cultural Rights interpreted in the General Comment no. 14 of the
- UN Committee for Economic, Social and Cultural Rights;
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), article 2, article 12 para. (1) and article 16 para. (1), general recommendations no. 21 (1994) and no. 24 (1999);
- Convention on the Rights of the Child, adopted in 1989, articles, 2, 12 and 24;
- Declaration and Programme of Action of the United Nations International Conference for Population and Development (Cairo, 13 September, 1994), final documents of the review conferences and the Resolution adopted as part of United Nations General Assembly special session (ICPD+5) in June 1999, as well as the United Nations General Assembly Resolution 65/234 on the measures adopted as a follow-up to the International Conference for Population and Development after 2014 (December 2010);
- Beijing Declaration and the Platform for Action adopted at the Fourth World Conference on Women on 15 September 1995, as well as the resolutions of the Parliament of 18 May 2000, on the measures adopted as a follow-up to the Beijing Platform for Action, on 10 March 2005, on the measures adopted as a follow-up to the Fourth World Conference on Women – Platform for Action (Beijing + 10) and the one on 25 February 2010 on Beijing +15 – UN Platform for Action for gender equality;
- Parliamentary declarations of implementation commitments of the ICPD Programme of Action in Ottawa (2002), Strasbourg (2004), Bangkok (2006), Addis Ababa (2009) and Istanbul (2012);
- Report of the United Nations Special Rapporteur on the right to education (A/65/162 (2010));
- World Health Organization Global Strategy for Women's and Children's Health, launched in 2010;
- Item 16 of the Interim Report of the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/66/254 (2011));

- Report of the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/HRC/17/25 (2011));
- 17 November 2011 Report of the United Nations High Commissioner for Human Rights on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity (A/HR/C/19/41);
- Resolution of the United Nations Human Rights Council no. 21/6 of 21 September 2012 on preventable maternal mortality and morbidity and human rights;
- UNFPA State of the World Population 2012 Report „By Choice, Not By Chance”, of 14 November 2012;
- Council of Europe Parliamentary Assembly Resolution 1399 of 2004 on the European strategy for the promotion of sexual and reproductive health and rights;
- Council of Europe Parliamentary Assembly Resolution 1607 of 2008 on the access to safe and legal abortion in Europe;
- Articles 2, 5 and 152 of the Treaty CoE;
- Report of the United Nations High Commissioner for Human Rights on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity (A/HR/C/19/41).

National Standards

Law No. 138 of 15.06.2012 on reproductive health⁸

The law sets the legal framework in the field of reproductive health care with a view to ensuring the human rights to healthcare and medical assistance. The law defines the following main notions:

- Reproductive health – a state of complete physical, mental and social well-being in all matters relating to the reproductive system at all stages of life. As a result, reproductive health implies that people are able to have a satisfying and safe sex life, the capability to reproduce, and the freedom to decide if, when, and how often to do so; reproductive health includes women’s and men’s right to be informed of and to have access to safe, effective, affordable and acceptable methods of family planning, which they should be able to choose by themselves, as well as the right to access adequate health services that allow women to go safely through pregnancy and childbirth;
- Sexual and reproductive rights – rights grounded on the observance of all heterosexual couples’ and individuals’ right to decide freely and responsibly on the number of children they would like to have, on the spacing between births and on the moment they want to have children, as well as the right to contraceptive method use, access to quality reproductive health services, education and information in this domain;
- Sexual health – a state of physical, mental and social well-being in relation to sexuality, not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence;
- Reproductive healthcare – methods, technologies and services that contribute to establishing, maintaining and improving reproductive health by preventing and removing reproductive function disorders at all stages of life;
- Family planning – actions that determine the conscious choice of the number of children, spacing between pregnancies and the timing of childbirth in the family;
- Contraception - methods and means to prevent unwanted pregnancies.

Article 3 of the Law lists the reproductive health services organized and coordinated by the Ministry of Health, among which: family planning and contraception; safe motherhood;

⁸ Law No. 138 of 15.06.2012 on reproductive health <http://www.avort.md/wp-content/uploads/2014/07/Legea-SR-2012.pdf>

diagnosis, prevention and treatment of sexually transmitted infections and HIV/AIDS; safe abortion; adolescent sexual and reproductive health; sexual health in the elderly; early diagnosis and treatment of cervical and breast cancer; prevention and treatment of infertility; men's sexual-reproductive health. Articles 4, 5 and 6 of the Law list the reproductive health rights guaranteed by the national legislation, including the Principles for achieving the rights to reproduction. Article 12 establishes that (1) State policy in the field of reproductive healthcare is geared towards: a) shaping an aware and responsible attitude of the population as to sexual and reproductive health; b) preventing unwanted pregnancies and reducing the number of abortions; c) prophylaxis of sexually transmitted infections and HIV/AIDS; d) correct and extended use of contraceptive methods and protection of the reproductive function; e) ensuring the birth of healthy and wanted babies; f) supporting families who bear children and couples who plan their pregnancies; g) development of quality reproductive healthcare services; h) effectively engaging governmental, non-governmental and private organizations, as well as the media in defending and fulfilling reproductive rights; i) promoting knowledge in the field sexual and reproductive education with the population; j) supporting scientific research in reproductive health; k) graduate and post-graduate training of specialists in reproductive health and reproductive rights in keeping with international standards.

The Law does not refer to any rights or special guarantees in connection with the protection of sexual and reproductive rights of persons with disabilities.

Law No. 185 of 24.05.2001 on reproductive health and family planning⁹

The Law regulates and guarantees people's reproductive rights, which are an integral part of human rights. The stipulations of the present law result from the constitutional rights to the observance and protection of intimate, family and private life and also ensures the noninvolvement of the state in issues related to family planning.

The Law defines the following key notions, such as:

- reproductive health - physical and psychological health, as well as social prosperity of a person in all aspects related to the reproductive system, which determines one's procreation capacity;
- voluntary informed consent - voluntary consent of a person upon undergoing a surgical contraceptive method or sexual gland sampling, expressed in writing, on the basis of multilateral and complete information offered by the treating physician or the physician who performed the examination, signed by both the patient and the physician;

The law guarantees special rights, such as:

- The right to free decision-making regarding reproduction (Article 5) – All people have the right to decide freely on the number of children and the time of childbirth inside or outside of marriage. The State guarantees its noninvolvement in citizens' free decision-making in matters of reproduction.
- The right to information on one's reproductive health and family planning (Article 6) - All people have the right to complete and accurate information on one's reproductive health and family planning, offered by governmental and nongovernmental facilities that are licensed for this type of activity, within the boundaries of their competence.
- The right to benefit from reproductive health and family planning services (Article 7) - All people have the right to benefit from reproductive health and family planning services. Reproductive health and family planning services are provided by governmental and nongovernmental healthcare, education and social assistance facilities, in keeping with legislation in force.

⁹ Law No. 185 of 24.05.2001 on reproductive health and family planning
<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=312794>

- The right of minors to reproductive health and sexuality education (Article 8) - Minors have the right to reproductive health and sexuality education. The sexuality education of minors and their training for family life is conducted by persons with special studies, jointly with the family and education institutions, according to specially designed curricula, taking into account the age, sex, psychological characteristics of minors and parents' wishes. The design of sexuality education, reproductive health and training of minors for family life curricula is secured by the Ministry of Education in collaboration with the Ministry of Health.

The Law does not make any reference to any special rights or guarantees in connection with protecting sexual and reproductive rights of persons with disabilities.

5. The right to physical and psychological integrity

International standards

- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 1;
- European Convention of Human Rights, articles 2, 3, 5.

National standards

Law No. 263 of 27.10.2005 on patients' rights and freedoms¹⁰

Article 5 of the Law expressly stipulates the right to personal life safety, physical, psychological and moral integrity, while ensuring discretion during health service provision. *Article 2* establishes that human life and health are of supreme value.

Law No. 1402 of 16.12.1997 on mental health¹¹

No article in the Law refers to preventing or combating torture in psychiatric institutions. Article 5 establishes general guarantees regarding the rights of persons suffering from mental disorders, as follows: *It is not allowed to limit the rights and freedoms of persons suffering from mental disorders only on the basis of the psychiatric diagnosis, cases of supervision through dispensarization, of the fact that they are or were in a psychiatric station or a psycho-neurological institution (psycho-neurological internat, specialized school, residential institution or a temporary placement institution etc.). Decision makers found guilty of such violations bear the responsibility in keeping with the legislation.*

Article 37 regulates the possibility of lodging complaints regarding ensuring the observance of human rights and human dignity as part of medical assistance service provision that are examined by the Ombudsman's Office.

Law No. 264 of 27.10.2005 on performing the medical profession¹²

Article 3 sets the general principles of performing the medical profession, such as: observance of patients' rights and best interest, observance of the primacy of life and the inherent right to life. *Article 7* institutes physicians' obligation to observe patients' lawful rights and interests, to keep the secrecy of personal information learned while exercising their profession, to request patients' consent for any medical service provision in keeping with legislation.

Penal Code of the Republic of Moldova¹³

Article 166/1 Penal Code, torture and inhumane or degrading treatment: *Deliberately causing pain or physical or psychical suffering, which represents inhumane or degrading treatment, by a public figure or a person who, de facto, exercises the powers of a public authority, or by any other person who acts in an official capacity or with such a person's express or tacit consent.*

¹⁰ Law No. 263 of 27.10.2005 on patients' rights and freedoms <http://lex.justice.md/viewdoc.php?id=313060>

¹¹ Law No. 1402 of 16.12.1997 on mental health
<http://lex.justice.md/viewdoc.php?action=view&view=doc&id=312970&lang=1>

¹² Law No. 264 of 27.10.2005 on performing the medical profession
<http://lex.justice.md/viewdoc.php?action=view&view=doc&id=313062&lang=1>

¹³ Penal Code of the Republic of Moldova <http://lex.justice.md/md/331268/>

The Penal Code also regulates other offences that are relevant in the context of the sexual and reproductive rights analysis, which can lead to acts of torture and inhumane or degrading treatment in relation with persons with disabilities. **They are:** article 159 – illegal self-induced abortion; article 160 - illegal surgical sterilization; article 166 - illegal deprivation of liberty; article 171 – rape; article 172 - sexually violent actions; article 173 – sexual harassment: article 174 - sexual intercourse with a person under 16; article 175 - perverse actions; article 309 - constraint to make statements; article 327 - abuse of power or official position; article 328 - excess of power or overstepping position-related duties; article 370 - abuse of power, excess of power or inaction in exercising power; article 169 - illegal hospitalization in a psychiatric institution.

6. Institutional framework

Ministry of Labor, Social Protection and Family

Ministry of Labor, Social Protection and Family is the central specialty body of the public administration authorized to develop, promote and implement governmental policies in the field of social protection of persons with disabilities, as well as ensure the coordination and assessment of the operation system of social inclusion of these persons.

The other central public administration authorities are responsible for social inclusion of persons with disabilities within their functional competencies, in keeping with legal provisions in force.

In developing the social protection policy for persons with disabilities, the Ministry of Labor, Social Protection and Family, along with the other central public administration authorities, consult with the National Council for the Rights of Persons with Disabilities and with civil society representatives. In developing and approving sectorial policies, the other authorities of the central public administration consult with the Ministry of Labor, Social Protection and Family, the National Council for the Rights of Persons with Disabilities and with civil society representatives with a view to assessing the impact of these policies on the social inclusion system for persons with disabilities.

In assessing the operation of the social inclusion system of persons with disabilities, the Ministry of Labor, Social Protection and Family requests support, information, reports from central and local public authorities, from the National Council for the Rights of Persons with Disabilities, civil society and other actors involved in the process.

The National Council for the Rights of Persons with Disabilities

Under Law no. 60 of 30.03.2012 on social inclusion of persons with disabilities, the National Council for the Rights of Persons with Disabilities monitors implementation and promotes national policies regarding social inclusion of persons with disabilities.

In keeping with the provisions of art. 54 of Law no. 60, the National Council for the Rights of Persons with Disabilities is a collegial and consultative body, instituted to monitor implementation and promote related state policies (normative acts, strategies, programs, action plans, etc.) and the UN Convention on the Rights of Persons with Disabilities, to ensure, for this category of population, equal opportunities of fulfilling the fundamental rights and freedoms upon equal footing with the other members of society.

The National Council for the Rights of Persons with Disabilities includes representatives of central and local public authorities, of nongovernmental organizations, as well as of civic organizations, the sphere of activities of which includes problems specific to persons with disabilities. The President of the National Council for the Rights of Persons with Disabilities is a

vice prime-minister responsible for the social field, and the vice president is the minister of labor, social protection and family. The Secretariat of the National Council for the Rights of Persons with Disabilities is appointed by the Government to fulfil the objectives specified at para. (2) in various sectors and at different administrative levels. The nominal membership and activity regulation of the National Council for the Rights of Persons with Disabilities is approved by the Government.

The Council on the Prevention and Elimination of Discrimination and Ensuring Equality

Article 11 of Law on ensuring equality and the Activity Regulation of the Council on the Prevention and Elimination of Discrimination and Ensuring Equality¹⁴ establish the organization and operation of the Council. The Council is a collegial body which is comprised of 5 members who do not have political affiliation, being appointed by the Parliament for a 5-year term. Three of the members must be civil society representatives and, at the same time, at least three of the Council members must be specialists licensed in law. The basic prerogatives of the Council are set in article 12 of the Law.

The manner of filing complaints and their examination by the Council is established in articles 13, 14 and 15 of the Law.

Local Public Administration

Local public administration authorities, in collaboration with civil society representatives, develop the social assistance policy for persons with disabilities and ensure the implementation of the legislation at local level. The social assistance of persons with disabilities is secured by local public administration authorities by means of their structures (departments/ offices of social assistance and family protection, education, culture, sports) and other state bodies, in keeping with provisions of the legislation in force.

Local public administration authorities:

- analyze and assess social issues of persons with disabilities on the allocated territory and, on the basis of the results obtained, approve and develop local social assistance programs for this category of persons, as well as exercise the control of implementing them;
- set up, independently or in partnership with civil society representatives, primary social services and specialized social services for persons with disabilities, securing the human, material and financial resources necessary for their adequate operation;
- can establish supplementary facilities for persons with disabilities regarding their access to medical, social, commercial, transportation, telecommunication services and other types of social services.

In developing and approving local social inclusion programs, local public administration authorities consult with the Ministry of Labor, Social Protection and Family, the National Council for the Rights of Persons with Disabilities and with civil society representatives with a view to assessing the impact of these programs on the social inclusion system of persons with disabilities.

Service for the defense of patients' rights in psychiatric stations

The regulation regarding the organization and operation of the Independent Service for the defense of patients' rights in psychiatric stations has been approved through Order 100 of February 12, 2014 of the Ministry of Health¹⁵. According to the Regulation, 2. the Independent

¹⁴ Law no. 298 of 21.12.2012 on the activity of the Council on the Prevention and Elimination of Discrimination and Ensuring Equality

¹⁵

<http://www.cnms.md/sites/default/files/Ordinul%20MS%20nr.1185%20din%2029.10.2014%20privind%20organizarea%20Osi%20fnctionarea%20Serviciului%20Independent%20de%20aparare%20a%20drepturilor%20pacientilor%20din%20statiunarele%20de%20psihiatrie.pdf>

Service for the defense of patients' rights in psychiatric stations (hereinafter - the Service) is located in the headquarters of the National Center for Health Management and enjoys legal freedom and autonomy. The Service carries out its activity in keeping with art. 37 of Law on mental health no. 1402 of 16.12.1997, item 32 of the Regulation on the organization and operation of the National Center for Health Management, approved through Order 100 of February 12, 2014, the present Regulation and international human rights standards.

The purpose of the Service is to ensure an independent mechanism of monitoring psychiatric institutions and examining patients' complaints aimed at identifying and removing deficiencies in observing patients' fundamental rights jointly with hospital administration.

Ombudsman's Office

Under Law no. 52¹⁶, the Ombudsman's Office ensures the observance of human rights and freedoms by public authorities, organizations and businesses, irrespective of the type of propriety and legal form of organization, by non-commercial organizations and decision makers at all levels. The Ombudsman's Office contributes to defending human rights and freedoms by preventing their violation, monitoring and reporting the manner of observing fundamental human rights and freedoms at national level, by improving legislation pertaining to human rights and freedoms, by international collaboration in this domain, promoting human rights and freedoms and their defense mechanisms, by applying procedures regulated by law.

7. Recommendations of international bodies relevant for sexual and reproductive rights

Recommendations of the UN Special Rapporteur on the protection of rights of persons with disabilities:¹⁷

- To ensure adequate monitoring of the situation of persons with disabilities, by consolidating the capacity to collect and analyze institutional data. The state should, for example, take into consideration the increasing expertise and capacity of the National Bureau of Statistics in the field of collecting segregated data. As part of its commitment to consolidate the supervision of the situation of persons with disabilities, the relevant information collected during the 2014 census should be processed and analyzed promptly;
- To ensure that all collected data referring to the situation of persons with disabilities are desegregated at a minimum level, according to sex, age and ethnic origin;
- To revise all normative standards and methodologies utilized at present to determine disability, with a view to abolishing the current system of disability classification;
- To undertake a comprehensive legislative review, so as to ensure full harmonization of the national legislative framework with the provisions of the Convention;
- To ensure the ratification of the Optional Protocol to the Convention on the Rights of Persons with Disabilities;
- To include the rights of persons with disabilities in all national strategies and plans;
- To ensure that the next national action plan in the field of human rights, to be adopted after the universal periodic review in 2016, takes into consideration persons with disabilities and is grounded on the recommendations made by the international human rights mechanisms;
- To ensure the efficient operation of a national mechanism of torture prevention, in keeping with article 18 in the Optional Protocol to the Convention against torture and other cruel, inhuman treatments, and grant priority to monitoring psychiatric hospitals and residential institutions;
- To guarantee that women with disabilities are able to enjoy their right to sexual and reproductive health, including by repealing the legislation that allows involuntary pregnancy termination.

¹⁶ <http://lex.justice.md/md/352794/>

¹⁷ A/HRC/31/62/Add.2

- To ensure that all cases of abuse, particularly in institutions that house persons with disabilities, are prosecuted and that victims are granted remedies effective.

CEDAW Recommendations:

- Expand the availability of modern medical abortion methods, including in the Transnistria region and rural areas¹⁸;
- To ensure the availability and accessibility of modern methods of contraception for girls and women;
- To raise awareness about the importance of using contraceptives for family planning and to include abortion and contraceptives in the basic health insurance package;
- To modify and develop the regulatory framework, so as to ensure that sterilization can only be performed according to international law, particularly with the free, informed consent of the women in question;
- To introduce health education, sexual and reproductive rights, including responsible sexual behavior, in the school curriculum.

Other recommendations:

- To offer adequate medical assistance in jails for women who have suffered abortions¹⁹;
- The state-party must conduct a careful assessment of the issue of abortion and maternal mortality and take necessary measures to reduce the high rate of maternal mortality²⁰;
- Consolidate the efforts of reproductive health education in order to reduce the number of adolescent pregnancies and develop child-friendly programs, so as to help adolescent mothers and their children²¹;
- Women and girls with disabilities should not be discriminated against for reasons of disability regarding access to diagnosis, treatment or rehabilitation²²;
- Equipment and installations, such as gynecological examining tables and mammography installation, fitted to meet the needs of women and girls with disabilities, should be available²³;
- Women and girls with disabilities must not be submitted to forced medical treatment or obliged to take part in experiments;
- The right of women and girls with disabilities to sexuality must be guaranteed;
- Parents should be informed and educated concerning questions regarding sexual identity of daughters with disabilities;
- Sexuality education classes should include aspects linked to the sexuality of women and girls, where appropriate;
- Decisions made by women and girls with disabilities on their own sexual or reproductive rights must be valued;
- As far as maternity is concerned, the choice of women with disabilities must be respected.

8. Summary of findings

Persons with disabilities are confronted with significant problems related to the observance and guaranteeing of sexual and reproductive rights at national level. This triggers consequences both

¹⁸ Concluding observations (2013) CEDAW/C/MDA/CO/4-5

¹⁹ "Concluding observations of the Human Rights Committee to Republic of Moldova - Ninety-seventh session 12-30 October 2009"

²⁰ "Concluding observations of the Human Rights Committee to Republic of Moldova - Ninety-seventh session 5 August 2002"

²¹ "Concluding observations: Republic of Moldova, Committee on the rights of the child, Fiftieth session 20 February 2009"

²² "Council of Europe, Recommendation CM/Rec(2012)6 of the Committee of Ministers to member States on the protection and promotion of the rights of women and girls with disabilities (Adopted by the Committee of Ministers on 13 June 2012 at the 1145th meeting of the Ministers' Deputies) "

²³ "Council of Europe, Recommendation CM/Rec(2012)6 of the Committee of Ministers to member States on the protection and promotion of the rights of women and girls with disabilities (Adopted by the Committee of Ministers on 13 June 2012 at the 1145th meeting of the Ministers' Deputies) "

by direct discrimination, and by the lack of capacity to adjust to the needs of persons with disabilities. The normative and policy framework is not sufficiently adjusted to guarantee and ensure the observance of sexual and reproductive rights of persons with disabilities. Accessibility is a major obstacle in connection with the observance of sexual and reproductive rights and participation of persons with disabilities in all domains of social life. The issues of access, worsened by prejudice and direct discrimination, limit access to quality medical services.

Despite progress in certain domains, sexual-reproductive rights, as rights specific of persons with disabilities, are not expressly regulated in national legislation considering that sexual and reproductive rights are part of the category of fundamental human rights. These fall within the general concept of human rights, acknowledged and already included in international, regional and national standards of some states.

The Republic of Moldova is yet to adhere to and ratify important international instruments in the field of observance of rights of persons with disabilities, including related tools.

The government should ensure a more efficient segregated data collection regarding the observance of the rights of persons with disabilities and make efforts to promote sexual and reproductive health education, particularly for persons with disabilities. The Government has not fulfilled most of the relevant international recommendations and appears to not take into account the relevant jurisprudence of the European Court of Human Rights regarding the observance of sexual and reproductive rights of persons with disabilities.