



TERMS OF REFERENCE

Job title: National Consultant in the psychiatric institution

Project: Joint UNCT for Human Rights Promotion and Protection in the Republic of Moldova

Contract type: Individual Contract

Duration of assignment: January 2013-July 2014 18 months (260 working days)

Duty station: Chisinau, Republic of Moldova

A. Background:

The human rights issues in the psychiatric institutions in the Republic of Moldova were repeatedly addressed to international bodies and human rights organizations. The extensive recommendations of CPT during the visit in 2007 are still entirely pending for realization in practice.¹ The European Court of Human Rights is monitoring Moldova for violations of rights of persons in psychiatry institutions, including for violation of right to freedom.² Separate aspects of treatment of persons in psychiatric institutions are constantly present in international human rights reports.^{3,4}

There are reports of human rights organizations on the treatment of persons in psychiatric institutions (MDAC5, IDOM).

Main issues (current situation): Cases of arbitrary involuntary confinement; lack of adequate/genuine review of detention criteria validity; cases of arbitrary legal capacity deprivation; cases of punitive work, medication, physical abuse against detainees and other persons in psychiatric institutions; increased number of beds and admissions with practically no complaints documented; lack of a complaint review system for psychiatry institutions, no legal or regulatory provisions of an independent complaint review mechanism; lack of data on the number of complaints at different levels; lack of implementation of the CPT recommendations on psychiatric institutions; Parliamentary

¹CPT/Inf (2008) 39 <http://www.cpt.coe.int/documents/mda/2008-39-inf-fra.htm>

²CASE OF DAVID v. MOLDOVA (Application no. 41578/05), 27 November 2007

³ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak; Mission to the Republic of Moldova; (A/HRC/10/44/Add.3)

⁴Committee on Economic, Social and Cultural Rights, Forty-sixth session, Geneva, 2-20 May; (E/C.12/MDA/CO/2)2011, para 24

⁵See summary report on visit of MDAC to Chisinau psychiatry hospital

Advocates office/Centre for Human Rights and NPM are primarily focused on penitentiaries and weak in monitoring psychiatry institutions; defective process of obtaining informed consent for treatment and hospitalization in psychiatric institutions; broad lack of understanding among medical and other staff of human rights requirements; ECtHR cases on Moldova on psychiatric issues; art 37 of the mental health act requires implementation by Ministry of Health of an independent patients' rights commission, which was not realized from 1997 until present.

Due to large number of residents in the Chisinau Psychiatry Hospital and the vulnerability of people with mental and intellectual disabilities to human rights violations, especially in a closed institution, there is a need for implementation of an independent complaint service – the ombudsperson in psychiatry institution. This will contribute to improvement of the quality of the mental health services provided.

Objective of the assignment and guiding principles:

Following the Paris principles, the main objective is to ensure an independent complaint review mechanism and identification of systemic human rights issues in the psychiatric institution. The guiding principles for this mechanism are:

1. Independence

The Ombudsperson is independent in structure, function, and appearance to the highest degree possible within the organization.

This practically means that The Ombudsperson Office and the Ombudsperson are independent from other organizational entities; The Ombudsperson holds no other position within the organization which might compromise independence; The Ombudsperson exercises sole discretion over whether or how to act regarding an individual's concern, a trend or concerns of multiple individuals over time. The Ombudsperson may also initiate action on a concern identified through the Ombudsperson's direct observation; The Ombudsperson has access to all information and all individuals in the organization, as permitted by law; The Ombudsperson has authority to select Ombudsperson Office staff and manage Ombudsperson Office budget and operations.

2. Neutrality and Impartiality

The Ombudsperson, as a designated neutral, remains unaligned and impartial. The Ombudsperson does not engage in any situation which could create a conflict of interest.

3. Confidentiality

The Ombudsperson holds all communications with those seeking assistance in strict confidence, and does not disclose confidential communications unless given permission to do so. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm.

B. Scope of work and expected outputs

The scope of work of the Ombudsperson will be (1) to work with individuals and groups in the organization to explore and assist them in determining options to help resolve conflicts, problematic issues or concerns, and (2) to bring systemic concerns to the attention of the organization for resolution.

An organizational ombudsperson operates in a manner to preserve the confidentiality of those seeking services, maintains a neutral/impartial position with respect to the concerns raised, works at an informal level of the organizational system, and is independent of formal organizational structures.

Successfully fulfilling that primary function in a manner consistent with the office's Standards of Practice requires a number of activities on the part of the ombudsperson while precluding others. The ombudsperson is also following the principle of subsidiarity and putting effort to ensure effective remedy in a timely manner at the lowest possible level, although having powers to bring issues to a higher level, bodies outside the institution and to court.

The core activity of the ombudsperson in the psychiatric institution will consist **in reviewing** of patients' complaints. This will require that the ombudsperson is physically located in the institution and access to his office is free; the working program is at least 4 hours in the office for a full working week; available and visible telephone numbers for after-hours emergencies.

The Ombudsperson has to ensure an effective complaint system that should be:

- respectful
- accessible
- responsive (and timely)
- accountable
- transparent
- non-discriminatory

This system needs to provide for genuine participation of consumers and careers (or institution staff) in the development, implementation and review of the system, incorporate sound governance and enable advocacy and recourse to independent complaints mechanisms.

C. Institutional arrangements:

The Ombudsperson office will be located in the Psychiatric Clinical Hospital, under the Ministry of Health but will be independent from the institution administration. He/she will also submit biannual reports, following consultations with UNDP, to the Ministry of Health, Center for Human Rights and the Parliamentary Commission on Health and Social Protection.

Systemic supervision with periodic working visits to other two large psychiatric clinics is required – in Balti and Orhei.

D. The main responsibilities

- Ensure (along with institution administration) that information about the ombuds service is visible and accessible in all wards and departments of the institution.
- Periodic check that all institution staff ensure full and unlimited access of users to filing complaints or addressing the ombudsperson.
- Check of complaint records resolved at the ward level, and/or overtaking appeals to these resolutions.
- Processing of users complaints. On an informal basis by such means as: listening, providing and receiving information, identifying and reframing issues, developing a range of responsible options, and – with permission and at Ombudsperson discretion – engaging in informal third-party intervention. When possible, the Ombudsperson helps people develop new ways to solve problems themselves.
- Pursues resolution of concerns and looks into procedural irregularities and/or broader systemic problems when appropriate.

- The Ombudsperson identifies trends, issues and concerns about policies and procedures, including potential future issues and concerns, without breaching confidentiality or anonymity, and provides recommendations for responsibly addressing them.
- Is entitled to bring significant cases to court or to other relevant institutions, if it is not resolved informally or the issue is systemic and ombuds' relevant recommendations are not considered and effectively implemented.
- Follow-up of complaint resolving.
- Follow up of systemic changes as corrective and preventive actions (CAPAs).
- Actively acts in wards, at admissions, especially at involuntary confinement, compulsory criteria for positively observe and ensure protection of the rights of residents and users of the psychiatry institutions, etc.
- Checks that ongoing clinical studies involving patients are approved by relevant ethics committees and follow legal and regulatory requirements in the field
- Periodic users satisfaction surveys.
- The Ombudsperson in the psychiatric institution has access to all departments of the institution, to procedures and records in these departments.
- The Ombudsperson observes and is entitled to independently identify human rights issues. These issues are included in the office's report but can be separately brought to the attention of the policy and lawmakers.

Since this is the first service of such a kind in a medical institution, accurate and transparent accountability may help to establish future effective patient rights services for other health fields and institutions. For this purpose there is a need of proper accountability and measurable indicators of activity and progress. These indicators need to be compliant to international standards in the field and should be reported to the advisory panel and/or founders biannually.

Reporting requirements

The ombudsperson generates reports at least biannually to the steering committee/ founders and the Parliamentary Commission on health and social protection. The biannual report should contain disaggregated data on the complaint mechanism, ombudsperson service progress indicators. A minimum of information should contain:

- Status of complaints:
 - Resolved
 - Referred to third party
 - Referred for litigation
 - Unresolved (lost for follow-up, unable to assist, pending, etc.)

Note: all complaints should be disaggregated by diagnosis, wards, sex, etc., to allow identification of trends and policy and procedural improvements.

- Number of trainings
- Status of access to ombudsman services
- Systemic issues/Trends
- Legal representation (qualitative and quantitative data)
- Involuntary confinements (qualitative and quantitative data)

E. Deliverables of the institutional ombudsperson office:

	Deliverable	Deadline
1	Complaints reviewed and resolved on monthly basis Report on activities submitted to UNDP, containing number, systemic and human rights issues identified for the month. Info on cases representation in courts if any.	Every last day of the month between 31 January 2013 and 30 June 2014
2	Biannual general report of the Ombudsperson in psychiatry, following consultations with UNDP, to the Ministry of Health, Center for Human Rights and the Parliamentary Commission on Health and Social Protection.	First report-up to 30 June; Second Report-up to 31 December 2013; Third Report-up to 30 June 2014.
3	Final progress report.	30 June 2014

F. Qualifications required:

The candidate will possess the following capacities, qualification, and background:

- University degree in law, social sciences or other relevant fields;
- Minimum 2 years of proven professional experience in the area of the rights of persons with disabilities;
- Proven commitment to universal human rights and rights of persons with disabilities (excellent knowledge of UN Convention of the Rights of Persons with Disabilities);
- Advanced knowledge of practical human rights issues in the (mental) health field;
- Previous experience of work with/in international organizations with human rights activities – a strong advantage;
- Ability to work independently; auto-evaluation and report writing;
- Ability of effective inter-personal relationships with both patients and authorities;
- Fluency in Romanian and Russian;
- Working knowledge of one or more additional languages relevant for Moldova, including Bulgarian, Gagauzian, Romani, Ukrainian or sign language is an asset;
- Knowledge of English would be an advantage;
- Adheres to the core values of the United Nations; in particular, is respectful of differences of culture, gender, religion, ethnicity, nationality, language, age, HIV status, disability, and sexual orientation, or other status.

Competences: independency, discretion.

The UNDP Moldova is committed to workforce diversity. Women, persons with disabilities, Roma and other ethnic or religious minorities, persons living with HIV, as well as refugees and other non-citizens legally entitled to work in the Republic of Moldova, are particularly encouraged to apply.