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**European Co-ordination Forum
for the Council of Europe Disability Action Plan 2006-2015
(CAHPAH)**

**Article 12
of the United Nations Convention on the Rights of Persons with
Disabilities:**

“Equal recognition before the law”

Position Paper

**Contribution to the
29th Council of Europe Conference of Ministers
of Justice**

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Article 12
of the United Nations Convention on the Rights of Persons with Disabilities:
“Equal recognition before the law”

**Position paper presented by the European Co-ordination Forum for the
Council of Europe Disability Action Plan 2006-2015
(CAHPAH)**

The Council of Europe Disability Action Plan is the main political instrument of the Council of Europe to promote the rights and full participation of persons with disabilities in society during the decade 2006 – 2015. Its basic idea is to translate the aims of the Council of Europe with regard to human rights, full citizenship and participation of people with disabilities into a European policy framework on disability.

The European Co-ordination Forum for the Council of Europe Disability Action Plan, CAHPAH, shall facilitate and promote the exchange of information on national disability policy and legislation, and experience on their implementation, and in particular, of examples of good practice.

The Conference of the Ministers of Justice gives CAHPAH the possibility to lay down some general principles and developments with regard to the question of equal recognition of persons with disabilities before the law and so to facilitate and promote an exchange of information.

In most cases in your very personal life, it will be self-evident, that you do make every day all the decisions you prefer, e.g. to sign contracts, to vote, to defend your rights in court or to choose medical treatments. For you, there is no discussion at all, there are no doubts or questions on that fact.

From that background and in terms of the work of the Council of Europe the question comes up: “Do persons with disabilities enjoy these fundamental rights to the same extent as non-disabled persons, and hence are they treated on an equal basis with others?”

The UN Handbook for Parliamentarians, Nr. 14, “From Exclusion to Equality, Realizing the rights of persons with disabilities” raises an interesting idea, where it states: “Imagine having your capacity to make decisions, sign contracts, vote, defend your rights in court or choose medical treatments taken away simply because you have a disability.”

For many persons with disabilities this was or still is a fact of life, and the consequences are severe. Therefore, Article 12 of the UN Convention has special relevance for persons with disabilities. The additional value of this provision is to be seen in the fact that as a consequence of having legal capacity, persons with disabilities are not denied the enjoyment of all the rights being stated in the UN Convention or the Council of Europe Disability Action Plan.

In other words: Equal recognition before the law is a precondition to all societal resources. Article 12 of the UN Convention states: “Persons with disabilities have the right to recognition everywhere as persons before the law... [and] shall enjoy legal capacity on an equal basis with others in all aspects of life.”

Bearing in mind this provision, Article 12 of the UN Convention vividly points out the shift in perspective on disability that has taken place over the past decades from an approach motivated by charity towards one based on rights. The human rights perspective on disability, to see persons with disabilities as subjects and holders of rights, sums it up.

This approach, the enjoyment of all the human rights and the location of problems also outside the disabled person, was recently emphasized at the Council of Europe Conference “Protecting and promoting the rights of persons with disabilities in Europe: towards full participation, inclusion and empowerment” in October 2008 in Strasbourg, organised under the aegis of the Swedish Chairmanship of the Committee of Ministers. This Conference dealt both with aspects of non-discrimination and equal and effective enjoyment of human rights of persons with disabilities and the place of diversity in society.

Article 12 of the UN Convention states that persons with disabilities have legal capacity on an equal basis with others and do not lose their capacity to act simply because of a disability. The Convention also recognizes that persons with disabilities might require and need assistance to exercise their capacity and that States Parties therefore have to take measures – to a different extent - to support those individuals, also by introducing safeguards against possible abuse of such support.

In that context, Article 12, paragraph 4 states: “Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.”

The fundamental shift in the development is that in place of guardians and tutors, who were/ are acting in a system of substituted decision-making, Article 12 of the UN Convention promotes a model of supported decision-making. The focus is on the idea that this concept is always in favour of the person with a disability, who will be affected by the decisions as the support person(s) best enables the individual to exercise his/her legal capacity to the greatest extent possible, according to their wishes and in the individual's best interests. Supported decision-making may take many forms. But at the core it realizes that persons with significant disabilities do have the same rights as all other persons.

As a consequence, Article 12 of the UN Convention may require a revision of laws, not only those that are addressed to persons with disabilities and may include substituted decision-making procedures, but also all those apparently neutral, dealing with heritage, voting, criminal law. In addition, a change of thinking is required, similar to the one that was triggered after the adoption of the United Nations Convention on the Elimination of All Forms of Discrimination against women (CEDAW). It was not uncommon until recently in most European countries that women were asked even by sellers or the organisations concerned whether their husbands were in agreement with a decision for which the women were solely responsible. Persons with disabilities are often totally disregarded while their assistants, parents, or friends have to respond.

It goes without saying that if one cannot put his/her opinion forward, then all other rights are also threatened. The principles of equality and non-discrimination, as first set out in Article 2 of the Universal Declaration of Human Rights, must be reaffirmed. The UN Convention and the Council of Europe Disability Action Plan are such instruments. Article 12 of the UN Convention is one of its core sections.

CAHPAH currently focuses on the implementation and follow-up of the Council of Europe Disability Action Plan 2006-2015. With the help of a questionnaire and member states' replies thereto, the Forum will, during 2009, obtain an overview on how the Council of Europe Disability Action Plan has so far been implemented in and by the member states. In this implementation strategy, the principle of equal recognition of persons with disabilities before the law is a vital element.

The aim of this statement is to explain the Council of Europe's work with regard to disability matters by paying special attention to the question of equal recognition of persons with disabilities before the law and thereby to point out the primary responsibility of national policies for its realization to improve the situation of persons with disabilities.