



Statement on Romania of the Centre for Legal Resources at the UPR pre-session

30 November 2012

The Centre for Legal Resources (CLR) is a non-governmental, non-profit organization functioning since 1998, part of the Soros Open Network. In the field of human rights it implements a programme on the rights of persons with mental disabilities and one on anti-discrimination in general, and is the Romanian national focal point of the EU Agency for Fundamental Rights. CLR has sent a submission on the implementation of the main anti-discrimination law and on high-level discriminatory speech.

Regarding the second cycle of the UPR, the Romanian state, through the Ministry of Foreign Affairs, did send to us the draft country report, but the short time of only a few days allowed for feed-back did not make our contribution possible.

Our statement today shall mainly address the following:

- the anti-discrimination legal and policy framework
- the right to housing and the Roma minority
- the implementation of the Optional Protocol to the Convention Against Torture (OPCAT)
- the rights of persons with mental disabilities

These issues are covered by various recommendations made to Romania such as:

- Continue its efforts in combating discrimination.
- Take further appropriate and effective measures to eliminate discrimination against Roma.
- Ensure in particular access by Roma to education, housing, healthcare.
- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading or Punishment in the near future and designating of an effective national preventive mechanism
- Develop further measures to combat discrimination against people living with disabilities, including by providing improved access to social and health services.
- Consider urgently improvements to conditions for psychiatric patients.

It is our view that these recommendations have been very poorly implemented, mainly as a consequence of lack of political will.

1. As mentioned in the submission, the main institution in the area of non-discrimination is the National Council for Combating Discrimination (NCCD), which largely refrains from awarding fines and prefers administrative warnings or even simple recommendations. This is especially true, when it comes to politicians, where the NCCD very rarely fines. In the case of Minister of Foreign Affairs Baconschi who in February 2010, referring to the Roma in France said in a conference that: "We have some physiological, natural problems of criminality amongst some Romanian communities, especially among the communities of Roma ethnic Romanian citizens"¹, the NCCD, although it found the statements to be discriminatory, it only issued a recommendation, and then issued a press statement on the case underlining that: "a recommendation is not an administrative sanction (warning or fine) but a guidance, an advice"². In the case of President Basescu who had made yet another discriminatory statement with regards to the Roma, this time in an official 2010 visit to Slovenia, when he claimed, among others that: "Many of them, traditionally, live off what they steal"³, the NCCD found it did not have territorial competence to consider the case.⁴

¹ Mediafax.ro, Baconschi: Cuvântul "fiziologică" sublinia că rata infracționalității e similară altor comunități [Baconschi: The word "physiological" was underlining the fact that the criminality rate is similar to other communities], 23.02.2010, available at: <http://www.mediafax.ro/social/baconschi-cuvantul-fiziologica-sublinia-ca-rata-infracionalitatii-e-similara-altor-comunitati-5600317> (Date of access: 09.07.2012)

² NCCD, Precizare privind solutionarea dosarului in cazul Baconschi (Note on the solution in the file Baconschi), 26.11.2011, available at: <http://www.ncnd.org.ro/noutati/Comunicate-de-presa/Precizare-privind-solutionarea-dosarului-in-cazul-Baconschi-95/> (accessed at: 25.11.2012)

³ Mediafax.ro, Basescu: Mulți dintre romii nomazi, "în mod tradițional trăiesc din ce fură" [Basescu: many of the nomadic Roma, "traditionally live off what they steal"], 03.11.2010, available at: <http://www.mediafax.ro/social/basescu-multi-dintre-romii-nomazi-in-mod-traditional-traiesc-din-ce-fura-7689349/> (Date of access: 09.07.2012)

⁴ NCCD Decision 175/04.05.2011.

These are very serious examples pointing to the most important institution in the area of combating discrimination renouncing its independence and its duties, in a country where the Roma are confronted with some of the highest levels of rejection, in all areas of life, and where courts do not yet have a relevant dissuasive role in the field of discrimination.

The NCCD also implements the *National strategy for the implementation of measures of preventing and combating discrimination (2007-2013)*.⁵ Yet, the strategy only imposes obligations on the part of the NCCD, and not on other central and local institutions with specific mandates in various areas of life, that is, it lacks mainstreaming. It lacks action plans (with indicators and dead-lines) and specific budgetary allocations. It is implemented on the basis of ad-hoc projects and initiatives, which are not policies, and therefore rarely have an impact relevant for the system. There is no specific report on the implementation of the Strategy.

The new Roma Strategy for 2012-2020⁶ is a document which was drafted ignoring substantial recommendations drawing from the experiences of the previous Strategy implementation made by a large number of NGOs⁷. It does not establish clear obligations and sanctions for non-implementation, and its implementation structure being too little mainstreamed, especially at local level, lacks the necessary powers, in a context where such a Strategy is to be implemented against the background of serious prejudice against the Roma. Furthermore, most of the action plans lack a clear budgetary allocation and only name sources in a general manner (eg: EU structural funds projects in general), again pointing to the lack of commitment towards its implementation.

Recommendations:

- **Change the appointment process of the members of the Steering Committee of the NCCD to remove political appointments and algorithms and make sure that the members are persons with proven relevant experience in and understanding of the field of anti-discrimination.**
- **The Romanian Government should adopt a comprehensive and appropriately budgeted non-discrimination strategy aimed at mainstreaming.**
- **The Romanian state amend the Roma Strategy, in consultation with all relevant stakeholders, to make it effective and commit a clear budget for each activity**

Question:

What does the Romanian state plan to do in order to prevent anti-discrimination into the educational system and to introduce the values of anti-discrimination (particularly as related to Roma ethnics, sexual orientation, disability and religion) into the curricula and teaching practices at all levels of the educational system?

2. In the area of housing, we maintain that the practice of some Romanian local authorities of relocating very vulnerable Roma communities, many times through forced evictions - communities which had been tolerated for years without property documentation by a state unconcerned with the fate of its most vulnerable citizens - their relocation to areas outside the localities, in dwellings unfit for human habitation, without public transport and basic facilities, at times to environmentally hazardous areas, right next to the town waste collection sites, or to sewerage plants, on in former chicken farms or factories with chemical substance recipients left behind, does not simply infringe on housing legislation, but amounts to abuse in service with discriminatory intent, a criminal offence which, although present in the Criminal Code⁸ does not seem to be acknowledged by the Romanian legal system, since such authorities enjoy legal and political impunity, while the most vulnerable Roma communities continue to find themselves in the same locations and growing in numbers years after.⁹

Recommendations:

- **Romanian authorities immediately stop all forced relocations of Roma, and adequately remedy the situation of communities currently living in extreme housing situations. Stop impunity for serious abuses in office with discriminatory intent, and refrain from using racism and discrimination to gain political clout.**

Question:

What is the calendar for covering the gaps in the legislation in order to remedy the housing situation of Roma vulnerable communities and prevent the occurrence of discrimination in housing?

⁵ Order of the President of the National Council for Combating Discrimination No. 286/2007.

⁶ Adopted through Government Decision 1.221/2011.

⁷ Letter to the General Secretariat of the Government. *Proposals for reviewing the draft Romanian government Strategy for the inclusion of Romanian citizens belonging to the Roma minority for the period 2011-2020*, available at:

http://www.romanicriss.org/PDF/Comentarii%20cu%20privire%20la%20Strategie_ONG_final.pdf (accessed at: 25.11.2012)

⁸ Art 247 of the Romanian Criminal Code

⁹ For a mapping of the situation see: Amnesty International, *Mind the legal gap: Roma and the right to housing in Romania*, June 2011, available at: <http://www.amnesty.org/en/library/asset/EUR39/004/2011/en/5f9becde-66e9-4262-bb3a-ff1c3681046d/eur390042011en.pdf> (Accessed at: 23.11.2012)

3. While we commend the ratification of the OPCAT¹⁰, the Romanian Government *has not made real efforts in order to properly follow the standards of the Optional Protocol and of the UN Convention on the Rights of Persons with Disabilities (CRPD)* in the implementation process.

According to the ratification law, the Romanian state was supposed to set up a National Preventive Mechanism (NPM), more than five months ago, but the deadline is being systematically disregarded. Moreover a formal national consultation plan with disability organizations does not exist in the adoption process for this law. It seems however that the Romanian government considers the national implementation and the establishment of the monitoring body of *the OPCAT* solved by merely proposing two largely similar draft laws initiated in March 2012 by the Ministry of Justice and the Ombudsman¹¹.

The proposed NPM cannot be considered an independent mechanism, as it will include in the "Experts Committee", which is meant to do the monitoring, one representative of the Ministry of Justice and one representative of the Ministry of Administration and Interior. Along the same lines, according to the draft law: "*The Selection Committee [of the experts] will be composed of the Ombudsman or Deputy Ombudsman appointed by him and one representative of the following institutions, at least at the level of director: Ministry of Justice, Ministry of Interior, Ministry of Health, Ministry of Labour, Family and Social Protection*"¹². Furthermore, Expert Committee members would have to have an authorization for access to classified information¹³.

Recommendation:

- Establish an independent mechanism as soon as possible, and provide for the effective involvement of persons with disabilities in the legislative and policy planning, as well as in the functioning of the mechanism itself.

Question:

- What are the exact dead-lines by when Romania intends to adopt the NPM and how does it intend to involve all relevant stakeholders?

4. The Romanian government has not made any effort in order to bring domestic legislation and practice in line with the UN CRPD.

According to the available data of the Ministry Labor, Family and Social Protection 17.217 persons with disabilities were living in social care institutions as of 30 June 2012¹⁴. There is no publicly available data regarding how many new admissions there are in each institution, and how many people leave these institutions each year.

Neglect and ill-treatment of persons with psycho-social disabilities in social care state-run residential establishments represent a real cause for concern. A range of CRPD breaches have been documented by the Center for Legal Resources. Several complaints received by the CLR related to a social care home in Bucharest exposed the systematic abuse of people with psycho-social disabilities, including instances where beneficiaries were routinely isolated, strapped do their beds, without adequate rehabilitation programs and medication for other health conditions than mental health problems, with only one staff member who has to feed dozens of beneficiaries with very little food. At the end of October, CLR addressed a complaint letter to the Minister of Labor, Family and Social Protection¹⁵, also asking for access to those beneficiaries but the access has not, to date, been granted.

Patients who are vulnerable frequently do not dare complain as they are afraid of retaliation by the institution staff. Oversight of such practices is inadequate: the practice of social inspections is formal, beneficiaries can be detained in locked social care centers without access to legal protection, civil society oversight is rudimentary and there are central and local authorities which refused the access of human rights organizations to these centres. No local Government results of state social inspections in such institutions are published and the central authority refers the complaint letters to the local authorities. Despite the fact that the Mental Health Act confines the involuntary admission only to psychiatric hospitals¹⁶, a high number of residents of social care centres are deprived of their liberty, without the formal judicial guarantees provided for persons committed to regular psychiatric hospitals.

¹⁰ Ratified by the Romanian Parliament through Law 109/14.04.2009

¹¹ Ombudsman, Draft law for the modification and completion of Law 35/1997 for the establishment within the Ombudsman of the National mechanism for the Prevention of Torture in detention Places, with the budget necessary, available at:

http://www.avp.ro/index.php?option=com_content&view=article&id=182&Itemid=124&lang=ro (accessed at: 25.11.2012)

¹² Art. 29, ind. 11, (2)

¹³ Art. 29, ind. 9 (2)

¹⁴ Ministry of Labor, Family and Social Protection Statistics available at: <http://www.anph.ro/tematica.php?id=13&idss=41> (accessed at: 25.11.2012)

¹⁵ Letter 471/29.10.2012

¹⁶ Law 487/2002, Art. 55.

A new provision¹⁷ of the Mental Health Act foresees the obligation that a judge confirms the involuntary admission decision, but without setting a minimum period of time in which the judges have to hear the person and decide on the matter. Furthermore, judges and lawyers must receive training on the human rights aspects of involuntary psychiatric treatment but, the issue has not yet been addressed.

Generally speaking, Romania's social welfare system, tributary to its past, does not ensure support for genuinely independent living of persons with psycho-social disabilities. It unequivocally directs towards residential institutions as its primary form of recommended support. The law on children's rights still allows for the institutionalization of children below two years of age if they have a disability¹⁸. There are no provisions for partial guardianship, or for support decision services, only for full guardianship while a person placed under guardianship loses all her/his rights and usually ends up in a social care institution. The lack of partial guardianship and the full deprivation of legal capacity as an only option based on disability is in contradiction with the CRPD.

Recommendation:

The Government should develop a strategy for setting up an independent monitoring and complaints mechanism at the disposal of institutionalized children and adults with psycho-social disabilities and make available the financial resources necessary to develop independent community living, and to implement all relevant provisions of the CRPD. Partial guardianship should be introduced in legislation as well as support decision services.

Question:

What is the calendar for the harmonization of Romanian legislation with the UN CRPD provisions?

Contact persons: Delia Nita (topics 1 and 2): delia@crj.ro, Georgiana Pascu (topics 3 and 4): gpascu@crj.ro .

¹⁷ Law 487/2002, Art. 61, (6) and (7), Art. 62.

¹⁸ Law 272/2004, Art. 60, (2).