Report concerning observance of rights and liberties of persons committed to healthcare and social establishments for people with mental disabilities

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Report concerning observance of rights and liberties of persons committed to healthcare and social establishments for people with mental disabilities

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REPORT
concerning observance of rights and liberties of persons committed to healthcare and social establishments for people with mental disabilities

The treatment applied to persons committed in these establishments was examined during the visits to 16 institutions. According to the methodology of the project, two visits were required at each of the 16 establishments. The second follow-up visit was mainly aimed at finding which was the progress recorded by each institution during the few months elapsed between the visits. The answers which some of the institutions developed for the monitoring reports were deemed useful to objectively examine the situation at the visited establishments. These have been deemed a conclusive indicator of how receptive the management of the institutions was to the theme of observing the rights and liberties of the persons committed. They highlighted the open attitude of the institutions' management towards the independent examination of the treatment applied to persons with mental disabilities.

The theme of the monitoring visits was mainly related to the following: openness of healthcare and social establishments towards independent examination of the rights and liberties of persons with mental disabilities; mechanisms and procedures to record and settle complaints and petitions submitted by the institutionalized persons; implementation of regulations concerning non-voluntary commitment and informed consent; implementation of regulations concerning measures to restrict the freedom of movement of committed persons; treatment and healthcare; observance of other rights of committed persons.

The monitoring visits took place during March – September in the following 16 healthcare and social institutions for persons with mental disabilities:

Psychiatric Hospital in Cavnic, county Maramureş
Psychiatric Hospital in Drăgoeşti, county Vâlcea
Psychiatric Hospital in Dumbrăveni, county Vrancea
Healthcare and social ward in Găneşti, county Galați

Psychiatric Hospital in Mocrea, county Arad
Psychiatric and neurology Hospital in Oradea, county Bihor
Psychiatric Hospital in Vedea, county Argeş
Psychiatric Hospital in Zam
Children neuropsychiatric ward of the Children's Hospital in Bârlad, county Vaslui
Psychiatric ward of the Emergency Hospital in Bârlad, county Vaslui
Psychiatric ward in Gura Văii of the County Hospital in Drobeta-Turnu Severin, county Mehedinți
Psychiatric ward of the Municipal Hospital in Sighetu Marmației, county Maramureş
Psychiatric ward of the Municipal Hospital in Târnăveni, county Mureş
Psychiatric ward of the City Hospital in Turceni, county Gorj
External ward of the Psychiatric Hospital in Brăila, county Brăila
Psychiatric Hospital "Voila" in Câmpina, county Prahova

What follows will be an overview of the main findings and conclusions of the monitoring visits (as well as the most relevant points of view of the management of the establishments we visited).

A. Openness of healthcare and social institutions towards the non-governmental organizations active in the area of protecting the rights of persons with disabilities

In comparison with the previous years, the monitoring actions within this project highlighted a ***higher degree of openness and receptivity on behalf of the Public Health Ministry, the Public Health Departments and the management teams of the healthcare and social establishments for persons with mental disabilities***. The open and cooperative attitude of some of the visited institutions was manifest in the attention of their management teams (and/ or of their superior authorities) towards the conclusions and recommendations included in the reports of the monitoring visits. In this respect, our acknowledgements go to Prahova Public Health Department, Voila Psychiatric Hospital, Vaslui Public Health Department, the Municipal Emergency Hospital "Elena Beldiman" of Bârlad, Gorj Public Health Department, the City Hospital in Turceni, the Psychiatric Hospital "Sfântul Pantelimon" in Brăila. However, **unjustified reluctance towards**

examination of the current situation in these institutions by independent bodies (non-governmental organizations active in the area of human rights protection) was obvious in many cases.

It is worth highlighting that, even if in a less complete and imperative form, the Law concerning the Mental Health and protection of persons with mental disorders, No. 487/2002, includes the non-governmental organizations among the institutions which, jointly with the specialized public authorities and institutions, are called upon to actively contribute to the protection of mental health and rights and liberties of persons with mental disabilities. Thus, Article 7 of the above-mentioned Act provides that, to implement the appropriate measures to *"limit spreading of conceptions, attitudes and behaviors detrimental to mental health"*, the Public Health Ministry *"shall cooperate"* inclusively with *"the nongovernmental organizations, professional associations and other interested bodies"*. The above-mentioned provisions of the Law are in fact in agreement with the Principles related to the Statute of National Institutions to promote and protect the human rights (the "Paris Principles"), adopted by Resolution No. 48/134 of the UN General Assembly on December 20, 1993[1].

During the monitoring visits, the management team of the Psychiatric Hospital Voila showed ***transparency and openness in cooperating with the monitors of the Center for Legal Resources*** (CLR), being interested and receptive towards the recommendations the CLR made. It made available to the monitors most of the documents they had requested and allowed them to move to any of the Hospital rooms and to conduct confidential interviews with the patients. The management of the Hospital responded promptly and sent in writing the solutions it had implemented following the recommendations of the first monitoring visit and during the follow-up visit, the CLR monitors found that the solutions mentioned in the reply were in agreement with the actual situation of the institution. Also receptive and open was the management team of the Psychiatric Hospital in Vedea. There was free access to the premises of the establishment

[1] Given their special relevance in the area of examination by independent bodies of the treatment applied to persons deprived of liberty, the "Paris Principles" have been the basis for the adoption and implementation of the Optional Protocol to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

in the Psychiatric Hospital of Dumbrăveni, it was not difficult for the monitors to get in contact with the staff. The management of the Hospital proved receptive to the recommendations made during the monitoring visit. An example of the measures taken by the management of the institutions is the training of its staff on the specific legislation – the Law concerning the patient's rights, the Law concerning the Mental Health etc.

A **less cooperative and open attitude** in contrast to the above was recorded in the case of such institutions as the Psychiatric Hospital in Drăgoeşti about which the monitoring team wrote in the follow-up visit report on August 27, 2009: *"The management of the Drăgoeşti Hospital has not implemented/ solved any of the recommendations included in the report concerning the first monitoring visit on April 24, 2009. The manager of the Hospital was not aware of the content of the monitoring report (even if there was a copy in the institution). The monitors could not talk with the medical director during the follow-up visit either, since he was absent from the establishment*". The monitoring team also mentioned that: *"The hospital manager made available to the CLR monitors part of the documents they had requested and allowed them to inspect all the areas of the institution and to conduct confidential interviews with the patients."* However, following the regional meeting organized with the representatives of the monitored hospitals, of the County Public Health Departments and the civil society in Râmnicu Vâlcea (on September 11, 2009, for the institutions monitored in counties Vâlcea, Prahova and Argeş), the hospital manager submitted to CLR attention a list of the main steps taken as a consequence of the monitoring visits and reports sent by CLR, excerpts thereof as follows: *"in the third ward, we have refurbished hallways and toilets; for the fall/winter, we have developed a schedule for heat supply in the wards to be monitored by the head nurses*; *we have developed an internal procedure to deal with complaints submitted by the patients, for which we have established a ledger to record and solve their complaints; we have set special boxes for complaints in each ward; we have taken the necessary measures to put doors on the toilets in the third ward; we have established the ledger to record non-voluntary commitments; the steering committee took the decision to notify the Prosecutor's Office within 24 hours of the non-voluntary commitment date, as well as to observe the legal procedures concerning non-voluntary commitment;*

we have also set a ledger to record all restraint measures taken; we have devised functional devices for physical restraint."

During the first monitoring visit at the external Ward of the Psychiatric Hospital in Brăila on March 31, 2009, the monitors' access had been delayed around 35 minutes with various bureaucratic pretexts, which made them feel that, as usual in these situations, such postponement of access might have occurred because of the last "finishing touches" to improve the status quo of the institutions or because the patients who might have complaints to submit should be prevented to meet with the representatives of the monitoring or control bodies. It is worth emphasizing though that during the second visit on September 4, 2009, access was much quicker and the monitors no longer felt that the staff had any intention to dwell too much on the access formalities. The staff was visibly more open and receptive towards the monitors. At the Social-Medical Facility in Găneşti, the staff has been quite vocal, and sometimes even aggressive during the monitoring visits. The residents were repeatedly assaulted verbally, being called *"animals"* by the institution's Director and the Chief Accountant. The union leader of the Hospital, orderly Laurențiu Bulgatu lacked respect and behaved almost aggressively towards the monitors. The monitors had the feeling that these attitudes had been connected as well with the very bad situation of the Hospital, the serious deficiencies related to the management of the institution, especially in connection with observance of the patients' rights and liberties as will be pointed out in the following sections of the report.

The monitors also had problems with access to the psychiatric wards of the Municipal Hospital in Sighetu Marmației. During the visit only the Human Resources Manager was there out of the five directors of the Hospital. Initially, the monitors had talked with the secretary of the manager who had allowed them access on the premises. But once they were in the first psychiatric ward, they encountered problems. Both the psychiatrist and the head nurse stated that only the manager could give permission for their visit. Consequently, the monitors had to phone the manager who told them that he was in Baia Mare on official business. They explained to him on the phone what was the procedure agreed with the representatives of the Health Ministry, but he wanted to talk with somebody from the Ministry. In the end, he got a call from a representative of the National Center for Mental Health, after which he

agreed to the visit. The entire procedure lasted for around one hour and twenty minutes.

The experience of the monitoring activities within the project reiterates once again **that the managerial authorities of the healthcare and social establishments for persons with mental disabilities must comply with the surreptitious feature of the monitoring or control visits**, a principle enshrined in the national legislation through the provisions of Emergency Ordinance No. 130/2006 concerning the Social Inspection. Examination in any other way of the treatment applied to people deprived of liberty in the custodial settings (and the above-mentioned institutions are such "*custodial settings*", within the meaning of Article 4 of the Optional Protocol to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment) is likely to distort the result of such monitoring or control visits. The requirement concerning the prior notification of such visits or delaying access of the monitoring and control institution' representatives to the premises, based on procedural or bureaucratic pretexts, can only suggest the intention to avoid that the current situation on these premises should be seen as it usually is. The experience of the monitoring activities organized within this project but of other similar activities confirmed without any doubt that the actual situation in the healthcare and social establishments was in an almost causal relation with the openness of the management of those institutions, their receptivity towards the issues on which the monitoring visits focused.

B. Mechanisms and procedures to record and settle complaints and petitions submitted by the institutionalized persons

The fact that the healthcare and social institutions disregard the patients' right to submit complaints continues to be almost the general rule. There are no clear procedures notified to the patients, which must be followed when they wish to submit complaints in connection with the treatment applied to them in these institutions. Frequently the management of the establishments "justify" the lack of such procedures – including the special ledger provided in the law – with the fact that usually, patients do not submit complaints.

On April 14, 2009, Romania ratified the **Optional Protocol to the UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (OPCAT)** through Law No. 109/2009. According to the provisions of Article 4 paragraph 2 of the Protocol, deprivation of liberty means *"any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority."* The quotation unequivocally proves that the **persons committed to healthcare and social institutions are persons deprived of liberty**. As these persons, who are deprived of liberty, make up a disadvantaged category on the one hand, and as they are handicapped persons (mental disabilities) on the other hand, the concern for the indiscriminate protection of their constitutional and legal rights and liberties should be appropriate to the situation in which they find themselves. **They must be ensured their constitutional and legal right to petition indiscriminately because of their special situation (and because of their needs, as a consequence of this situation)** – according to the provisions of Article 51 of the Constitution of Romania, Government Ordinance No. 27/2002 concerning the regulation of the petition-settlement activity, approved with amendments through Law No. 233/2002 and Article 25 of the General Rules for the application of the Law concerning the Mental Health of April 10, 2006 – they must be ensured **their right to submit complaints** whenever they claim that they have been subject to torture or to other cruel or degrading treatment or punishment (according to Article 13 of the UN Convention against Torture and Other Cruel or Degrading Treatment or Punishment). The patients must also be safeguarded their **right that their complaints should be examined and settled by the competent public authorities** (also according to Article 13 of the UN Convention against Torture).

With respect to the above-mentioned provisions of the Optional Protocol to the UN Convention against Torture, it is worth mentioning that **these provisions of international law – that acknowledge the status of disadvantaged category of the persons with mental disorders who are committed to such institutions as those that are the object of this Report (according to OPCAT, the disadvantaged situation is a result of the fact that these persons are deprived of liberty) – prevail over the national legislation (that has**

not yet specifically acknowledged such a status for these persons). By means of the specific mechanisms it sets up, OPCAT provides higher standards for the indiscriminate protection of these persons' rights and liberties, such as, first and foremost, their right not to be subject to torture or to other cruel or degrading treatment. OPCAT shall prevail over the domestic legislation according to the Constitution of Romania (Article 20 paragraph 2), according to which: *"Where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favorable provisions."*

Even though the Emergency Hospital in Bârlad has implemented a procedure concerning the registration and settlement of complaints submitted by the persons committed which seems, overall, appropriate, the same does not apply to its Psychiatric Ward. According to the staff, the patients verbally approach the doctors or the nurses and they do not submit written complaints. However, during the monitoring visit, there were patients who stated that they had submitted written complaints several months before (in which, for instance, they had complained about the lack of medication under prescription in the inventory of the hospital's pharmacy), but they had never had any replies. Their complaints could not be found registered in the Hospital's Complaint Ledger, nor in the General Registry. At the Psychiatric Ward in Gura Văii, belonging to the County Hospital of Drobeta-Turnu Severin, the conclusion arose from the discussions with the head nurse of the ward that, until then, the staff had never had any complaints. It so happened that they received written notes from the patients whereby they requested permission to go home, but they had not had any complaint. On the other hand, the Hospital did not implement any procedure in connection with the settlement of complaints. During the first monitoring visit, the Hospital did not hold any Ledger to record and settle complaints since the staff was not aware of the legal provisions. Following the monitoring visit, a Ledger to record and settle complaints was produced, but it was only a medical ledger under that name. No complaint has ever been entered, the Ledger does not have any columns and the Hospital does not have any procedure currently to record and settle complaints. During the monitoring visit at the Psychiatric Ward, several patients came up with requests for the

Hospital manager, some of them claimed that they had submitted written applications to the head nurse (the complaints were in connection with the food quality and their wish to leave the institution).

At the Psychiatric Hospital Voila, during the follow-up visit, the monitors found that not only was there a special Ledger, which recorded all complaints submitted by patients and their representatives (lodged with the Hospital Secretariat), but there was also a "*Special Ledger to record complaints"*, lodged with every ward. Each ward also has a special box set up for the submission of complaints by patients. All complaints are collected and recorded in the Ledger of each corresponding ward at the end of each week, and a copy of each complaint is lodged with the Secretariat, which issues its registration number. In the case of ward complaints, each ward must analyze and develop a draft settlement of the complaint within 15 days since the registration date, which shall be submitted to the Medical Board or the Steering Committee, as the case may be, owing to the contents of the complaint. In 30 days since the submission of their complaints, the patients must receive an official reply from the institution. If complaints are lodged directly with the Secretariat, they are then sent to the manager or the medical director, who shall distribute them to the head doctor of the ward, the ethical board or the hospital discipline board, as the case may be, owing to the contents of the complaint. The above-mentioned rules mean a procedure, which in principle, is likely to observe the right of the patients to submit complaints and receive a legal settlement of their complaints within a reasonable deadline. It is worth mentioning that, in connection with the two categories of ledgers, **the legal provisions in the field (Article 25 of the General Rules for the Application of the Law concerning the Mental Health) cover the establishment of a single ledger** – *"The Special Ledger to record all complaints submitted by patients or their representatives"*. Consequently, the practice of the Voila Hospital (but also from the other "mental healthcare establishments") must comply with the above-mentioned legal provision.

According to the manager's statements, in the Psychiatric Hospital in Drăgoeşti there are no complaints, consequently, there is not any procedure implemented for complaint-settlement, nor any Special Ledger to record and settle complaints. The manager's explanation cannot justify non-compliance with the law by the institution, as there is

no Special Ledger to record all complaints submitted by the patients or their representatives and the management of the Hospital ignores its legal obligation to "provide a written reply to all complaints submitted in connection with infringement of patients' rights" (Article 25 of the General Rules for the Application of Law No. 487/2002). According to Article 25 paragraph (1) of the General Rules, *"All mental healthcare establishments must set up a Special Ledger to record all complaints submitted by the patients or their representatives."* This is a mandatory and not an optional provision of the law, not a discretionary power of the management of the hospitals, if the patients submit complaints or do not do so, or in connection with any other situation; it is neither a pretext for the management of such establishments to fail to apply the law. Additionally, the argument that in a hospital, in almost four years since the adoption of the General Rules for the Application of Law No. 487/2002, there hasn't been any complaint, is likely to raise by itself some serious question marks. Since the law is imperative and precise in its provisions related to the establishment of the above-mentioned ledger, its provisions must be enforced as such, therefore the existence of a *"Complaint ledger"* or of any other document (or procedure), which does not comply specifically with the provisions of the law, can barely be deemed as an act of implementation of the law. The hospital management did not implement the recommendation made by the monitors during their visit on April 24, 2009 to develop a procedure concerning how to settle complaints submitted by patients. According to the statements made by the manager of the Psychiatric Hospital *Sfânta Maria* in Vedea, there are no complaints by the patients – and this explains why there is no complaint-settlement procedure in place and why there is not any Special Ledger to record and settle complaints. There isn't any such Ledger in the Hospital in Sighetu Marmației either (the fifth psychiatric ward for chronic disorders for males, for example).

C. Implementation of regulations concerning non-voluntary commitment and informed consent

The monitors continued to find deficiencies related to knowledge and implementation of specific legal provisions concerning the non-voluntary commitment of persons with mental disorders and their agreement (consent) related to confinement, diagnosis and

treatment procedures. The main cause of such deficiencies in connection with the implementation of legal provisions is connected to the lack of knowledge or the superficial knowledge about the Law concerning the Mental Health and its General Rules of Application. In numerous cases, the staff treats these mandatory legal provisions as if they were optional, or, in any case, as if they were connected to a very serious matter such as the treatment of people having, on the one hand, mental disorders, and, on the other hand, the status of persons deprived of their liberty.

The monitoring activities within the project highlighted that **the provisions of Article 27 of the General Rules of April 10, 2009 for the Application of the Law concerning the Mental Health had not been implemented even to that date, even though they had stipulated that no later than 30 days since the entry into force of the General Rules, the Minister of Health "shall appoint the establishments authorized to conduct non-voluntary commitments in a circular based on proposal by the Public Health Departments and the endorsement by the Psychiatric Specialized Committee**." A case that confirms without any shadow of doubt the failure to implement the above-mentioned legal provisions is the one of the Psychiatric Hospital in Dumbrăveni. Even though this establishment had requested clarifications concerning its status, until the follow-up visit (which took place on August 27, 2009), it had not received a written answer thereof yet – the Hospital director had been, however, informed over the phone that the "establishment is not authorized to conduct non-voluntary commitments." However, the establishment conducts non-voluntary commitments (in 2006 there have been six persons recorded as non-voluntarily committed, and in 2007 another one). Consequently, **it is high time that the implementation of the provisions of Article 27 of the General Rules of April 10, 2006 for the Application of the Law concerning the Mental Health should take place as soon as possible, namely the establishments authorized to conduct non-voluntary commitments should be appointed**.

The discussions with the management of the Psychiatric Ward of the City Hospital in Turceni, emphasized that **the latter was not aware of the non-voluntary commitment** since such procedures had never been enforced (the Hospital does not hold any Ledger to record non-voluntary commitments). The patients confined to the psychiatric ward

(most of them, around 85%, are brought in by relatives or tutors or are transferred from the Ward for acute disorders of the County Hospital in Târgu Jiu) have not signed the informed consent regarding commitment and treatment according to the provisions of the Law concerning the Mental Health and the General Rules for its Application, the Hospital manager stated that the procedure was based only on their verbal consent. It is worth mentioning that **many healthcare and social institutions for persons with disabilities are not even aware of the fact that the General Rules of April 10, 2006, for the Application of the Law concerning the Mental Health include an example of the "Informed Consent" form (in Appendix 1),** which the patients must sign. Appendix 1 of the Report reproduces this form. When the Hospital in Turceni was revisited, the head nurse said that the situation of some of the patients "had been solved", since their written consent concerning their commitment had been recorded. The Hospital Manager confirmed that most of the patients committed to the Psychiatric Ward wished to leave the establishment. Even if no non-voluntary commitment procedure had been implemented and there were a very small number of patients whose freedom of movement had been restrained, patients may check out only if a relative "comes to take them out". There are patients who were committed by relatives and who claim that they had or have ownership titles over valuable real estate (flats, for instance). During the monitoring visits, the team found out that the **patients did not have any information concerning their rights**, including the one to challenge their non-voluntary commitment in court. It was also found that there were people committed as a decision of the court was pending concerning their commitment according to the provisions of the Criminal Code. In the case of one person, there wasn't any court document whereby temporary confinement had been ordered, pending the final decision concerning commitment as a safety measure. The only document in this file had been signed by a prosecutor who had asked for the patient's keeping in the Hospital during the trial. During the visit, there was the case of a person brought in by the police to be committed to the Psychiatric Ward. This person was committed without any specialized examination, without any psychiatrist's opinion, the patient would be seen by a doctor only two days afterwards (the visit took place on Friday and Monday would be the first day when the psychiatrist would be in). The patient verbally agreed to the commitment. Classifying such cases as

“voluntary commitment” raises serious question marks if the police brings in the patients – and the Law concerning the Mental Health (Article 5 letter j) defines consent as “the agreement of the person with mental disorders, which is given free of any constraint”). During the follow-up visit, the team’s attention focused also on the case of the patient PCD: he had checked out this year from the Psychiatric Ward of the Hospital in Turceni (he had since then lived in his parents’ house, whom he has had a good relation with). The patient mentioned he had tried to get a job as well, but after his interview, the employer refused to give him the job since he did not need staff any longer. PCD said that while he was unloading some wood, he hurt his leg and that is why he went to the Psychiatric Hospital in Târgu Jiu. When asked why he went to the Psychiatric Ward and not to another one, PCD replied that this was the only place he knew how to go to but that he had thought that the doctors would send him “where he had to be” to treat his leg. He had been examined, got a dressing for the wound and antibiotics treatment. He was sent afterwards to the Psychiatric Ward of the Hospital in Turceni. When he got there, he was cooperative, conscious, coherent and not aggressive. Both monitors and head nurse saw that there was not any reason why he got checked in a psychiatric ward. However, he was committed, and stated that “if the doctor deems it necessary, then he must be right”, but claimed that if he could have chosen between being committed in Turceni and going home, he’d rather have gone home. PCD’s medical referral note stated that he had been committed since June 26, 2009, there was a mention concerning his previous psychiatric diagnosis, there wasn’t any mention about any problem with the leg and made a recommendation “for the Hospital in Turceni, to commit him there for a long-term period”. It is worthwhile noting that all commitments on the day of the visit took place without a psychiatrist, even if the patients brought in had refused commitment and the non-voluntary commitment procedures had not been implemented – thus, practically all legal provisions concerning non-voluntary commitment had been breached (Article 44-59 of the Law concerning the Mental Health). The provisions of Article 14 paragraph (2) of the Law concerning the Mental Health are also violated, as patients are referred to the Hospital in Turceni for long-term commitment based on previous commitment history and not based on a psychiatric evaluation, which should be part of the patient’s file, jointly with the referral document. The law is also violated (Article 43) because

the voluntary committed patients (according to the managers of the ward, there aren't any non-voluntarily committed patients in Turceni, at least in theory) are denied release on request since there is no relative to ask for the release. The provisions of the Law concerning the non-voluntary commitment are violated even if "there aren't any non-voluntarily committed patients", but there are patients who refuse being committed in the absence of any non-voluntary commitment procedure, as their commitment should be maintained against their will.

According to the staff of the Psychiatric Ward of the Emergency Hospital in Bârlad, the ward does not use the non-voluntary commitment procedure, therefore all committed patients are deemed to have given their consent to commitment. According to the head doctor, there were situations when the patients refused to sign the commitment consent form and they were let go. The staff does not implement the non-voluntary commitment procedure as it deems that the method currently used would be much more efficient, that is to persuade the patients to accept commitment. If the patient does not agree with the commitment on the day when he gets to the hospital, even if the psychiatrist deems it necessary (in this case, the non-voluntary commitment procedure should be conducted), the commitment takes place and the patient is asked the following day (when much more relaxed) if he wishes to stay in hospital and in this case, he will sign the informed consent. Even if some of the patients of the psychiatric ward claim they did not sign the consent, the non-voluntary commitment procedure is not implemented when commitment should be maintained against the patient's will. There are **no records concerning non-voluntary commitments** in the Ward, the Ward Head Doctor states that *"there isn't any notebook and there shall never be one as long as there are no conditions to do so"* – referring to the fact that there is no solitary confinement room in the ward. Even though the monitors explained to the staff that it was mandatory to observe the law in the case of a lack of consent regarding commitment, by implementing the non-voluntary commitment procedure if necessary, irrespective of whether there were or weren't any special solitary confinement rooms, **the staff obviously could not make the (basic) distinction between the non-voluntary commitment measure and procedures and the situation when the solitary confinement measure might be applied to agitated patients**.

Information provided to patients at the Hospital in Drăgoeşti is confined to the prerequisites to signing the "informed consent", and patients are not informed about their rights, according to the provisions of Article 38 of the Law No. 487/2002. The same applies for the Psychiatric Hospital in Vedea, except that in the latter, the rights of the patients had been posted on a note board in each ward. It should be highlighted that the mere posting of the patients' rights (which is a good practice, undoubtedly) does not amount to informing the patients about their legal rights, which, within the meaning of the above-mentioned text of the Law concerning the Mental Health, does not refer to a mere reminder of various paragraphs of the law, but also *"to an explanation of their rights and the means whereby they can exercise them*." At the Hospital in Drăgoeşti, **non-voluntary commitment does not observe the procedural stages set forth in Law No. 487/2002**, since the decision concerning such a commitment may be taken, in breach of Article 45 of the Law, by employees of the hospital who are not psychiatrists (there have been situations when, since the psychiatrist wasn't there, the manager of the establishment had to conduct the non-voluntary commitment, as a general practitioner and not as a psychiatrist and even if he does not practice medicine in that establishment, but only works there as a manager). According to the statements made by various employees of the Hospital, there are even situations when the police sign the informed consent instead of the patient. There has never been any notification of the Prosecutor's Office thereof, according to the provisions of Article 53, the Hospital manager stated that it was not under the responsibility of the institution he managed to do this notification, but the Police must notify the non-voluntary commitment to the Prosecutor's Office. The statements made by the Hospital manger show **an obvious lack of awareness concerning the legal provisions and the procedures stipulated therein**. The Hospital doesn't have a Ledger to record non-voluntary commitments either (during the follow-up visit, the manager said that it would be set up as soon as possible). In the course of the monitoring visit, a patient was brought in to the Hospital with handcuffs on. A policeman and the ambulance driver were accompanying the patient, who was obedient, was not agitated nor aggressive. The staff of the Hospital said that during their previous discussions with the police, they requested – quite justly, the monitors pointed out – that the patients should not be

brought in handcuffed on the premises of the Hospital, especially if they don't display an obvious aggressive behavior.

At the Hospital in Voila, there is **real concern to commit the patients only after they have been properly informed thereof and as much as possible to avoid committing them against there will**. All cases of non-voluntary commitment identified during the monitoring visits observed the legal procedural steps, and the social worker maintained contact with the Prosecutor's Office. Nevertheless, **cases were identified when the non-voluntary commitment was in violation of Articles 45 and 47 of the Law No. 487/2002**, **as the grounds for non-voluntary commitment were in breach of the provisions** in the above-mentioned articles. Thus, the main criterion to launch a non-voluntary commitment procedure is the refusal to sign the informed consent form. The review board, set up by virtue of Article 52, as well as the prosecutor, keep to the non-voluntary commitment decision in all identified cases, owing to the patient's refusal to sign the *"informed consent"* form. The cause of the breach of the legal provisions is the **confusion of the Hospital management with respect to the legal regulations governing this field**. Thus, the Hospital developed a *"Code of conduct concerning the non-voluntary commitment"*, which is deficient in terms of providing a definition for non-voluntary commitment – *"commitment of patient against his own will, following his refusal to sign the informed consent form"* (this definition was observed, for instance in the case of the non-voluntary commitment of the following patients: CS (51) and FL (39), *"the patient refused to sign the informed consent form."*). This definition (as the practice which it unlawfully generated) is obviously contrary to the provisions of Article 45 of the Law No. 487/2002 wherein the limited cases when a person may be subject to non-voluntary commitment are provided specifically: *"Any person may be checked into a hospital through the non-voluntary commitment procedure if and only if the competent psychiatrist decides that the person has a mental disorder and considers that: a) because of this mental disorder, there is the imminent risk of harm, be it self-inflicted or caused to others; b) in the case of a person with a severe mental disorder, whose capacity of judgment is impaired, failure to commit them could cause a severe deterioration of their status or could prevent for the appropriate treatment to be administered."* Following the monitoring visits, the Hospital management brought the necessary corrections to appropriately interpret and apply the Law. ***In the letters***

dated July 29, 2009 and August 18, 2009 from the Hospital in Voila, respectively the Prahova Public Health Department, following the monitoring visits, the CLR was informed efficiently about the fact that the necessary measures for the correct interpretation and application of the Law had been taken.

The non-voluntary commitment cases identified by the monitors at the Hospital in Vedea ***abide by the procedural steps set in the law*** (except for the provisions of Article 45 of Law No. 487/2002, which stipulate that the grounds for the non-voluntary commitment must be referred to). The Hospital does have a Ledger for the non-voluntarily committed patients. Nonetheless, **there are other serious problems in connection with the treatment applied to the Hospital patients**. During the visit, the monitors witnessed the *"non-voluntary commitment"* of a man (TN), aged 65. According to the staff statements, prior to getting to the ward where he would be committed, the patient had been taken to another ward where the psychiatrist, the doctor who did the commitment on the date of the monitoring visit, examined him and recommended that he should be committed. Also, the healthcare staff of the ward where the patient would be committed received over the phone the IV treatment recommendation (since the patient was decompensated). The patient was taken out of the ambulance with his hands handcuffed on the back. From the moment when the ambulance entered the hospital yard and the ambulance nurse and one police officer took the patient out of the car, he took the following route:

- on the first floor of the ward where he would be committed, two other patients took him over even if around were two nurses and one orderly; together with the policeman, they took his handcuffs off and restrained him to be able to withstand the treatment shot (which one of the nurses then gave him); the patient was neither agitated nor aggressive, but he was verbally abusive (using verbal stereotypes); he did not display a lot of resistance towards any of the procedures which were applied to him;
- the same two patients of the Hospital escorted him to the showers; he was undressed on the ward hallway, and all the patients who were there witnessed this scene, along with all the others whose curiosity had been aroused by his screaming; he was restrained under the shower as well, he protested as the water was too cold, but the Hospital staff did not seem to be too mindful about it; when the monitors saw that the water was really cold, they intervened and the

patient was taken out of the shower, without being given a proper one, but then he was wiped and dressed. All the above are very telling about a **certain lack of staff involvement in the procedures (including the administrative ones) provided with a view to committing patients to hospital, and also an obvious lack of concern towards the need (set in the law) that the persons with mental disorders should be *"treated humanely and with respect of human dignity*."**

As in other such institutions, in the Psychiatric Ward of the Hospital in Sighetu Marmației, the monitors noted a superficial awareness and observance of the legal regulations concerning the non-voluntary commitment and the patients' informed consent, which trigger deficient practice in the field as well. For example, in the second psychiatric ward for females with chronic disorders, the non-voluntary commitments take place when the Police bring in the patients, as for the rest, according to the statements by the ward representatives, *"the family brings them in, we trick them, we give them a shot, then they are persuaded to stay and cooperate."* When asked if they used the informed consent form, the doctor whom the inspector talked to stated that they didn't ask for the patients' written agreement. This practice, which is not unique for these establishments, is obviously in breach of the legal provisions in this field, mainly in breach of the provisions of Article 29 of the Law concerning the Mental Health and the protection of persons with mental disorders No. 487/2002. According to the quoted reference, *"To develop and implement the therapeutic program, the psychiatrist must seek the patient's consent and observe his right to be assisted in giving his consent."* The only exceptions when the psychiatrist may set treatment without having the patient's consent are when: the conduct of the patient is an imminent risk of self-inflicted harm or a cause of harm to the others; the patient lacks the mental capacity to understand his condition and the need for a medical treatment; the patient's freedom of movement has been restrained as a consequence of a previous judicial procedure and his guardianship has been established; the patient is underage, therefore the psychiatrist must seek and obtain the consent of the patient's personal or legal representative. In the first two mentioned cases, when the consent of the patient's personal or legal representative is not or cannot be obtained, the Law provides the right of the psychiatrist to *"act on his own responsibility, to determine the*

diagnosis and treatment he deems necessary", but also in these cases, on the other hand, he must do so *"only for the necessary period to attain the pursued goal*", and on the other hand, on condition that these cases should be *"notified and submitted to the scrutiny of the procedure review board, according to the provisions of Article 52"* of the Law. In conclusion, **in such situations, when the consent of the patient or of his personal or legal representative is not obtained (or withdrawn) the non-voluntary commitment procedures provided under Article 52 and following of the Law No. 487/2002 must be implemented** – such procedures also mean the following:
- a confirmation of the non-voluntary commitment decision in not more than 72 hours by the procedure review board (and the regular evaluation of the non-voluntarily committed patient in no later than 15 days);
- informing the patient and his personal or legal representative about the decision taken;
- a notification of the Prosecutor's office concerning the non-voluntary commitment decision in no later than 24 hours and its submission to the Prosecutor's Office for review;
- a potential challenge in court concerning the non-voluntary commitment decision submitted by the patient or his personal or legal representative.

Violation of these binding legal provisions – either because they are not known or because they are not observed – results, among others, in the illegal deprivation of liberty of such persons, a conduct which is punishable under the criminal law (Article 189 of the Criminal Code, illegal deprivation of liberty).

Unlike the above-mentioned practices, the non-voluntary commitment procedures implemented in the fifth psychiatric ward for chronic disorders – males of the Hospital in Sighetu Marmației largely observe the requirements provided by the law.

There were cases when (at the Hospital Voila, for example) **the monitors were left with the feeling that in some of the visited healthcare and social establishments, clinical trials and experimental treatments would be taking place in violation of the applicable legislative provisions** because of the contradictory, missing and unclear information provided to them by the management

teams. We quote from the imperative provisions of Article 37 of the Law concerning the Mental Health No. 487/2002 according to which clinical trials and experimental treatments *"shall be applied to a person with mental disorders only by virtue of the latter's informed consent and only on condition of the endorsement thereof of the ethical board of the psychiatric ward, which must be convinced that the patient had really submitted his informed consent and that the treatment addresses the interest of the patient."* The provisions of Article 26 of the General Rules for the Application of the above-mentioned Law have the same meaning: *"Patients committed without their consent cannot be used as scientific research subjects."* The mentions which the persons committed to psychiatric wards must specifically[2] put down, so that the scientific research activities could be lawfully authorized, as provided in the *"Informed Consent form"* which the patients must fill out, are extremely relevant (the contents of the *"Informed Consent form"* are set forth in the General Rules for the Application of the Law concerning the Mental Health, which we attach in Appendix No. 1 to this Report – in the quoted format, we have emphasized the two special mentions concerning the scientific research activities). The manager of the Hospital in Vedea emphasized that the establishment was not involved in conducting clinical trials concerning various pharmaceutical therapies, the last trial having ended in 2007. **The Center for Legal Resources herein requests the Public Health Ministry and the National Agency for Medication see to it that the scientific research activities should take place in strict compliance with the three conditions stipulated by law:**

- the patient's consent;

- endorsement by the ethical board (given only if the latter is convinced that the patient had really submitted his consent and if it addresses the patient's interest;

[2] Patients must submit their informed consent concerning the scientific research activities they might be subject to: "All biological samples (blood, tissue or organs) taken for diagnosis may also be examined for purposes of scientific research, training, may be confidentially photographed and published without any further specific authorization. I have been informed that I have the right to refuse my body being photographed, except for the medical documentation photographs, which I herein authorize, on condition that the essential facial elements should be concealed, to make my recognition impossible."

- the patients confined to hospitals without their consent (non-voluntary commitment) cannot be used as scientific research subjects.

In connection with the non-voluntary commitment procedures, the **CLR deems that the legislation currently in force must be amended, especially in order to strengthen the legal safeguards concerning the observance of human rights and liberties in the case of persons with mental disorders (likely to be committed against their will in specific establishments), especially of their right not to be illegally deprived of liberty**. Appendix No. 2 to the Report lists the main legislative proposals by CLR in this area.

D. Implementation of regulations concerning measures to restrict the freedom of movement of committed persons

The problems found during the monitoring visits in connection with the restraint and solitary confinement measures were basically rooted in the lack of awareness and ignorance of specific legal provisions. In connection with this issue as well, the managers of the healthcare and social establishments, and, in general, the staff of these institutions pay insufficient attention to the legal provisions which are extremely clear and imperative in connection with the restriction of the patients' freedom of movement. There are cases when, for instance, the legal provision (Article 22 paragraph 3 of the General Rules for the Application of the Law concerning the Mental Health), which provides that the patient shall be restrained for the shortest amount of time possible and that such a measure should be regularly reviewed, no later than every two hours, is interpreted as a matter of detail or as an optional legal provision (that is when it isn't purely and simplely unknown). And another imperative provision in connection with the keeping of a Ledger to record restraint and solitary confinement measures in each institution is merely seen as a purely formal and bureaucratic requirement – when it isn't completely ignored as well. Such mentalities and practices are not at all something minor, which could be easily justified. They have a most direct and severe impact on the right of the patients not to be subject to treatments forbidden through provisions of the internal legislation and of treaties to

which Romanian State is a party. The articles in the law which provide that the patients may be restrained only *"through specific means, that do not cause bodily harm"*, are not a matter of detail which may be ignored or a provision which may or may not be observed as a ward or another of a hospital may or may not have such specific protected means. Restraining patients by using other "means" (rope, wire etc.) does not mean violation of a certain paragraph in the law but cruel treatment (within the meaning of the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment, which Romania ratified through Law No. 19/1990), which is punishable by the criminal law (Article 267 of the Criminal Code – *"Subjecting to degrading treatment").*

Even if the specific regulations (Article 22 of the General Rules for the Application of the Law concerning the Mental Health) provide that restraint of patients can take place only in rooms especially equipped for this purpose and with the permanent surveillance of the latter, at the Psychiatric Ward of the Emergency Hospital in Bârlad, **the agitated patients are brought to the "psychotics' ward" and tied with sheets to their bed**. Their hands, their legs are usually tied and they are also tied over the chest. At the time of the monitoring visit, two persons were tied up to their beds in the "psychotics' ward" for males. According to the staff, restraint takes place only based on the endorsement of the psychiatrist and all such interventions must be put down in the patient's case file. The staff also mentioned that the restraint should not take more than 20 – 30 minutes, while the patient must be permanently supervised and hydrated. However, during the monitoring visit in the "psychotics' ward" for males, a patient was found who had been tied to the bed for more than two hours. In violation of the above-mentioned legal provisions is the fact that in the ward **there is no Ledger to record restraint and solitary confinement measures**. During the discussion, the head of the ward initially stated that this ledger *"was here, somewhere"* and then that the Ledger would be put in place. The monitors found out that the solitary confinement room was postponed out of reasons that would justify the absence of this area only to a small extent, as it is mandatory for each healthcare and social institution for persons with disabilities which apply the solitary confinement measure: *"The area where the solitary confinement room will be set is known, but no research was conducted to identify the amount necessary for the refurbishment, no steps were*

taken to identify the source of funds, no decision was taken concerning when the works would be completed." ***In its letter dated August 4, 2009 to the CLR, the Hospital management team provided insurance that the establishment will "refurbish a solitary confinement room according to standards" (as well as "use a Ledger to record restraint and non-voluntary commitment procedures"***). At the County Hospital in Drobeta-Turnu Severin, patients are restrained with bed sheets, on their own beds, and they are sedated and given IV tranquilizers. Sometimes, they are restrained in another ward. According to the Ledger to record restraint measures, as submitted to the monitors, **the restraint may take up to 2, 3 or even 7 hours and even more, even though the law provides that (Article 21 paragraph 6 of the General Rules for the Application of Law No. 487/2002) this cannot extend to more than 4 hours**. The Psychiatric Ward of the City Hospital in Turceni has several one-bed rooms that are used if there is a need of restraint patients. In a discussion with the Hospital manager, he highlighted that the agitated patients would be transferred to the acute disorders' ward of the County Hospital of Târgu Jiu, since in Turceni there was only a ward for chronic disorders and they did not treat such conditions. However, the ward nurses did not confirm this piece of information, as they stated that there was no point in transferring the patients to Târgu Jiu, since they were referred back to Turceni. **The rooms used as solitary confinement rooms are not equipped according to the provisions of Article 22 of the General Rules for the Application of the Law concerning the Mental Health** even if some of them have access to sink and toilet (the permanent supervision cannot take place and no measures have been taken to avoid risks of harm for the solitarily confined person). There are one or two solitary confinement rooms on each block of the ward. The ward staff stated that the solitary confinement measure is taken if the agitated or violent patients do not respond to medication (Diazepam shot). Thus, the agitated patient is placed in the solitary confinement room, where he stays for one or two days as he is agitated (the conclusion was that those on solitary confinement are checked upon every half an hour by a medical nurse or by an orderly, since, as the staff pointed out, *"we know that the walls are not upholstered and that they might hurt themselves."* The ward **doesn't have any Ledger to record restraint and solitary confinement measures**, any such information, according to the

statements by the staff must be recorded in the overview clinical casefile of the patient (however, the monitors could not find information concerning the restraint and solitary confinement cases in any clinical casefile). This is a situation in breach of several legal provisions under Article 22 of the General Rules for the Application of Law concerning the Mental Health. **The ward staff did not have information concerning the legislation in force** (during the follow-up visit, the head nurse requested the monitors to give her a copy of the legal regulations applicable in the field). According to the staff, should the patients be agitated or violent, they will be given medication, mostly Diazepam shots (**it is worth emphasizing that the Romanian legislation does not provide the "chemical restraint" of patients**). Even if the restraint measures taken are put down in the clinical casefiles, at the Psychiatric Hospital in Mocrea, **there is no Ledger to record restraint and solitary confinement measures** applied to patients, as provided under Article 21 paragraph 8 of the General Rules for the Application of Law No. 487/2002.

A distinct case from the perspective of the solitary confinement measure is the Psychiatric Hospital in Zam. The Hospital doesn't have a solitary confinement room. Even if it had such a room, the head nurse told the monitors that it didn't exist any longer as they had a case when a patient had died because he had put himself on fire in the solitary confinement room, and the staff could not do anything as the door had been blocked. **Such a justification for the inexistence of this special room provided by the law cannot be accepted**. Such an incident as the one described by the head nurse cannot justify under any form a decision by the Hospital administration contrary to the legal provisions. From the story told by the head nurse it seems to be likely that the incident might have been caused specifically by the fact that the room had not been equipped in accordance with the special legal provisions (the General Rules for the Application of the Law concerning the Mental Health, Article 22 paragraph 2) wherein it is set that the room *"must provide a possibility to continuously keep the patient under observation."* It seems quite likely that this legal provision has not been fulfilled and the patient might have set fire on himself especially because of the failure to continuously keep him under observation.

At the Voila Psychiatric Hospital, **physical restraint is a measure very seldom used, since it has been replaced by the chemical restraint measure**, stated the Hospital medical manager (*"chemical restraint"*, however, is not provided in the Romanian legislation). **There is no Ledger to record restraint and solitary confinement measures** applied to patients, as provided under Article 21 paragraph (8) of the General Rules for the Application of Law No. 487/2002 (the measures of restraint and solitary confinement are documented in a Joint Ledger called the Ledger recording the supervised patients – a ledger which is **an innovation in connection with the above-mentioned legal provisions**). **The practice to commit some of the patients to the so-called *"supervision rooms*" can also be considered an act of innovation, having no corresponding legal provision**; these are wards which are used, in fact (in the absence of any clear and precise procedure) for the application of the solitary confinement measure, as regulated under Article 22 of the General Rules for the Application of Law No. 487/2002. The Hospital medical manager stated that a person could stay in the Supervision Room in between a few hours and a few months (the case of a patient was given who checked in the Supervision Room on January 28, 2009 and was released thereof on March 27, 2009). **This practice is, however, contrary to all provisions included in the above-mentioned law**. There were no less than 6 such *"supervision rooms"* wherein 32 beds were located and 37 patients were accommodated (Ward 1 – 5 beds, 5 patients; W2 – 5 beds, 5 patients; W3 – 5 beds, 5 patients; W4 – 5 beds, 7 patients; W5 – 8 beds, 9 patients; W6 – 4 beds, 6 patients). The practice at the Voila Hospital is in breach of the legal provisions as, this measure is considered, among others, completely exceptional (which *"must be applied with extreme caution and only when all the other means have been exhausted*), and in the solitary confinement room (*"which must be specifically provided and equipped to this purpose"*) *"more persons cannot be isolated at the same time*", the solitary confinement measure *"must be applied for the shortest amount of time possible and must be regularly reviewed, no later than two hours"* etc etc. The ***"supervision room"*** **practice in breach of the legal provisions in force** was found at the Psychiatric Hospital in Vedea as well. Supervision of patients at the Hospital in is conducted by the specialized healthcare staff, through the intermediary of the eye slits, the cameras and, whenever necessary, by a nurse from inside the

ward. **There is also a patients' supervision system, in the wards, with cameras, violating the patients' privacy.** Moreover, the servicing of the video-surveillance and data storage system has been outsourced to a private company based on a service agreement, which does not specifically provide the data storage protection. Such a supervision system may be accepted only for the common areas of the Hospital (courtyards, hallways etc) and only if the data stored is protected – but not for the wards where the patients are committed, even if the patients or their relatives and tutors would be informed thereof, as mentioned in the letter dated July 29, 2009 of the Voila Hospital management to the CLR. **The Hospital must promptly give up the "limitation on the rights of the patients committed in the safety room", as this is described in the same letter dated July 29, 2009**: *"prohibition to detain (sharp, cutting etc.) objects which may cause harm; prohibition to have jewelry or any other such valuables; prohibition to own a mobile phone; prohibition to have food."* All these prohibitions are discriminatory and unlawful, as they aren't provided in the Law concerning the Mental Health No. 487/2002, or in the General Rules of April 10, 2006 for the Application of the above-mentioned Law. According to Article 53 of the Constitution of Romania (*"Restriction on the exercise of certain rights or freedoms"*), *"The exercise of certain rights or freedoms may only be restricted by law, and only if necessary, as the case may be, for: the defence of national security, of public order, health, or morals, of the citizens' rights and freedoms; conducting a criminal investigation; preventing the consequences of a natural calamity, disaster, or an extremely severe catastrophe."*

At the Psychiatric Hospital in Drăgoeşti, even if initially, the staff had stated that physical restraint measures were not taken therein, subsequently, it changed statements and specified that this measure was taken quite seldom, and it means that patients are tied up with their bed sheets (this is the method deemed safest for the patients). **The Hospital does not have any Ledger to record restraint and solitary confinement measures** (even if this is a mandatory document, according to Article 21 paragraph 8 of the General Rules for the Application of the Law concerning the Mental Health). According to the Psychiatric Hospital in Vedea, physical restraint is a measure, which doctors apply quite seldom. However, the monitors found that in one of the wards (ward II), most patients were visibly lethargic and somnolent, indicators of chemical restraint. That is why it must be

emphasized that, on the one hand, the Romanian legislation does not provide the possibility for the patients' "chemical restraint" and, on the other hand, **excessive use of "physical restraint" might have as consequences the deterioration of the patients' health condition, which should be avoided at all means. In any case, just as the "physical restraint", the "chemical restraint" cannot be used to substitute the lack of staff or the lack of treatment, or even as a punitive measure, such as it is specifically prohibited in the provisions of Article 21 paragraph 3 of the General Rules for the Application of Law No. 487/2002**. The monitors also found out that the **Ledger to record restraint and solitary confinement measures would not be filled out when the restraint measure is taken, but later on**. During the visit, the patients informed the monitors that one other patient was tied up to a bench in the Hospital courtyard. True, one young patient (MG) was lying down on one of the benches in the Hospital courtyard, with his right arm tied to the bench with a used leather strap (it wasn't a special restraint strap). The patient was in the Hospital courtyard, with other patients, and was not supervised by any member of the staff. The restraint had been endorsed by one of the doctors (and recorded in the Ledger for the restraint and solitary confinement measures) as one day ago the patient had been very violent, aggressive and even trying to inflict harm on himself. The doctor stated that the restraint measure of having him tied up to a bench was motivated by the wish to take him out in the courtyard and allow him to be in the open air, without becoming a threat to himself or to the other patients (*"the whole idea was to take him out too*"). Such an approach may be beneficial in principle, but, even in such cases, **one must observe the applicable legal provisions (among others, Article 21 paragraph 10 of the General Rules for the Application of the Law concerning the Mental Health: *"Throughout the restraint measure, the patient must be monitored to see whether his physical, comfort and safety needs are fulfilled. Such an evaluation of the patient's condition must take place at least every 30 minutes or every shorter amount of time if the doctor asks so."***). At the external ward of the Psychiatric Hospital in Brăila, the patient CD, an oligophrenic, was tied up with straps on the bed. According to the staff, she would get *"quite agitated at nighttime and she is likely to fall off her bed"*, which is why she is tied up to the bed each night. There were **no references to this case in the Restraint**

Ledger, contrary to the legal provisions. According to the patient, she did not know/ was not explained why she was subject to this treatment.

At the psychiatric ward for adult females of the Municipal Hospital in Sighetu Marmației, the restraint measure is based exclusively on what the doctor orders and according to the Special Ledger to record such measures, the maximum length of restraints was one hour, ***in agreement with the legal requirements. The Ledger also mentions the name of the patient, the reasons for the restraint, the name of the doctor ordering the restraint, the name of the nurses present, the date and time of the application, as well as the time when the restraint stopped***. However, in the chronic disorders ward for females, **the monitors found a situation which cannot be interpreted at all as a "good practice."** They found a *"patient who was in bed on her back, with her breast undressed and covered with a blanket only up to her waist. When we asked why nobody had helped her to button her shirt's buttons, the nurse tried to cover her with the blanket, leaving her feet in plain view. We then saw that she had been tied up to the bed. We uncovered her and saw that she had actually been tied up by her hands and by her feet on the metal frame of the bed. She was tied up with textile straps (probably from the bed sheets). When we asked an orderly why that patient was being subject to that kind of treatment, she said that as the woman was agitated, she had to be restrained to be given an IV tranquilizer. Still, when we found her, the patient was not under any IV treatment. She was awake and calm. Another patient from the neighboring bed stated that she had taken part in tying up the former patient to help the staff on duty. When asked why she continued to be restrained if the reasons for her restraining were no longer present (the patient was not agitated and did not have any perfusion at all), the nurse freed her. The patient didn't have any reaction: she was neither agitated, nor somnolent and could answer a set of simple questions. In the greater room near the entrance – a four-bed room – near the door bed was a young woman tied up to her bed, dressed only in a thin linen shirt and with no blanket. She was apparently apathetic, moaning and trying to move once in a while, and while we were there, she didn't have any violent reactions. The nurse said that she was very violent and that she had been physically restrained a short while before the monitors' visit. We wanted to see the Restraint Ledger but were told that, since it was 3 pm – it was 3:15 pm – both the*

doctor and the nurse from the registration office were out and that she didn't have access to the patients' casefiles nor to the ledger. The nurse on this ward was very annoyed with the fact that we wanted to see the casefiles, even if we told them that we were in our right to do so; she said that those were confidential, that even her, as a medical nurse was not aware of the patients' diagnosis." One of the very few hospitals which **currently uses specific appropriate means to restrain patients** is the Psychiatric Hospital in Dumbrăveni. On the date of the first monitoring visit, the Hospital staff was using lamp fuses. Following the recommendation made by the monitors, by the follow-up, they had purchased special leather straps for restraint procedures.

E. Treatment, care and medical procedures

Except for the social and healthcare establishment in Găneşti, all inspected facilities were hospital-type establishments: individual hospitals, wards or external wards of a hospital. Therefore, (voluntary or non-voluntary) commitment of patients to such establishments has a therapeutic aim. Especially in the case of psychiatric cases, such a situation presupposes the creation of an appropriate "therapeutic environment" in that particular establishment, which should support, through its various components, the effect of the administered treatments and the improvement of the patients' mental condition, or which should in the very least not deteriorate it further. In this respect, our findings detailed under Sections f and g of this report have significant consequences, most of them on the effectiveness of the therapy and, most of the times, have simply the reversed effect of an anti-therapy: overcrowding, lack of, or insufficient, qualification of the healthcare professionals of various categories, patients' neglect/inactivity, insufficient food and/or served in inappropriate conditions, the patients' right to privacy or to own personal valuables is not provided, their leisure is not observed, their right to communicate unhindered with the outer world is not provided, their human dignity is not observed and the list of such examples can continue. All of these are both human-rights issues of non-discrimination and respect for human dignity, and issues of direct medical duties of the hospital establishment, namely to ensure the putting in place and maintenance of a therapeutic setting or, even more importantly, of an environment that should not act as anti-therapy. In such psychiatric establishments the entire institutional

setting is important, not just the doctors' activity and the pharmaceuticals.
<u>For instance, in the Dutch psychiatric hospitals the hours when the patient is lying inactive in bed are considered wasted therapeutic time</u>. Thus, organization of occupational therapy activities is not just something optional or yet another way to earn income for the establishment, but it is also a mandatory therapeutic component, which supplements and facilitates other therapies (medication, psychotherapy etc). Intentional excessive sedation of patients to "calm them down" carries extremely severe consequences from the point of view of their therapeutic involvement in rehabilitation and reintegration activities.
Moving on now to the detailed analysis of the treatment, care and medical procedures, we will focus on the main following elements:

– how patients are selected to be committed in the visited establishments and how patients are selected (while in the establishments) to be confined to "supervised areas" vs. how patients are selected to be committed to less restrictive areas within the premises of the given establishment
– how the patients' condition is evaluated
– medication given to patients
– solitary confinement and physical restraint of agitated patients
– chemical sedation of patients
– other observations

For the elements above, relevant fragments from the monitors' visit reports will be shown at the end of this section.

Patients' selection

In principle, patients could be committed to the main psychiatric establishment competent for that geographical area until the acute decompensation is improved (through treatment) as they must have been brought to the psychiatric ward because of their acute decompensation (or relapse). It is against the law to accept patients who have not been seen by a psychiatric specialist (even if it is the Police that brought them in). Prior to sending patients for commitment to a psychiatric ward, *they must be thoroughly checked-up in that establishment (the main establishment), which will make the referral, wherein they would be prescribed the necessary medication for all their likely disorders (including non-psychiatric).* If the patient does not carry health insurance, he should get the necessary investigations as a

matter of emergency, since *the urgent nature of the psychiatric commitment (deprivation of liberty) extends to the additional investigations, which are necessary to establish the clinical condition and the subsequent therapeutic conduct.*

Patients whose social problems prevail over their medical ones should be referred from the beginning to the welfare institutions competent for the given geographical area. *Psychiatric establishments should try and filter the social cases they might have by integrating them in the healthcare and welfare network and/ or by providing insurance to those patients whose conditions make this possible (i.e. by issuing a handicap certificate under the law, based on the diagnostic, their family and social situation, etc)*, based on the support of the municipalities' welfare departments, and based on increased (effective) involvement of the legal advisors and social workers from the institutions.

The requests for commitment in a certain doctor's ward and/ or in the non-chronic disorders wards must be explicitly and transparently specified by the patients who so request and there must be no other side effects in connection with their clinical condition. This is in observance of the patients' rights, but must be done in a transparent manner and must be documented in the clinical overview of the patient, since there must be a *gradual equivalence between the material commitment conditions and the allocation of staff at the level of the "acute" and "chronic disorders" wards, as well as the "supervision wards*."

Evaluation of the patients' condition

The non-voluntarily committed patients' evaluation must strictly observe the provisions of the General Rules for the Application of the Law concerning the Mental Health. Also, the regular evaluation of the clinical conditions of all patients (during the doctor's "visit") must be conducted and recorded, together with the appropriate references thereof in the casefile under the column "evolution." This clinical follow-up must be focused, in all cases, on the patient's somatic condition (the diagnosis and treatment of simultaneous somatic conditions and/ or changes in the patient's chronic somatic pathology, including the dental problems).

Each establishment must set in place effective, functional and easy accessible relations for the examination, investigation and specialized

(long-term) treatment of chronic somatic conditions of all committed patients (including their dental problems which, currently, seem to lack a solution in the case of persons with mental disorders committed to establishments such as the ones discussed about in this report).
Any change in the clinical condition (including the somatic condition) and in the treatment must be recorded and provided grounds thereof in the medical casefile. All medical casefiles (including the treatment and the evolution sheets) must be permanently accessible physically (for the healthcare staff, the staff on duty, the emergency intervention team, other authorized staff).
Ideally, each establishment should have its own general practitioner and an ambulance.

Patients' pharmaceutical treatment

In this respect, the monitors found three main categories of problems: accessibility, components and administration.
Accessibility: many times, the establishments get a supply of psychiatric medication that is reasonably modern. The issue is to what extent this medication reaches the patients committed to the "supervision" or the "chronic disorders" wards on the basis of a judicious therapeutic plan that is customized and appropriate for the clinical condition and the evolution of the disorder.
Components: in some establishments they still use Phenobarbital for sedation purposes (which, while much cheaper, is no longer for psychiatric use, since it is used only to treat convulsions) or Diazepam (while this is much cheaper, there are other products – with Benzodiazepine or not – which are much more effective than Diazepam in the treatment of an agitated condition or insomnia). No establishment makes reference to the accessibility of medication for Parkinson (Romparkin or Biperiden): this means that either the extrapyramidal side effects are not visible or they pass unnoticed, or that the dosage of antipsychotic medication is too small or is not given at all. We think there are small chances that patients with chronic disorders be given only recent atypical antipsychotic medication, which does not have any extrapyramidal side effects, as long as Haloperidol continues to be used in most establishments (which is well-known to induce extrapyramidal side effects).

Administration: even if the mix of medication accessible in a given establishment seems to be (relatively) modern, the issue is whether the same is effectively administrated to patients as prescribed and who might benefit from the respective treatment.
The prescription protocols developed by the Public Health Ministry and the National Health Insurance Office are currently in force in Romania (they may be viewed on the official websites of the County Health Insurance Office). Such protocols provide the indications, the implementation and the effectiveness criteria for the treatment. Failure to observe these protocols should result, at least in theory, in the absence of any disbursement for the medication by the Insurance House. Until the appropriate mechanism to check prescriptions is implemented, the psychiatrists from the central establishment should check to what extent the subordinated establishments have observed the prescription protocols.
The prescription protocols must be observed with all the patients treated.
The medication cost should be a prescription criterion only within the limits of the prescription protocols above-mentioned.
The intravenous administration of a treatment should not be prohibited, since disposable syringes can be currently found anywhere in the country. **On the other hand, perfusion in a "supervision" room environment seems risky and even going against therapy.**

Solitary confinement and physical or chemical restraint of agitated patients

Solitary confinement **is a therapeutic measure starting from the assumption that the sensory overstimulation of a patient might induce a state of agitation. The solitary confinement room must comply with the provisions of the General Rules for the Application of the Law concerning the Mental Health. It is essential that it be a quiet room for only one patient. Obviously, only a doctor can prescribe solitary confinement**, which must be supervised accordingly and in a non-coercive manner. It is a less symptomatic treatment (more pathogenic) in comparison with restraint.
Physical restraint must observe the same rules (it must be recorded in the patient's medical casefile, as well as the supervision and the timeframe etc). Solitary confinement and physical restraint cannot be

part of a patient's therapy plan. They both have less restrictive options (moving to a more quieter ward, separation from another person whom the patient does not have good relations with, sleeping in a bed with lateral bars – for patients who sleep tied up to their beds since "they may fall off their beds over night," etc).
As these are measures, which result in a restraining of the individual freedom of movement, both must be prescribed and applied in accordance with the regulations in force.
The "supervision" rooms or wards must be gradually put out, since they are a measure of restraining individual freedom, which is not specifically provided in the current regulations and which cannot be considered an option for restraint/ solitary confinement. The "supervision" rooms are, quite likely, one of the consequences of the lack of healthcare staff.
Chemical restraint (unlike the solitary confinement and the physical restraint) may be part of a patient's therapy plan and is not in itself a negative therapy measure. A series of modern IV antipsychotic medication has as approved indication (according to the protocol) the agitation conditions. Thus, if prescribed appropriately, it is an etio-pathogenic treatment for agitation, within a therapy plan which provides the subsequent replacement of the chemical restraint (with shots) by acute oral treatment and, later on, with long-term maintenance treatment with the same antipsychotic or with a different one.
Deliberate ***sedation of patients at night*** so they may have a quiet sleep is another consequence of the lack of staff/ staff negligence, especially in the supervision wards (with high numbers of patients). In many cases, it is not medically justified and it is not even done, most of the times, with the appropriate medication (Diazepam or Phenobarbital are still used).
Deliberate ***daytime sedation of patients***. In their reports, the monitors quite frequently recorded that patients were lying sedated in their beds before noon, because they had been given their morning medication. Modern medication allows for antipsychotic treatment without significant side-effects such as sedation, and, if such effects still appear, they may be reduced to a minimum by adjusting the medication dosage. The fact that the monitors found that the patients were nevertheless over-sedated points to a certain intent behind this action.

Our opinion is to make reference (document) in the clinical casefile the manner in which the therapeutic measure of solitary confinement/ physical restraint/ chemical restraint of the patient will continue.
The solitary confinement, restraint, sedation must not be used for coercive purposes (as punishment).
All establishments which have "supervision" commitment areas, whatever name they may go by, must take the appropriate steps to shut them down by gradually shifting patients, in small numbers, to the other wards of the establishment, thereby making the open door commitment regime a rule, to refurbish the former supervision areas and to take all the other necessary measures adjusted to the local conditions. This process will not be a swift one and will require careful planning.

Other observations

More sustained effort must be put into releasing patients whose clinical condition allows it; patients must be released in the care of the general practitioner and the psychiatrist who treats outpatients and has jurisdiction in the geographical area of residence of the patient (medical letters). A person requesting/ accepting the release need not be present for such release.

Monitors' findings concerning the medical treatment of patients in the visited establishments

At the Hospital in Bârlad, whenever the case may be, patients are transported with the ward ambulance at the bigger hospital for medical investigations. [...] Most of the times, they are accompanied to the hospital medical rooms by a ward nurse, since the doctors refuse to see patients with mental disorders who are not accompanied.
Each patient has a medical casefile which contains a general clinical observation sheet and the informed consent form. The observation sheet describes the situations when the restraint measure was taken.
The patients' medication includes antidepressants, Solian, Haloperidol, Abilify, Zyprexa, Efectin, Haloperidol. [...] Each night, patients get sedatives.
[...] For around one month, they are faced with a lack of treatment kits (medicinal alcohol, cotton swabs, etc.). To solve this problem, they approached the hospital management, but [...] the suggestion was to

"suppress the injectable treatment," which the healthcare professionals said was impossible. In this situation, the ward staff contributed money from their own pockets to buy the necessary kits.

At the Hospital in Gura Văii, if the patients have other medical problems which require specialized doctors, they are transported to the County Hospital. For dental emergencies, they are transported to the dentist working still within the County Hospital. They don't have patients undergoing dental procedures scheduled at various time intervals. Women are given injectable contraception every three months. [...]

The medical rooms don't have medical equipment, they only have a small kit to measure blood pressure and temperature and a small surgery kit. [...]

The Hospital provides each patient with the necessary medication, so that they need not buy it. The treatment administered is maintenance medication, the patients are not sedated (during the visit most of them would sit in the courtyard). Medication used: Diazepam, Phenobarbital, neuroleptics, antidepressants, tranquilizers and sedatives (very little). Each patient's medication is documented on the observation sheet for each patient and in the pharmaceuticals' ledger. The doctor changes the treatment only if the medication administered causes harm to the patients, or if the given pharmaceutical isn't supplied by the pharmacy any longer or if it doesn't produce the desired effect. [...] The evolution of the condition and each patient's treatment are put down in the patient's sheet twice a week.

At the Hospital in Turceni, the staff states that the patients cannot be released unless there is a relative to request/ accept their release. The staff also speaks of a danger in connection with the release of these patients and its fear not to be blamed for the effects of a potential release (i.e. "if they throw themselves under the train, people will turn to us to ask why we had released them").

This establishment does not have any general practitioner, however, since it is a ward of a city hospital, [...] whenever problem appears and patients are brought in with the hospital ambulance for investigations and diagnosis. Patients are transported with the public ambulance 112 (the hospital does not have its own ambulance).

The only doctor of the Psychiatric Ward in Turceni is retired, hired on a part-time contract, [who] lives [...] at 45 km away from Turceni. For this reason, she does not make it to the hospital on a daily basis. [...], some of her colleagues give her a lift to the hospital [...]. This situation is the

result of the following: even if several competitions were held to occupy the vacancies for psychiatrists, nobody came forward. The lack of psychiatrists is a situation which has been in effect for the past [...] 14-15 years, and in the past 10 years this ward has been operating based on a part-time contract with a doctor. [...] This situation will have a deeper impact in what will come after the visit, since, as the psychiatrist will be on her annual leave, all the specialized medical services will be supplied for all around 130 ward patients by a psychiatrist who will come every Tuesday from the Hospital in Târgu Jiu.
The patients' medication counts with latest-generation pharmaceuticals and other psychotropic substances [...] most patients have in their current medication drops of Haloperidol.
[...] There is a patient aged 40 diagnosed with breast cancer in the ward, who does not carry insurance. Following steps taken by the hospital staff, she was seen by a specialist doctor at the County Hospital of Târgu Jiu. Her condition was evaluated and she was diagnosed, but was denied treatment. The doctor who saw her stated for the Turceni Psychiatric Ward staff that the Cytostatics treatment can only be given to cooperative patients and the patients with mental disorders are considered incompetent. Also, [...] no doctor could be found willing to operate on her, all those asked raised the issue of consent. However, the Hospital staff confirmed for us that the none of the patient's rights had been denied, therefore she was legally competent to give her consent in connection with the breast surgery. No written steps were taken, as the staff of the establishment only told us that the doctor they asked had stated only verbally that he could not give such treatment to a person with mental disorders.
During the follow-up visit, five patients came with a referral from the Psychiatric Hospital in Târgu Jiu. The only document based on which the patient is committed is the referral note. The staff in Turceni does not get any information regarding the case (a description of the decompensation situation, the treatment given since the commitment until the transfer moment, description of the reason for the transfer to etc.); the only document is the referral note, which doesn't make any mention of the treatment provided. According to the statements by the ambulance nurse, the Hospital in Târgu Jiu implements the practice to give sedatives to the patients who would be transported, to keep them calm on the road. That is why most of the times they sleep in the ambulance. There are numerous situations when, because of the

sedatives, the patients were not able to talk with the staff in Turceni when they were committed therein. In this situation, there cannot even be a talk about signing the informed consent form or about the patient's being vocal against the commitment; when they wake up, they have already been committed. On the other hand, since they do not know their rights, they are unable to act for themselves.

The following was witnessed by the monitors. Because of sedatives, one of the patients, [...], could not stand on his feet anymore; he was brought in the hospital by two orderlies. Following the short "visit" of the patient in the head nurse's room, he was brought on one of the hospital hallways, where there was a bed and left there to sleep. [The respective patient] was a resident of Călimăneşti, county Vâlcea, and was committed even if he was sedated and could not express his consent concerning commitment.

The monitors talked with three of the patients brought in the hospital. Of them, [patient X], an electrical cables fitter had ended up in the Hospital in Târgu Jiu, after he had been in the emergency room of the Hospital in [other locality in the county], with a swollen right foot. We could not get any clear information about what happened in Târgu Jiu from the ambulance nurse (she did not know the patient's situation), and the reason for his referral [...] in Turceni was not documented anywhere. However, according to the patient, we found out that he had not even been seen by any doctor and had not been given any medication for his foot problem. The suspicion [...] was that, because of his previous history of commitment to psychiatric wards [the patient's history], the staff in Târgu Jiu did not take into account the other medical problem, which was not of a psychiatric nature. According to the patient's statements, [he] did not agree to being committed in Turceni but was committed there nevertheless, without having been seen by a psychiatrist, without the non-voluntary commitment procedure being implemented.

Focus of syphilis:

According to the statements [...], in November last year a patient carrying syphilis was transferred from the County Hospital in Târgu Jiu. Neither the staff of the Hospital in Târgu Jiu, nor that of the Psychiatric Ward in Turceni knew about this situation, the director stated that had he had this piece of information before, the patient would not have been received to the psychiatric ward.

Following the patient's complaints about his red and itching genitalia, he was sent to the hospital for further investigations. The test was submitted in December [and we were told that] it raised a series of problems since this type of test is only done in larger laboratories. Considering that the patient had been diagnosed with syphilis, the decision was taken to test all people committed to the ward since "nobody knew what type of contact the patient might have had with the other patients." Following the investigation, 18 people were found with syphilis and 37 were suspect of having been infected with syphilis.

According to statements [...], to stop the focus of syphilis, the following measures had been taken:

Not only the 18 persons diagnosed with syphilis, but also the 37 suspected of syphilis were isolated;

All the patients had each their own aluminum steel mug;

Women were isolated from men to avoid sexual intercourse; even if previously in the psychiatric ward the patients were divided into rooms based on gender, the three blocks of the building had common hallways (with no communication restrictions). Consequently, iron bar doors were mounted to restrict communication between block A (female ward) and blocks B and C (male wards); no measure was adopted and no form of control was implemented in connection with possible sexual intercourse between men.

Within a program implemented by the PHD Gorj, the men received condoms and the women contraceptives.

The director also ordered that the commitments be stopped for one month (when the monitoring visit took place, commitments had already been resumed).

Asked if the female patients had been informed that they would be given contraceptives and if their consent thereof had been requested, [...] he stated that he did not have any information in connection with the female patients' consent, but he claims that a gynecologist went to the psychiatric ward and talked to the patients, explained to them what contraceptive pills were, what they were good for and how condoms must be used.

During the monitoring visit in the psychiatric ward, the monitors asked the nurses whether the patients had received condoms. Their answer was negative, they stated, "how could we give them such a thing, what would they do with it? We haven't given them any to prevent them from

swallowing or filling them up like balloons, they don't know how to use them."
There is a partnership agreement signed currently, [...] between the clinic for dermatology and venereal diseases of County Hospital in Târgu Jiu and the psychiatric ward in Turceni. Staff from the county hospital come once a week to see the patients and to give them the necessary treatment. According to [one] statement, the treatment for syphilis had started in January and the staff from the dermatology clinic had been around five times in the psychiatric ward, to see patients and give treatment.
Even if we did requested data to that effect, we haven't got any in connection with the number of patients under treatment since nobody knew how many patients still had the disease. Taking into account that syphilis is a contagious disease, which may be transmitted not only through sexual intercourse but also through saliva, if the patients use common cutlery which is not washed properly nor disinfected, there is the risk of contagion.
When the establishment was revisited [...], they could not provide us with the number of patients who were still suspect of having been infected with syphilis, motivating that the last tests were taken in the week prior to our visit and the results were not in yet.
Two years ago there was a situation when one of the patients was pregnant. In this situation, the hospital management took the decision for her to be transported to the County Hospital in Târgu Jiu for an abortion. Again, [...] stated that they were not aware of the patient's consent to have an abortion.

At the Hospital in Mocrea, there is no duty shift; however, the nurse on duty has permanent contact with the doctors. There is one doctor for the female ward and one for the male ward who see all committed patients on a daily basis.
If patients have other medical problems requiring other specialist doctors, [the patients] are transported with the hospital ambulance to the County Hospital. Dental emergencies are solved by the dentist in Ineu. They don't have patients undergoing dental treatments scheduled at various intervals.
They had one case of pregnancy, when the mother got pregnant in the hospital and after birth, the baby was taken to the Child Protection Department Arad, and the mother was then committed to another psychiatric clinic.

The medical rooms have: one encephalograph which cannot be used for the time being since there is no specialist, one EKG device, and other devices to measure blood pressure.
The Hospital provides each patient with the necessary medication, so that they need not buy it and they all take sedatives. These pharmaceuticals are used both for treatment and sedation.
There is no special ledger where the medication prescribed to each patient would be recorded and changes in the treatment are recorded only on the patient's observation sheet. In the patient's observation sheet, mentions concerning the evolution of the condition and the applied treatment are made every Monday and Thursday and when the treatment is changed, the consent of the patient is not taken any longer.
They don't use a lot of tranquilizers for the administration of medication and they don't use antipsychotic substances at all. They only use neuroleptics (Plegomazin, Levomepromazine, Haloperidol – drops and vials) and sedatives (Diazepam).

At the Hospital in Zam, most of the staff commute, except for the janitors and the workers who live in the area [the hospital has a capacity of 385 beds].
There are 192 employees in the hospital, out of whom 5 are psychiatrists and one an intern psychiatrist. The latter comes very seldom in the establishment (once every three months). The others are: 67 nurses, 65-70 orderlies, a pharmacy nurse, a pharmacist, a chiropractor, an economist and around 60 ancillary staff (administration, skilled workers, cooks, doormen). All these persons have a full-time contract with the hospital.
The hospital has a duty shift, the psychiatrists see the patients daily or every other day. In general, all are seen by the doctors.
In medical emergencies situations, the patients are transported with the ambulance or the car of the institution to the County Hospital in Deva. On each ward there is a device to measure blood pressure, an EKG device and a laboratory for usual tests, which all wards share. They don't sterilize medical instruments, they only use disposables.
Medication given to patients is recorded in their sheets every day or every other day or every other day. There are records concerning the medication given to each patient at the Hospital pharmacy which is based on the personal number of each patient. The medication administered is used not only for treatment, but also for sedation

(neuroleptics, tranquilizers, sedatives, vitamins, antipsychotics). The doctor changes the treatment every 2-3 days, or every 2-3 weeks since the initial administration of the treatment, based on the patient's response to treatment. All such changes are recorded in the patient's casefile.

At the Hospital in Sighetu Marmației, even if the pharmaceutical supply is not very good, they still use newer generation medication as well (antipsychotics, thymostabilizers, neuroleptics etc) which, according to the psychiatrists, cannot even withstand comparison with the old ones. [One] doctor says: "Nobody hears our voice, even if we are a psychiatric hospital with a very high number of beds (higher than any other block of this hospital, our emphasis), maybe it's because we are a general municipal hospital and not a special psychiatric hospital. The living conditions of the patients are a disaster, the same as our working conditions." The same features in the statement by [another] doctor: "Maybe because the hospital doesn't pay for its debts to the suppliers, they cannot buy too many new pharmaceuticals. Anyway, here with the adults we don't use injectable pharmaceuticals. This is saddest for the patients, as they have to live in these conditions and there is no money to refurbish the rooms for them."
They have not used electro-shock therapy for 4-5 years, even if [...] they think it was extremely effective: "They'd be good for inhibited depressions; the electro-shocks were spectacular for the negativist stuporous conditions, 10 a day were being administered in the previous years" (to 10 patients).
They use the classical medication: "Diazepam, Haloperidol, Plegomazine, Levomepromazine... and certain liver boosters: Silymarin, Aspatofort."
The problem [...] is with the [assistance] staff, for instance, on the night shift there are only two orderlies and one nurse and that is why the "treatment at 9 o'clock in the evening is important, this is the toughest ward." Also, doctors say orderlies are poorly trained, they come from various fields and make all sorts of mistakes. We couldn't find out what types of mistakes they were making reference to, but they told us that they would need training courses on communication with the patients.

At the Hospital in Brăila, [...] the treatment is set in the Psychiatric Hospital in Brăila, and the therapeutic scheme is kept for "as long as it

is necessary." Evaluation is done twice a year (in 2009 there were 50 evaluations).
From the treatment records we mention some of the pharmaceuticals given to residents (Bromazepam, Diazepam, Meprobamate, Nitrazepam). According to information supplied by the staff, there is also a medication ledger. Psychotropic medication is kept in a cabinet and transmitted from one shift to another.
There is psychological evaluation in the acute disorders ward twice a year.
[...] They have never had unwanted pregnancies in the hospital. They gathered information concerning administration of contraceptives but have never started to administer them. There is masturbation, when the patients are sedated (Carbamazepine, Tiapridal). Patients may have relationships between them. Menstruation is monitored. Until quite recently, they had a ledger to record the cycles of each female resident, not any longer, but the female residents come forward to the staff in such a situation.
They don't have dental treatment.
The ambulance comes on request.
The observation sheet records the medication for each patient.
[...]

At the healthcare and social establishment in Găneşti there are three cases when the staff implanted coils to the female residents [...]. [...] has a child with a male resident whom she lives with in a separated room [...]. The child, a little girl, is now in a foster family. Subsequent to her birth, she had two more abortions and had been put on a coil without her consent. [...].
There is no equipped medical room. There is only a cabinet with a few pharmaceuticals in the emergency room (which is wrongly called emergency since it is the room where the nurses stay). In this room there is also a computer, a desk and a hospital bed.
There is no ledger to record the medication given to each person.
Treatment is reviewed once a year, when the public procurement file is put together.
For emergencies, the ambulance is requested from Tg Bujor (30 km away) or Bereşti (12 km away) (a female patient had been had gallbladder surgery a few days ago – [...]). When the visit took place, the resident had been released from hospital and had come back to ward 2.).

Every two weeks, two persons go to be evaluated (only females) at the Sf. Elisabeta Hospital in Galați [...].
Residents are given the following types of medication: Rivotril 60%, Plegomazine 10%, Levomepromazine 10%, Carbamazepine, Solian.
[...]

F. Observance of other rights of committed persons

The international treaties concerning the human rights and fundamental freedoms (among others, the Universal Declaration of the Human Rights, the UN Convention against Torture, the European Convention against torture and other cruel, inhuman or degrading punishment or treatment, the European Convention of Human Rights) coherently and simultaneously safeguard the right of persons to be treated indiscriminately, with dignity and not to be subject to torture, cruel, inhuman or degrading punishment or treatment. The current domestic regulations in the area of mental health (mainly the Law concerning the Mental Health and the Protection of Persons with Mental Disorders No. 487/2002, respectively the General Rules of April 10, 2006 for the Application of the Law) include provisions in agreement with the above-mentioned international standards, such as those which imperatively set forth that the persons with mental disabilities *"must be treated humanely and with respect of human dignity*", that no discrimination grounded on their disabilities shall be admitted, that the mental health services must provide the patients with conditions *"as closer as possible to the normal life"* etc. Besides the other rights and freedoms established to the benefit of all patients in the Law concerning the Rights of Patients No. 46/2003, the patients with mental disorders must be provided a number of rights specific, on the one hand, to the disabilities they have, and specific, on the other hand, to their condition of persons deprived of liberty.

In this section we will focus on a few of the rights that must be safeguardedd for the patients committed to healthcare and social establishments for persons with mental disorders, rights in connection with: accommodation and food; access to personal correspondence and use of phone for personal purposes; freedom to have personal visits etc.

With respect to the **accommodation and food provided for patients**, it is worth highlighting that **there are institutions where *overcrow-***

ding **is a serious problem which must be taken into account**. An example in this respect is the Psychiatric Hospital in Mocrea. On the first visit in March 27, 2009, the Hospital had a capacity of 115 beds, but because of the overcrowding, 140 beds were installed – an accommodation capacity which had been exceeded at the time of the monitoring visit to the hospital, since 150 patients had been committed. The most relevant cases from the point of view of the overcrowding (2 or even 3 patients to a bed) were in room 3 of the closed ward for females (3 beds for 6 patients), room 4 of the same ward (9 beds and 16 persons or room 5 of the closed ward for males – 8 beds and 13 patients. On the follow-up visit (July 8, 2009), the works at the second building of the Hospital had been completed, wherein the female wards had been transferred. Rooms are currently much larger, have five beds each and their own rest room, with a toilet, a shower and a sink. The patients would not share the bed any longer – however, **the rule set in the Order of the Public Health Minister No. 914/2006 concerning the endorsement of rules applicable to the requirements that a hospital must fulfill with a view to obtaining the operating sanitary licence (Article 5 of Appendix 3), was not observed, as it provided for at least 7 square meters/ bed in each room (a volume of 20 cubic meters of air/ bed).** One cause of the overcrowding in some of the rooms of the psychiatric wards/ hospitals is that, **in the absence of legal regulations in this respect, wards with different commitment regimes are being organized within the psychiatric wards/ hospitals ("closed", "open" etc)**, which makes it that some of the rooms are overcrowded, whereas there are unoccupied beds in others. Such an organization, which is not set in the laws, makes it that the practice and procedures thereof generated vary to a large extent from one establishment to the other, and, consequently, residents' rights or restrictions imposed on them vary to a large extent, as well. These wards' doors are locked and the patients can leave them only based on staff's approval (for more details, see the case of the Psychiatric Ward 5 for chronic disorders, males of the Hospital in Sighetu Marmației). The **CLR herein requests that the hospitals give up completely as of this moment to organize "close wards"/ "rooms for patients under supervision", a practice which is completely beyond the legal framework in force and which is contrary, on the other hand, to the principle put forth in the Law concerning the Mental Health (Article 26 paragraph 2) according to which *"Care for any one***

with mental disorders shall be provided in the lest restrictive environment, using the lest restrictive procedures”*, and, on the other hand, to the provisions under Article 20 of the General Rules for the Application of the Law concerning the Mental Health, according to which the only two *“procedures to limit the patient’s freedom of movement”* are the patient’s restraint and solitary confinement, respectively (measures to be applied strictly individually and in the conditions specifically regulated by the above-mentioned act).** The Psychiatric Ward of the City Hospital in Turceni was also overcrowded, the patients being frequently forced to share several a single bed. The ward can take up to 100 beds, but usually, here come between 120 and 140 patients (the Hospital manager stated that the average of monthly commitments is 130). The Psychiatric Ward for accute disorders within the Emergency Hospital in Bârlad can take up to 75 beds. On the monitoring visit, 60 beds had been occupied, ***the occupancy rate being 80%. According to the documents submitted by the medical manager, in 2008 the occupancy rate in the ward was 106.51%. When the visit took place, the 4 rooms recently renovated were not used any longer, the patients had been accomodated in the old wing of the Hospital which had not been renovated for a very long while. The patients were not moved to the recently renovated areas since, mainly, the windows of the rooms did not have any bars yet, (because *“other hundreds of millions of lei”* would have been necessary in addition). The psychiatrists would not accept to move patients until bars would have been put at the windows, their reason being that there were usually two orderlies on a shift and it was not possible to permanently supervise patients this way (the forecast was that *“in these conditions, the patients would not be moved too soon*”). **The CLR appreciates that the absence of bars in the windows should not be a reason to postpone moving residents in the renovated areas** (which would result in a very likely overcrowding in terms of accommodation, contrary to the provisions of the Order of the Public Health Ministry No. 914/2006). We herein request that the Hospital should be allocated the amounts necessary to complete the refurbishment works. There is overcrowding as well in the children’s neuropsychiatric ward of the Hospital in Bârlad – the ward has to cope with the overcrowding on a frequent basis, so two children have to share a bed. Based on the reference to the rules set in the Order No. 914/2006 of the Public Health Ministry (according to which each bed

must have at least 7 square meters around), the Hospital in Drăgoeşti is among the overcrowded establishments. There is an area of 50 square meters in the 10-bed rooms (which means 5 square meters for each bed), and 16 square meters, respectively, in the 4-bed rooms (4 square meters for each bed). Even the Psychiatric Ward of the City Hospital in Turceni has 100 beds formally, a higher number of beds is actually there to house up to an average of 130 patients a week. According to the head nurse, each patient has his/ her own bed. One of the orderlies did not conform this information, as she mentioned that **there were situations when patients needed to share the same bed**. The monitors found during the monitoring visit that such a situation existed as in a 4-bed room, there were five patients (FG and BL were sharing the same bed; they stated that they were friends). The area for each patient is not in agreement with the provisions of Articles 5 and 6 of the General Rules applicable to the functional structures of hospital departments and services, Appendix 3 to Order No. 914/2006 for the approval of the general rules concerning the conditions which a hospital must fulfill with a view to obtaining the operating sanitary licence, namely, the allocation of a minimum area of 7 square meters/bed in the rooms and the provision of rest rooms. At the Psychiatric Hospital in Voila**,** the adults' wards, **some rooms may have an occupancy rate of up to 1.77 patients/bed, others may have an occupancy rate of 0.86 patients/bed**. When the monitoring visit took place, the general occupancy rate of the rooms in the Hospital was of 1.2 patients/bed (both in the general rooms, as well as in the supervision rooms, there were cases when two patients had to share the bed). There was overcrowding in connection with the rule set forth in the Order No. 914/2006 of the Public Health Ministry, since each bed had to have an area of at least 7 square meters.

The ***health and safety conditions in the healthcare and social institutions***, continue to be, **in general, very precarious, in some situations, they are even inhuman and degrading treatments**. The Social and Healthcare Establishment in Găneşti **is a focus of infection from all points of view**. Nearly all bed mattresses are rotten and not replaced (which is in contradiction to the statements by the head accountant of the establishment, according to which mattresses would be changed every other two weeks, out of which 7-10 are rotten and burnt). The bedsheets, where there is one, is rotten, is not changed weekly and then cleaning takes place not more than once a

month. There is a stench everywhere, in the rest rooms, the water closet flushes continuously, there have never been and there isn't any toilet paper nor soap (the orderlies confirmed that the patients didn't get any toilet paper or soap). The residents are not taken proper care of and they are dirty. At the Psychiatric Ward for acute disorders, females, of the Municipal Hospital in Sighetu Marmației, in the two restrooms, the **toilet bowls are broken and without any seat, they flush continuously and there is no toilet paper**. One of the restrooms has a partition between the water closet cabins, whereas the other doesn't. There is a heavy persistent stench. In one room there are 3 showers without any partition. **The showers and the water closet cabins look disgusting**: broken tiles, water and stenches. The ward for chronic disorders, females are also in a very bad situation. **There was a heavy stench in all the rooms**, even the windows were open. Most of the beds didn't have any sheets and the beds were very dirty and extremely degraded: some of them were torn into pieces and almost all looked torn down. One patient claimed that she had not been given clean sheets for the past three months and she would wash her own sheets whenever she needed clean sheets. The patients were almost undressed, some of them had gowns without any buttons, other was lying in their panties directly on the cover of their beds without any sheets. No room has any tiles or wooden floors, there is only cemented floors and most of the patients would go barefoot on the cemented floors. There was only one bathroom for all rooms, from where a **heavy stench** was coming, which was pretty hard to withstand even in the rooms, let alone in the bathroom itself. There was water on the floor of the restroom, the toilet bowls were broken, there wasn't any seat, they were flushing and the cemented floor was broken as well. Similar "hygienic" conditions were in the Psychiatric Ward for acute disorders, males, in the same Hospital. **A completely unacceptable situation, which means the patients' inhuman and degrading treatment for which the CLR herein requests immediate action was the one found by monitors in the Psychiatric Ward 5 for chronic disorders, males, still in the Hospital in Sighetu Marmației**. According to the report developed by the monitors: *"When we entered in the room, we had to withstand a terrible stench of urine and feces, even if all windows were open and apparently, the floors had been cleaned a short while ago (there were traces of it on the cement and chlorine smell). Most of the patients were undressed, especially from*

waist down since <would tear down their clothes >. One of the patients was standing in the restroom doorframe, undressed from waist down and barefoot on the cement. The patients don't have and slippers in the entire ward and they are barefoot on the cement, there was a draught of air from the open windows and water on the floor (from the bathroom, most likely). The atmosphere in the room was scary." The very bad situation had not been corrected until the moment of the second monitoring visit: *"When the visit took place, there was lunch served on this ward. The patients in this room, prey to the same neglect (most of them without clothes, those with clothes were unacceptably dressed– rotten clothes, without any seams or buttons, sizes far too larger, most of the beds did not have sheets, there was a heavy stench etc), they would eat from disposable plates, in the room, most of them without any spoon or fork. Lunch was cooked beans which the patients would drink directly from their plates, that is why part of this food would go down on their face and clothes (that is for those who had clothes). Most of the patients were barefoot, most of them were undressed from waist down, two of them were completely undressed."* A similar situation was found in the other rooms as well: *"heavy stench, rotten sheets and beds. The restroom is even more degraded. The space is very little, there is no toilet bowl, only a wooden improvisation thereof, the dirt is heavy: urine and feces on the floor, heavy stench. The water closet may be accessed directly from the room and the patients' beds are near the water closet door."* At the Psychiatric Ward of Gura Văii belonging to the County Hospital in Drobeta-Turnu Severin there is no water in the restrooms, they only have one faucet in the bathroom from where they can take water. **The restroom pipes have been removed from their positions. There is a strong stench of feces in both restrooms**. The showers from the first floor restroom are used by all the 59 residents. Bathrooms have been renovated with tiles. There are no separate restrooms for the employees. Since the water pipes are broken, there is water on the floor and on the restroom ceiling (dampness which extended to the office nearby) on the first floor, where the light bulb has to be changed quite frequently, as it burns. The residents take a shower not more than once a week, as they don't have the necessary conditions. Thus, when our last visit took place, only two showers and one restroom worked. **The patients don't even have where to wash their hands, they don't get any soap except for when they take a shower, there isn't**

any toilet paper in the restrooms. They don't have any privacy also in the showers, since several of them are washed once. There are no rooms to store the patients' personal belongings. There were urine smell and rotten mattresses in some rooms. When the visit took place, the rooms were not heated (a risk for respiratory infections because of the cold). Should they have any lice, the patients' hair is cut and they are cleaned with special solutions. There are no records attesting to the patients' consent in this respect, yet the staff states that they ask to have their hair cut down. **Females are not allowed to dye their hair, their jewels are taken by the staff which gives them back upon release**. The fact that the women are prohibited to dye their hair and wear their jewelry (as well as the practice to cut the patients' hair completely against their own will) is in breach of their constitutional right to privacy, and their right to be *"treated humanely and with respect of human dignity."* It is also in breach of the principle set forth in the Law concerning the Mental Health – Article 36 paragraph (2) – according to which patients with mental disorders must be provided *"living conditions as closer as possible to the normal life of persons the same age*." ***There are also hospitals*** (the Hospital in Zam, for instance) ***where women are allowed to dye their hair and to wear it long***. At the Psychiatric Ward of the City Hospital of Turceni, the patients go to their mandatory bath once a week, women on Tuesdays and men on Thursdays. ***Patients are accompanied and helped out by janitors or orderlies and are being washed in turns***. Bedsheets are changed whenever necessary, according to the information given by the orderlies (they had been provided clean sheets on the day when the monitoring visit took place). The incontinent persons are changed more often, but there are no diapers for adults, the representatives of the institution stated that there was no budget for such expenses. There wasn't any strictly necessary hygienic and sanitary products in the bathrooms (such as soaps, towels, toilet paper). According to the head nurse, **the patient don't get any toilet paper - which is completely unacceptable, since they are persons deprived of liberty** (they only get if their families bring them some), as, it had been specified, the Hospital doesn't have any funds to buy toilet paper; and most of the times the female get pure cotton and not tampons. Both the head nurse and the Hospital manager stated that the insufficient budget of the Hospital did not allow for the purchase of hygienic - sanitary products. **For around 13 years, no toilet paper has been purchased**

for the patients. Because such products are not purchased (towels, soap bars, toilet paper, toothbrushes, toothpaste etc) and because the mandatory bath takes place only once a week, **patients are dirty and their clothes and bed sheets are stained with feces**. The CLR appreciates that if the staff could be more engaged, the above-mentioned conditions could be improved, since the most recent renovation works took place in the Hospital in 2008, when the heating plant was installed and since there is running water currently in the establishment. ***The situation was somewhat better*** in the Hospital of Mocrea. All rooms had been recently renovated (there was linoleum on the floors and the walls had been recently painted, looking very good). The bed sheets were clean. The Hospital has its own heating plant which operates 24/7, providing hot running water, therefore the ***patients may take a bath whenever they requests***. There is a mandatory bath once a week in the wintertime and twice a week in the summer time. ***Patients are supervised or washed by the hired nurses/orderlies who give them soap and shampoo***. Women take their shower separated from the men and get the necessary personal hygiene products. After the shower, they are provided with clean towels. Hygienic products (shampoo, soap bars, razors, shaving paste, toilet paper, tampons) are kept in a small storage facility. However, there is problem with women being prohibited to dye their hair and to wear their hair long. **The Hospital in Mocrea (but also others where there is a similar practice) must give up as soon as possible to impose such limitations, which unlawfully affect the committed persons' dignity and their indiscriminate exercise of their right to privacy**. These rights are imperatively safeguarded including in the provisions of the Law concerning the Mental Health: *"Any person with a mental disorders must be treated humanely and with respect of human dignity."* (Article 35 paragraph 2); *"No discrimination grounded on any mental disorder shall be admitted."* (Article 35 paragraph 3); *"Any patient with mental disorders has the right to privacy."* etc. ***A better situation was also found*** at the Psychiatric Hospital in Voila. Except for one ward, which needs renovation and refurbishment, all the other are in newer, better buildings, which have been renovated and refurbished. ***Rooms are clean, lightened, heated, beds have proper sheets, restrooms are appropriately cleaned. Patients get toilet paper and other personal hygiene products whenever they request it*** (those products are not kept in the restrooms as they "would

be stolen"). There are **showers in the Hospital where there are no partitions among them** to provide privacy for the patients. ***There is hot running water 24/7***. Individual heating plants provide hot running water and heating for each building; these are new systems from 2007-2009. ***In the letters dated July 29, 2009 and August 18, 2009 of the Hospital in Voila and the Prahova Public Health Department, subsequent to the monitoring visits, the CLR was promptly informed about the "partitioning of the shower area with special (compact and opaque) shower curtains"***. At the Hospital in Drăgoeşti there are striking differences among the various wards of the Hospital in terms of cleaning and hygiene. Thus, if *"**The rooms of blocks I and II are clean, freshly aired, with the appropriate furniture (beds, bed stands, one sink in each room), the bedsheets are clean, changed on a daily basis, each morning**"*, in block III *"the monitors saw* ***puddles of urine on the block hallway.*** **Also in block III, the air heavy with feces and urine stench was unbreathable. In block III, the conditions are completely unhygienic, water closet cabins with no doors, exposed directly to the hallway, bar, broken windows, feces and heavy feces stench, leaks of infested water**. *The accommodation, hygiene, temperature, security, lighting conditions in this block – called the "supervision block" by the hospital staff (where the "agitated patients" are committed) – are inappropriate for the provision of any type of service, let alone the health care services. The rooms located in Block III (which, according to the manager's statements, would have been refurbished in 2005) are in a very bad shape, with old furniture, poorly lightened (with both natural and artificial light), have dampness, the paint is chipped and with dampness in certain areas and the restrooms are completely unusable. The female shower room does not have any doors (as it is practically an extension of one of the wings in the main hallway of the supervision block), no shower works and it can only be used for hose showers. The monitors found a* ***female patient who was under the cold-water shower and was screaming****. According to the Hospital manager, the difference in accommodation conditions provided in the blocks is caused by the lack of necessary funds to carry out renovation and refurbishment works. Also, the "damaged patients who damage even more" are accommodated in block III, which is in a much worse shape than the others*. It is quite likely that the situation described could be caused by the lack of resources, but it is also a

result of the **discriminatory mentality and attitude, obviously lacking balance, punitive through consequences and unacceptable displayed by the management of the institution (this case is not isolated) towards patients with a more precarious health condition. This is also a consequence of the fact that some of the patients are classified as "agitated", in breach of the legal provisions applicable, and are accommodated separately, in "supervision blocks/ wards/ rooms", also in breach of the legal provisions applicable.** At the external ward of the Hospital in Brăila, **the resident would wash their clothes by themselves,** the staff explaining that that was the residents' option, as *"they arrange among themselves to earn some money, because the cleaning has been outsourced."* **The Hospital management must make sure that such practices exclude the situations when some residents might actually use their colleagues for personal purposes**, and all those cases when a precarious condition of cleaning of individual clothing could be likely to affect the hygienic conditions of the institution. At the Psychiatric Hospital in Vedea, most rooms are clean, lightened and heated, have bed stands and beds (which are of an inferior quality, quite worn and torn, with degraded bed sheets). A special situation which affects negatively the patients' rights is that **they don't have pillows**. According to the staff statements, this is owed to the fact that they don't have the necessary funding to buy them. Another motivation was that the patient could ruin the items in the rooms. As to the torn bed sheets, the Hospital found a way to solve this problem. Bedsheets are made in the tailor's shop by the patients together with the person in charge for this tailor's shop. Thus, on the one hand, patients are involved in ergotherapeutic activities, and, on the other hand, the Hospital saves money. Another problem is that, at least in part, **cleaning of rooms is done with the help of the patients** (during the monitoring visit, the monitors found a case when one patient's feces were cleaned up by another patient and not by the orderlies or by the staff employed by the Hospital). **The situation mentioned is against the rules provided in the Law concerning the Mental Health**, according to which (Article 36 paragraphs 4 and 5) patients *"cannot be put to forced labor"*, and the activity carried out by patients committed to a mental health clinic *"must not allow for their physical or mental exploitation*", respectively. At the Hospital in Dumbrăveni, the monitors found that the **residents take care of the cleaning without having**

given their consent thereof (in breach of Article 36 paragraph 4 of the Law concerning the Mental Health *"The patient cannot be put to forced labor."*).

With respect to the fact that hygienic products are not supplied to the patients, both during the monitoring visit and during the follow-up visit, the Hospital staff stated that **because of the lack of funds, there is no possibility to purchase toilet paper**. However, during the follow-up visit, the monitors identified in one of the Hospital's storage facilities, a box of toilet paper about which the Hospital staff stated that it was for its own purposes and not for the patients. **Since even according to the staff statements, there is no special budget line to purchase toilet paper for the staff (while the patients were not provided at all with this elementary hygienic product), obviously such a practice is an abuse breaching the rights of persons who are twice disadvantaged (they are persons with disabilities and deprived of liberty)**. At the Hospital in Zam, too, the monitors found that **"closed" and "open" wards** had been organized. The "closed" wards are located on the underground floor of the ancient block and are locked, at the entrance in each ward there are iron bar-doors. According to the explanation given by the staff, the patients in the closed wards are isolated in order not to cause any harm to the others. Such an organization is done not based on specific legal regulations but on a practice older than 25 years. Most of the times, living conditions in the "closed" wards are much worse than in the other wards, as it had been recorded in the monitoring report: *"All rooms in the <open> wards had recently been renovated (tiled floors and halfway tiled walls). Rooms in the <closed> wards are in an extremely degraded shape. Some beds did not have sheets, and others had rotten mattresses (only made of spires), since they had been destroyed by the patients. The staff explained that, because of the specific features of the conditions of the persons committed to the "closed" wards, no refurbishment could be done since the patients would destroy again everything that would be repaired." (...) "The patients in the open wards had long hair, whereas in the closed ward, all of them had short hair." (...) "There is no pre-established visitation schedule, patients may received visitors at any time. For those in the closed wards, the prior endorsement by the doctor is necessary."* **The practice of setting-up "closed" wards must be promptly given up, since, on the one hand, it is not grounded in the law, and, on**

the other hand, it generates an unacceptable discriminatory limitation of the legal rights of the patients committed there (among others, it is a breach of the principle according to which the care for the persons with mental disorders must be provided in the lest restrictive environment, set forth in the Law concerning the Mental Health, as well – Article 26 paragraph 2). The only lawful procedures to limit the freedom of movement of persons with mental disorders are provided in the General Rules for the Application of the Law concerning the Mental Health (Article 20), as follows, restraint and solitary confinement (the latter is an individual measure which must strictly observe the procedures and the conditions included in the above-mentioned law. The setting-up of "closed" wards also gave rise to a completely disproportionate occupancy rate of the patient rooms in the Hospital in Zam, as it is recorded in the monitoring report: *"During the visit, we could see that the occupancy rate of beds was 70-80%. Even if we identified cases when two or three residents were sharing the bed (especially in the "closed" wards), there were several free beds in the open wards and there were rooms with just one patient."* Even if the period chosen for the monitoring visit was not the best to generate conclusive findings concerning ***heating of the patients' accommodation areas***, the monitors found different situations. Thus, for instance, if at the Hospital in Mocrea ***"when we visited the premises, all rooms were well heated*** *(heating was provided by a stove fuelled with wood)"*, at the Hospital in Drăgoeşti (April 24), *"there wasn't any heating provided anymore since <it wasn't necessary> the Hospital manager stated. However, the monitors appreciated that the* **room temperature was not in excess of 16, 17 degrees Celsius**. *The Hospital manager stated that it wasn't cold in the rooms, using as an <argument> the fact that on the monitoring visit, the patients did not get any antibiotics, therefore there wasn't any flu or virus infection around."*

Food for the committed patients, is another **topic requiring a lot of attention and substantial improvement**. There are also institutions where the ***monitors didn't record any complaint by the residents*** – for instance: the Psychiatric Ward in Gura Văii belonging to the County Hospital in Drobeta-Turnu Severin; the Hospital in Sighetu Marmației and the Hospital in Vedea (the patients stated that they were happy in general with the food quality, however, at the Hospital in Vedea, they complained about the fact that the food "will

vanish" from the patients' rooms if they could not eat their portion and they chose to take their plate to the room to eat it later); at the Psychiatric Ward of the Emergency Hospital in Bârlad, both during the first monitoring visit and during the follow-up visit, the patients stated that they were happy with the food quality and quantity (in this establishment, ***the food supply service has been outsourced; the CLR recommends the expansion and generalization of this good practice at the level of the system of healthcare and social institutions for persons with mental disorders***; the catering company supplies food for all Hospital departments, its headquarters are within the Hospital premises; food is delivered already portioned, in mealboxes; the ward doesn't have any cutlery or plates; patients eat directly from the mealbox and use disposable cutlery; meals are served in the morning at 08:30, at noon at 13:30, and dinner at 18:30). A different situation was recorded, for instance in the external ward of the Hospital in Brăila, where **residents claimed that the food was very bad and always the same** (in the morning – jam with margarine, at lunch and in the evening – a combination between peas and potatoes, only on Thursday they get chicken with rice). At the Hospital in Mocrea, **both patients and staff complained that the food was poor in calories**. The daily budget allocated for a resident is 10 RON for a non-diet meal and 12 RON for a diet meal. According to the manager of the Psychiatric Ward of the Hospital in Turceni, patients get meat twice a week, they are trying to observe the 2,100 calories/ day ratio. **The Hospital receives a food budget for only 70 patients out of the 100 beds in the ward (irrespective of the occupancy rate)**. Taking into account that the number of patients is in average 130/ day, it is impossible to respect the limits set. The legally allocated amount of money for the daily meals of a patient is 10 RON at the Hospital in Drăgoeşti. However, according to the Hospital manager and economist, the real budget allocated for the patients' food in the Hospital in Drăgoeşti for 2009 is 256,377 RON. As the Hospital houses 120 patients, the conclusion is that the allocated amount of money for the daily meals of a patient is around 6 RON. Because of this gap and taking into account some patients' requests to have vegetarian meals in the menu as well, the Hospital management decided that on each Friday lent menus would be supplied for all patients, since this type of menu is much cheaper. The Hospital management is thus trying to develop a menu, which would

stay within their food budget. **The CLR requests the Public Health Ministry to take the necessary measures so that the hospitals could receive food allocations according to the real number of committed patients and according to the values set in the law for this purpose. The CLR also requests that the practice of imposing lent menus to all patients should be given up**. Such a menu should be exclusively served to patients who so request (another hospital where they serve lent food on Wednesdays and Fridays is the Hospital in Dumbrăveni). The monitors also received patients' complaints regarding food at the Hospital in Zam.

According to the legal regulations applicable (especially Article 36 of the Law concerning the Mental Health), ***for their spare time***, patients with mental disorders should be provided *"the education means"*, as well as *"those means which should allow them to develop active occupations, adjusted to their social and cultural environment, encourage them to use those means and measures for professional readjustment likely to facilitate their reintegration into community."* The monitoring visits organized in the framework of this new CLR project also confirmed the **very serious and practically generalized deficiencies in the operation of these healthcare and social institutions in connection with the way in which the patients spend their spare time**. In most of the visited institutions, basically the only means for the patients to *"spend their spare time"* are watching TV and, quite seldom, having a walk in the hospital courtyards. As for the rest, the patients spend days in row – and even years in a row – without doing absolutely anything, without any sort of *"occupational therapy"* and *"ergotherapy"* program being organized for their benefit and improvement of their health condition etc etc. The total lack of activity which the patients are practically condemned to withstand 24/7, often many years in a row – when they are not allowed to leave these institutions which deprive them of their liberty – is not only a formal violation of a right which is recognized to them by law, but it is also a fact which damages their health condition. These problems are caused both by the insufficient budgetary allocations for this chapter and the lack of qualified staff and an obvious lack of interest and concern in this respect on behalf of the staff of these institutions. **The CLR considers that the Public Health Ministry must step in promptly and efficiently to improve the situation concerning how the patients spend their spare time**.

At the Psychiatric Ward in Gura Văii of the County Hospital in Drobeta-Turnu Severin, the "occupational therapy" room is not opened since there are no aids whatsoever (because of the "lack of funding"), and the patients only help with the transport of clothes and food. There were 4 TV sets in this room, which were not working. At the Hospital in Drăgoeşti, **no recovery or recreational programs are implemented. No rehabilitation, no ergotherapy take place etc**. The only recreational activities of some of the patients are gin rummy or backgammon. The reason put forth by the Hospital manager was the lack of rooms especially furnished to conduct this type of activities. On the other hand, according to the statements by the Hospital manager, he had the intention to refuse around 15,000 RON for the rehabilitation programs by "motivating" that this money would be insufficient for the needs the establishment had under this chapter. When the visit took place, only 10, 15 patients were walking in the courtyard. The others were in the rooms, most of them were asleep or lethargic. The head nurse confirmed that after their morning meal, patients are distributed their medication and because of it, they feel sleepy. Some of the patients will help the staff with their different tasks on the premises. The Hospital club was turned into a patients' room. At the Psychiatric Ward for acute disorders, males of the Hospital in Sighetu Marmației, the psychiatrist stated that the **patients did not have any networking activities** as they were missing. The only activity for networking is the individual psycho-therapy *"which we, doctors and nurses who talk with them do."* At the Psychiatric Ward 4 for chronic disorders, males, of the same Hospital, the psychiatrist stated that **because of the lack of staff, the appropriate services could not be provided to the patients**. For instance, he said, they can only be taken out for a walk only rarely: *"They permanently need escorts, and the staff here is insufficient. In addition, we don't have what to give to them to wear: shirts, trousers and shoes. They are never taken out in the winter time, in the summer time, they are taken out three or four at a time, escorted by stretcher-bearers."* He also stated that should there be sufficient staff, he could take the patients to an occupational therapy center funded by the Netherlands during the day, where they could be engaged in ergotherapeutic activities. Until the date of the visit, the ward patients had never had this opportunity because of the lack of staff. At the Hospital in Dumbrăveni, according to the residents, the "recreation

program" was when **the residents were forced to get out in the yard, following a preset schedule, and they can only watch the TV installed in the Hospital courtyard and play ball, they cannot even think about other activities.** At the external ward of the Hospital in Brăila, **almost the only daily "activity" of the 147 residents is to sit in the courtyard** – most of them lying directly on the ground or on the cement, the three benches in the courtyard being completely insufficient taking into account the large number of residents. At the City Hospital in Turceni, the Psychiatric Ward, **the only activities of the patients carried out are to watch TV at the club, to walk in the courtyard,** as well as the fact that *"some of the men give a hand with cutting the wood."* Before, when the Hospital had a land property, the patients were put to work, they were engaged in various activities. The ward does not have an ergotherapy workshop or any other areas especially equipped to carry out rehabilitation and recreation activities therein. Patients are taken out 2-3 times a day in the courtyard, in function of the weather conditions, because otherwise, *"there is likelihood of contacting various diseases"* (a motivation which seems more like a justification for the very few times that the patients may have a "walk"). All patients are taken out at the same time in the courtyard, taking into account the number of staff available. At the same time, part of the staff should stay in the ward since there are also a few persons restrained (4-5 persons). **When asked how many times they had been taken out in the courtyard during the week when the monitoring visit took place, the patients answered only once, at the beginning of the week, but they were happy as the staff had promised them that when the monitoring visit would be concluded, they would be taken out once again**. When asked what was their daily activity, one patient said that *"we go out on the hallway, we smoke a cigarette."* There are two clubs in the Hospital, one for females and one for males. These are located at the ground floor and are separated through an iron-bar door, which is locked at all times. The men's club has three wooden benches, one TV set and one table. When the visit took place, there were 6 persons in the club who were watching a TV show. There was only a bench and a TV set in the women's club. At the Social and Healthcare Establishment in Găneşti, even if the courtyard is big (over 2000 sq meters, with small benches), as well as other very good conditions to conduct many other activities (such as

gardening, tree-planting, open-air sports, walks in the garden etc), **the residents are sedated at day time and do not have any recreation means**. At the Psychiatric Ward for chronic diseases, females, belonging to the Municipal Hospital in Sighetu Marmației, **the only "networking" activity which the female patients had was to take a walk in a patio**. During the visit, most of the patients were in this patio. During the second visit (August 13, 2009), no patient was out on a walk, and when they were asked when had been the last time that they went out, they answered "in the spring" (probably during the first monitoring visit). The psychiatrist said the following about these outings: *"They can only be taken out in the patio, and that only when the weather conditions allow it, therefore it is seldom, more during the summer time."* In connection with the networking activities, the same doctor stated that *"We don't have ergotherapy materials, there is nothing organized in this respect in the hospital, some of the patients from the acute disorders do some things, some times, but this is spontaneous, nothing is organized. We now hope that the Dutch will develop an artisan workshop out of the ward (this is a Dutch initiative)."* He also stated that the staff was overloaded and consequently, there wasn't anybody who could take care of that too. One of the patients, aged 76, a retired elementary school teacher, on her first commitment, perfectly coherent and logical, was committed voluntarily a few months ago by her daughter, the reason being the misunderstanding between her and her son-in-law. **In the past four months, the patient had been out of the room only to do various medical check-ups**: dermatological, gynecological and dental (which she had paid of her own pocket), as for the rest, she had never been out or conducted any other type of recreational activity. When she went for her medical check-ups, she was permanently escorted by two orderlies, even if she had no intentions of running away – *"I am at the stage where I don't care about anything anymore, I'm used to everything, I'm indifferent."* A much better situation was found in the Psychiatric Hospital in Mocrea, where the two *"occupational therapy rooms"* operate as clubs, where the patients carry out various activities, they do **drawing, puzzle, make up, reading, singing and dancing**. The Hospital had been recently entrusted funds amounting to 60,000 RON to be used for a gazebo where the patients could carry out occupational therapy activities, with sound blasters so that music could be played (therapy

through music). They had a plan to build a fitness room, with an open-air sports ground. There is neither club nor any other areas for rehabilitation activities in the Psychiatric Ward of the Emergency Hospital in Bârlad. There are chairs and a TV set in the hallway. According to the statements by the head nurse, patients can also play gin rummy or cards in the rooms. Every Thursday there is ***a band which comes to play folkloric music for the patients***. Patients have access in the Hospital courtyard based on the agreement by the healthcare staff (this is a procedure which must be fulfilled). According to the staff, in the Hospital in Vedea ***there are several occupational therapy programs***. They have organized occupational therapy workshops (library, book-binding, sewing, painting, fitness room, networking workshop, music workshop, ceramics and pottery etc). There is a church being built within the premises for which the patients provide support. Workshops are well-equipped, with new furniture and devices. The occupational therapy activities take place based on a schedule. During the sewing workshop, they make bed sheets for the Hospital. During the ceramics and pottery workshop, they create clay objects which are subsequently burnt and painted; part of the patients' works were displayed in the painting room. **However, the monitors were left with the feeling that part of the area mentioned was insufficiently used in the activities with the patients and that sometimes, the new equipment of the Hospital was being kept more to be shown during various visits and inspections**. Both during the monitoring and the follow-up visits, no activity with the patients was taking place in none of the visited workshops. No activities took place in the past month in some of the workshops since, as it was stated, the staff had been on holiday. Also, because of her medical problem, the person in charge with the ceramics and pottery workshop is not able to carry out activities with the patients and the workshop is not used for the time being. During the follow-up visit, **the doors of the workshops were locked**. There is a fitness room in the Hospital, which is very clean, but which, because of the high number of flowerpots (located not only on its edges, but also in close vicinity to the ping-pong table), and consequently, because of the small area left to be used, is not appropriate to doing fitness and sports activities. The ping-pong table is located between two pillars, which means that the game area is narrow and uncomfortable. **The ping-pong table is permanently**

covered with a sheet (even when the patients use it for play), the staff stated that it was using this sheet on a permanent basis to protect the table "from scratches". The sports room was also locked when the visit took place. The very good equipment the Hospital has must be fully used for "occupational therapy" and in the interest and for the benefit of the patients (as it is provided in the Law concerning the Mental Health – Article 36 paragraphs 2 and 3). The formalism and the "official" behavior in presenting the concerns of the Hospital administration for the patients' spare time must be avoided (twice-disadvantaged persons because of their disabilities and because they are deprived of their liberty). At the Psychiatric Ward in Gura Văii of the County Hospital in Drobeta-Turnu Severin, the residents read the news-papers, magazines and books brought by the employees of the institution. **They don't have any subscription to any newspaper and they don't have any TV sets**. When the weather allows it, some patients take a walk and plant flowers in a little garden and the women do some knitting or crochet. The residents may walk only within the area of the institution (its park, own garden). When they had trainers, they would take them out for a walk outside the institution as well, but since they had received complaints from the nearby neighbors according to which the latter would be afraid of them as they are unpredictable, the management never allowed to leave the institution. **The CLR appreciates that such an attitude on behalf of some members of the local community cannot justify giving up at the good practice in force on that date, namely to take patients for a walk in town**.

***The right of the committed patients to have visitors* *is observed overall*. There are also situations when this right is subject to unlawful restrictions, which can only have negative cones-quences.** At the Psychiatric Ward for chronic disorders, females, of the Hospital in Sighetu Marmației, for instance, the nurse who was present during the monitoring visit, when asked how many times did the patient receive visitors stated that *"there isn't a lot of people to visit them"*, then added, *"only the relatives can visit them."* She then explained that other visitors did not have access to visit the patients as *"the latter would come only to gossip, to see what their condition is, and then to gossip some more, we protect their image. Therefore close family can come, that is parents or children."* Such a limitation of the right to visitors

which patients have (they are persons with disabilities, who are also deprived of liberty, who cannot leave the institution where they are committed whenever they want it) not only is against the legal provisions in this respect, but it is also likely to aggravate the situation of these persons deprived of liberty, which is difficult as it is, under all the aspects. **All healthcare and social institutions for persons with mental disabilities must observe their right to visitors specifically, as they wish to have visitors and irrespective whether the visitors are close family or not**, in accordance with the provisions of Article 36 of the Law concerning the Mental Health: *"Any patient with mental disorders has the freedom to receive the personal calls of an advisor and of any personal or legal representative, and other visitors, whenever it is possible."* The CLR deems that not only the private visitors that the patients may receive, but also ***the practice of allowing patients to go into community and/ or family for a visit*** are beneficial for the patients, but also able to improve the relationship between them and the staff (they can also make their reintegration to society much easier). The likelihood that some of the patients would never come back to the institutions upon expiry of the permission term proved to be so remote where there is this practice of allowing patients out, that this should not be a justification for the institutions which do not agree to such a practice or a fact likely to deter the staff of those institutions where allowing patients out is considered a good practice from doing so. ***Such a positive example which the CLR recommends as a good practice*** to be followed by the entire system is the one of the Hospital in Vedea. The cases when patients are allowed out to visit their families are relatively numerous, and, according to the management, following these permissions, the Hospital does not have to cope with special problems.

In connection with the ***patients' access to postal and phone services*** (Article 36 paragraph 1 letter c of the Law concerning the Mental Health) it is worthwhile pointing out that lately and under this chapter **significant progress has taken place**. Taking into account the status of persons deprived of liberty of patients committed to psychiatric wards, these establishments must hold mailboxes belonging to the National Company "Poşta română" ("Romanian Mail"), which the residents could access directly and they should be provided with envelopes, stamps and the necessary paper for their written correspondence. Patients must be ensured their right to send

and receive letters, with strict observance of the mail secrecy. Patients must also be ensured access to phone services. All healthcare and social establishments must have public pay phones with phone cards (which the establishment should provide for the patients) which the patients could use to make phone calls, with due observance of the secrecy of the calls. On a monthly basis, patients must be provided a certain number of phone calls free of charge – either from a public phone on the premises of the establishment, or from a public phone located near the establishment. There should not be any restrictions in what concerns the use of own mobile phones.

During the visit at the Psychiatric Ward of the City Hospital in Turceni, the head nurse stated that the patients had the right to send letters and to use the phone in her office whenever they needed to. They ask for paper and pen from the nurses, buy envelopes and stamps from the mailman – who they give the letter back to be posted. Asked how could the patients manage to buy envelopes and stamps, the head nurse stated that they "manage." **The patients did not confirm these pieces of information, they said that they were not let to use the phone, the staff provided them with the reason that it was not up to them (the patients) to pay the bill, but the establishment did. With respect to the written correspondence, they claimed that the letter would not be posted but torn apart by the staff. This last statement must be checked by the Hospital management, which must make sure to exclude such a potential abuse completely**. When the first visit at the Hospital in Mocrea took place, there wasn't any mailbox, but the monitors saw during their follow-up visit that one mailbox had been installed in the mean time. **The residents don't get envelopes and stamps from the Hospital** (the Hospital manager stated, however, that should they ask for them, they would get envelopes). **There wasn't any public phone** at the Psychiatric Ward of the County Hospital in Drobeta-Turnu Severin, which could be used to make phone calls. The staff stated that it had never applied for it since the residents would destroy it (a presupposition which the staff used to justify a breach of the patients' legal right) – but that, should they need it, they might used the one in the head nurse's office (especially in such cases, the patients must be ensured secrecy of their phone calls). **Residents don't have a mailbox and don't have any envelopes and stamps either provided by the institution**, the comment was made that the

Hospital Ward does not have the financial resources for this purpose (situation in which it cannot justify breach of a legal right of the committed patients, who are persons deprived of liberty). At the Hospital in Dumbrăveni, the monitors were told that the **patients were prohibited to have their own mobile phones as they could cause disturbances. This type of interdiction** – debatable to say the least in view of the invoked "research studies" (about which the CLR representatives do not know whether they have been validated) and imposing such a restriction on persons with mental disorders – **are in breach of the law** in connection with the above-mentioned provisions of Article 36 of the Law concerning the Mental Health. When it provides the right of patients with mental disorders to "access phone services", the law does not make a distinction between landlines and mobile phones. This interdiction is also contrary to the practice in many other healthcare and social establishments, which, lawfully and establishing a good practice, let committed patients to use mobile phones completely free. ***A better situation*** was recorded at the Psychiatric Hospital in Zam, where residents may use the public card phone located in the new wing and the establishment landline, as they are allowed to make phone calls from the employees' office (**with the latter present, which is a breach of the phone calls secrecy**). They also receive and write correspondence. There is a mailbox within for complaints and petitions. If they so ask, patients get envelopes, paper and pens.

The CLR deems it necessary to set in place a *uniform procedure to record and investigate the committed persons' deaths* in the case of the system of healthcare and social institutions for persons with mental disabilities. Such a regulation is necessary taking into account the status of these patients as deprived of liberty (a large number of them without any family and without any type of "caretakers"). In the case of death among other categories of persons deprived of liberty (inmates or in pre-trial custody), the Romanian legislation provides such a procedure, which is uniform and specific and regulated in details (see more details in the Law No. 275/2006 concerning the execution of punishments and measures ordered by the criminal investigation bodies during the course of the criminal trial). The proposed measure takes into account the fact that the **number of patients' deaths, caused by various "accidents" is quite high in these institutions**. One example is the Social and

Healthcare Establishment in Găneşti, where the monitors found no less than four such cases. Following a convulsion, one resident fell on fire and died because of mechanic asphyxia and burns; the second, one blind oligophrenic female patient was a victim of another resident (her eye had been removed); the third hang himself and the fourth choked to death. Each such case must be investigated and clarified (by the Prosecutor's office or under the supervision of the Prosecutor's office) so as there won't be any shadow of doubt concerning the situations in which such accidents took place and who should be blamed for their occurence. **Such procedures and investigations in such situations must take into account the responsibility provided in the law on the staff for the life, health and physical integrity of patients** they take care of and keep under guard – who are persons with mental disabilities and deprived of liberty. Lack of uniform practice in connection with the one in similar institutions was found with the Hospital in Mocrea. The 4 deaths recorded during the last year in the Hospital were not notified to the Prosecutor's Office as they would not have occurred in suspicious conditions. The Hospital staff did not see it appropriate to notify the Prosecutor's Office for as long as, given the opinion of the Forensics Service, which certified the deaths, such did not occur in suspicious conditions. There were 6 deaths in 2008 at the Psychiatric Ward of the City Hospital in Turceni. In all these situations, the Hospital applied every time the following procedure: the doctor on duty at the city hospital would be notified, he would come to the Psychiatric Ward, would confirm the death, the police would be notified and called in, the autopsy would be conducted. If the death is by suicide, then the Prosecutor's Office is notified. Such a case happened last year in March (patient C died), but about this case the Hospital does not have any document, since it is not informed in connection with the progress in the investigation by the Prosecutor's Office. The **CLR deems it necessary that the Prosecutor's Office should promptly inform the Hospital concerning the results of their investigation and should give it the necessary documents for it to properly record such cases**. There were 2 deaths in 2009, on March 3, 2009 (a 48 year-old person, diagnosed with mental retard, committed to the Psychiatric Ward in 2005) and on May 29, 2009, a 40 year-old person a chronic substance abuser (alcohol) with pulmonary fibrosis. The patient PP had been committed in the Psychiatric Ward on April 28, 2009, in

May 19, 2009, he was transferred by the Ward staff to the City Hospital in Turceni for a medical examination and following this examination he was transferred to the TB Hospital in Dobrița, which sent him back to the Psychiatric Ward on May 28, 2009, in coma and with a perfusion, "he came back during the night and died in the morning." **Even if the patient was comatose, he was committed back to the psychiatric ward and not in intensive care and he wasn't given any medical treatment**. The police was seized in both situations. **The CLR requests the Hospital management to take all the necessary legal steps to clarify the context and the potential chain of responsibility in the case of patient PP's death**. In the past year, only one death occurred at the Hospital in Gura Văii, the patient died of a heart attack and the Forensics Service representatives did the autopsy of the dead. The cause of death is recorded in the patient's observation sheet and a copy of the death certificate is kept with the County Hospital. At the Hospital in Drăgoeşti, according to the applicable procedure in cases of death, the family is notified and the death certificate is obtained. In the timeframe between the first visit (April 24, 2009) and the follow-up visit (August 27, 2009), there were two deaths in the hospital. **Even if the Hospital holds a "Ledger to analyze deaths", none of the two cases has been recorded**. The Hospital manager stated that the deaths and the causes of deaths are recorded in the patients' casefiles. In the general clinical observation sheets, only these pieces of information had been recorded: LG – June 7, 2009, died at 3; VC – June 4, 2009, died at 7. At the Hospital in Vedea, according to the procedure applicable in cases of death, the family and the police must be notified, and if the dead does not have any caretakers, then the Prosecutor's Office is also notified. There is no Ledger to record deaths at the Hospital in Dumbrăveni, since they are only recorded in the patient's sheet. For each dead, the autopsy procedure is automatically conducted by the Forensics' Service and the casefile of the deceased is taken over by this Service.

G. Other findings

An already chronic issue of the healthcare and social establishments for persons with mental disorders is ***the lack of staff, and, in numerous cases, its deficient professional training***. Since this is a problem which is one of the most important causes for the very

difficult situation of the system, the **CLR requires the Public Health Ministry to prioritize the topic of staff in these institutions on its agenda of public policies and on the governmental agenda**. The status quo highlighted in the previous sections of the report is, to an important extent, a consequence of the problems of the system in this respect. We will present hereinafter only a few of the specific examples under this chapter, following the monitoring visits. The Psychiatric Ward of the City Hospital in Turceni experiences the lack of staff very acutely, given the fact that during 2005–2006, all vacancies had been blocked and then there wasn't any money to hire. Thus, **there are the following vacancies: three vacant positions for psychiatrists, one vacant position for a psychologist, one vacant position for a social worker, three vacant positions for orderlies**. The lack of staff, including psychiatrists, is caused mainly by the fact that these vacant positions in a healthcare and social institution located in a small town are not attractive. Because of the lack of psychiatrists, the institution has to cope also with the following situation: since the psychiatrist has been hired on part-time, he does not live in Turceni (being forced to commute from Craiova), and in emergency situations, in the absence of the psychiatrist, **commitments take place based on the referral by the staff currently in the institution at that time, namely, nurses**, who consult the psychiatrist over the phone. In the absence of a psychiatrist, the nurses decide on the commitment and the medication. A special situation would take place during July 6 – August 1, 2009, when the only hired psychiatrist would be on his annual leave, and the psychiatric services would be provided by the doctors employed at the Psychiatry Hospital in Târgu Jiu. They would come to Turceni, on rotation, only one day a week, every Tuesday. The lack of staff, especially psychiatrists, is a problem that the Hospital had had to cope with for more than ten years, during which the Hospital had never hired a full-time psychiatrist, only a part-time retired doctor. The Psychiatric Hospital Voila has to cope with the lack of staff as follows:

- doctors, there are 5 interns and 2 doctors work per ward, **it needs to have 36 doctors and it currently only hires 16;**
- the Hospital **needs 3 pharmacists**, currently, **none is hired** since nobody is interested;

- **66 orderlies/ ancillary healthcare personnel** and only **44 are hired;**
- **41 janitors necessary,** and only **21 are hired;**
- **28 stretcher-bearers necessary**, and only **8 are hired.**

The most difficult problem with the lack of staff is that at the Hospital in Drăgoeşti, there are five psychiatrists' vacant positions which are not filled mainly because there are no specialists in this field who are interested to work in a city such as Drăgoeşti. To solve the duty shifts, the Hospital must work with a psychiatrist from the Mental Health Center in Horezu. At the Psychiatric Ward of the Emergency Hospital in Bârlad, in order to cover the lack of staff, the management has been working with various doctors who are not hired by the hospital. Because there is no psychiatrist employed by the children's neuropsychiatric ward of the "Sfântul Nicolae" Hospital in Bârlad, (as opposed to the information provided during the first monitoring visit by the Hospital manager), the children come to the Hospital only for their psychological evaluation, as for the psychiatric evaluation, they are sent to the Hospital in Socola. The Hospital has recently initiated cooperation with a psychiatrist in training who is currently an intern in Cluj-Napoca, but who would come to Bârlad next year.

During the monitoring visits, the monitors gathered some other information concerning ***more relevant investment (budgetary allocations and their management)*** which had already taken place or would be taking place in some of the visited institutions. Thus, the refurbishment of the Hospital building in Mocrea is complete, as it had started more than two years ago. The façade and the interior of the building have been restored, the electrical wiring and the sewage have been redone, and a new heating plant operating based on wood has been installed. The wards and the doctor's rooms have been restored, with new furniture. The bathroom areas have been refurbished with tiles and have 3-4 showers. The water closets are separated and have china bowls. There is a sink in each ward. The refectories and the kitchen have also been restored and refurbished (there are two electric ovens and four modern cookers in the kitchen). According to the information gathered during the follow-up visit, the completion of the works at the Hospital's buildings had been scheduled to take place in the winter of 2009-2010. One of the flights of stairs had been restored and the thermal installation had been redone at the Hospital in Turceni, in 2006, and in 2007, the underground level and the food supplies

deposit had been refurbished. The most recent construction works took place in 2008, when the heating plant was installed (it operates based on wood) and the necessary installation of the building was mounted. The Local Council paid for the works, as well as for the heating plant, as it works very well with the Hospital. In its letter dated July 6, 2009, sent to the CLR following the monitoring visit, the Hospital management team stated that *"all the necessary steps were undertaken at the local administration level, but also at the level of the Ministry, with a view to gathering the necessary funding for the rehabilitation and refurbishment of the interior in the building where the psychiatric ward for chronic disorders operates*". The CLR was also informed in a letter dated August 10, 2009, by the Psychiatric Hospital in Brăila, that, following the monitoring visit, in the Hospital *"all necessary procedures were launched with a view to outsourcing capital refurbishment works and to rehabilitating the external ward of the Hospital*". At the Psychiatric Hospital in Dumbrăveni, in 2008, the budget was of 48 billion ROL, and in 2009, **a budget of 55 billion has been approved,** yet according to the statements by the manager, **around 80 billion is necessary** to cover all expenses. Out of the 55 billion ROL, 5% are own funds from sponsorship, sale of assets (stoves), greenhouse production. What the current budget does not cover refers to expenses for pharmaceuticals, which would amount to around 6.4 – 6.7% of the budget. With respect to food ratios, **around 120,000 ROL is necessary** for the daily ratio of a patient, **whereas what is currently covered is 80,000 ROL.** At the Hospital in Dumbrăveni, the management concluded sponsorship contracts with the residents or their families, for the Hospital to be given money to buy various products for the beneficiaries. The monitors found that **the sponsorship procedures are *"not transparent to say the least, and the manager did not respond to our request to clarify the status of the money received by the patients during their stay in the institution. In conclusion, there are no official documents, records according to the legal requirements in connection with the check-in and management of the patients' monies. An external audit is recommended to check all the monies that the institution receives whose beneficiaries are the patients."*** One aspect to be considered in connection with all the institutions such as those, which are the object of this report, is the legal and appropriate management of assets and valuables belonging to the persons committed to these institutions.

Given the special status of these persons (persons with mental disabilities and, additionally, deprived of liberty), the **managers of these institutions must provide clear and updated records concerning the patients who are under legal guardianship, as well as the expenses related to the monies received by the patients while committed to these institutions (pensions, monies from their families, guardians etc)**. The monitors found a very bad situation in the Healthcare and social establishment in Găneşti, and it has become obvious that **the management of this institution is deficient, especially in connection with the use of budgetary allocations**. It is high time that the County Council ordered an investigation to check how the monies allocated to this institution was spent. The last yearly budgetary allocation – which the representatives of the institution considered satisfactory – was 2,585 thousand RON, a subsidy from the local budget and 700 thousand RON a subsidy from the state budget (with the budgetary correction, to this added 55 thousand RON from the local budget). **Having under consideration the very difficult situation of most of the psychiatric hospitals, the CLR herein requests the Public Health Ministry to prioritize its investment support for these institutions wherein one of the most disadvantaged category of persons is committed – a category which is twice disadvantaged as it is made up of persons with mental disabilities and deprived of liberty**.

Appendix No. 1

INFORMED CONSENT
concerning the therapeutic investigations and procedures and participation in the healthcare education process
(Appendix 1 of the General Rules of April 10, 2006 for the Application of the Law concerning the Mental Health)

I, the undersigned .... have willingly showed up, free of any constraint and requested an evaluation of my health status to be given a diagnosis and developed an individual therapeutic program.

I am informed about my right and freedom to ask another person to be present (personal representative) to assist me in giving my consent, with a view for the necessary investigations for the diagnosis could be conducted and the therapeutic methods necessary for recovery of my personal autonomy should be implemented. I am also aware that I have the right to deny a diagnosis or treatment procedure that I do not agree with.

I have also been informed, with sufficient amount of explanations, in a clear and respectful language, suited for my understanding, about the following:

- the diagnosis and how it is to be set;
- the aim, methods and length of the proposed treatment, as well as the benefits thereof;
- the potential discomfort, risk or side effects thereof;
- other possible treatments;
- risks and consequences of denying or interrupting treatment in the absence of a healthcare professional opinion.

I have been informed that the invasive diagnosis and therapeutic methods with a higher risk would be developed separately and that I would consent to them on an individual basis.

I hereby authorize the doctors and the healthcare professionals of the clinic/ ward to carry out all necessary diagnosis investigations and procedures, in the legal context of an appropriate medical practice. Except for the cases when I express my specific disagreement, may be implemented all usual investigations and treatments, with a low or average level of risk.

All biological samples (blood, tissue or organs) taken for diagnosis may also be examined for purposes of scientific research, training, may be confidentially photographed and published without any further specific authorization.

I have been informed that the healthcare process is doubled by the educational process and I consent to, within the limits set by decency and common sense, being a part of the training process, but this must not affect the quality of the healthcare provided to me. I have been informed that I can deny it on principle or in the moments that I choose, without being under any obligation to provide other explanation and notwithstanding my rights as a patient.

I have been informed that I have the right to refuse my body being photographed, except for the medical documentation photographs, which I herein authorize, on condition that the essential facial elements should be concealed, to make my recognition impossible.

Should any major emergency arise during the hospital confinement, the medical team is herein authorized to conduct all diagnosis tests or therapeutic procedures which are medically justified and in conditions of appropriate medical practice.

I have read (I have been read), I have understood what is written above and I agree to it.

....
(Patient's signature)

Treating doctor,
....
(Signature and seal)

Personal/ legal representative,
....
(Last name, first name and signature)

Appendix No. 2

Comments and proposals concerning the legislative solution of the "non-voluntary commitment" of persons with mental disorders

Non-voluntary commitment is regulated in Section 2 of the Law No. 487/2002, the Law concerning the Mental Health and the Protection of Persons with Mental Disorders (Article 44 to Article 59).

In principle, the regulation is appropriate since the measure of non-voluntary commitment is taken within an administrative procedure wherein the decision of the healthcare professional who ordered the commitment is reviewed by a medical board and if this is confirmed, then the person committed non-voluntarily (their legal or chosen representative) has the right to challenge this decision in court.

Nonetheless, we feel that the current solution may be criticized based on the following features:

Given its nature, even if it is not a punishment which deprives one of their liberty, the non-voluntary commitment is, however, a measure which deprives of their liberty the non-voluntarily committed persons, since they are not allowed to leave the healthcare establishment where they had been non-voluntarily committed ("forced", according to Article 12, "non-voluntary", according to the following articles; to observe the principle of terminological unity of legal acts, it is mandatory to use just one and the same term – as to us, we would rather use the term "forced", which we feel to be more appropriate for the situation it refers to, namely the commitment of a person to an institution against their will).

As it had been pointed out in Section b) of the Report, the healthcare and social institutions for persons with mental disorders are establishments which deprive them of their liberty, as deprivation of liberty is defined through Article 4 of the Optional Protocol of the UN Convention against Torture and Other Cruel or Degrading Treatment or Punishment (which Romania ratified through Law No. 109/2009), namely as *"any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority."*

Since commitment is logically followed by a person's deprivation of liberty, all safeguards provided in the Constitution, as well as in the international pacts and treaties signed and ratified by Romania in the area of human rights to freedom and safety must be guaranteed – the Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms etc.

On April 28, 2006, the Ministry of Justice published the results of a consultation of judges and prosecutors from the Courts of Appeals and the Prosecutor's Offices attached to the latter, concerning the current form of the Law No. 487/2002, especially its provisions in connection with the non-voluntary commitment.[3] We feel that the conclusion of the above-mentioned consultation, according to which *"even if Article 5 paragraph 1 letter e of the European Convention for Human Rights provides the possibility to detain persons who suffer from mental disorders and are disadvantaged, we appreciate that the procedure provided in Articles 49 to 56 of the Law (concerning the non-voluntary commitment) is contrary to the provisions of Article 6 of the Convention (the right of any person to a fair trial) and the caselaw of the European Court"* is sensible. According to Article 5 of the Convention, *"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law … the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants."*

We also appreciate as pertinent the conclusion of the consultation initiated by the Ministry of Justice, according to which the provisions of the law concerning the non-voluntary commitment may be maintained, but the commitment procedure must be amended, especially in that the review of the non-voluntary commitment decision by the prosecutor must be removed and the control of the courts regarding these decisions must be regulated.

In the CLR's opinion, the current regulation is defective in that, among others:

- **a)** concerning the application for forced commitment (Article 47 of the Law), punishments must be provided according to the

[3] Mediafax News Agency, *The Mininstry of Justice wants to amend the Law concerning the Mintal Health*, April 28, 2006.

criminal law against all persons/ representatives of public authorities who submit such an application in ill-faith; if they restrained, detained and transported the respective person to the hospital, even if they were aware (or they should have or could have known) that such a measure was not mandatory, they should be held liable according to the provisions of the criminal law concerning the illegal deprivation of liberty (Article 189 of the Criminal Code); the legal guardian and the guardian authority must be included specifically among the persons/ authorities who can make the application for forced commitment; *"known medical history"* must be removed as one of the grounds of applying for forced commitment (Article 47 paragraph 2) since, on the other hand, it might not be relevant in this application (for instance if the respective history, either through the form of the disorder or through the extended timeframe elapsed since it was first manifest, is not pertinent/ conclusive in taking the decision for forced commitment. On the other hand, their removal is mandatory for the sake of regulatory consistency (as an example, under Article 14 paragraph 2 it is provided that the *"fact that a person had been taken care of or committed in the past shall not deemed grounds for current or future diagnosis of mental disorder."*); removal of this "ground" is mandatory because highlighting a potential *"medical history"* would be a psychological factor to trigger a prejudice of those who apply and decide for the non-voluntary commitment;

b) concerning the decision for forced commitment, the obligation of the *"psychiatrist who evaluates the commitment opportunity"* to develop the grounds of their decision must be regulated; such an obligation should be provided mainly because of the consequences of the decision for forced commitment might have related to the person committed (the most important of which being the deprivation of liberty); besides the medical arguments, the grounds must also include some factual and legal data (among others, which of the provisions of Law No. 487/2002 are the grounds for the decision taken); the *"committee to review the procedure"* must also be under an obligation to ground their decision (Article 52); providing grounds for such decisions is necessary including out of reasons of symmetry of regulation, if, for instance, the psychiatrist must provide grounds for moving against the decision to commit the person (Article 51); we appreciate that providing

grounds should be mandatory even more so if the forced commitment of the person has been decided – and consequences thereof have been mentioned above; ultimately, this is a necessary obligation if the persons/ authorities who apply for commitment must provide grounds for their application also (Article 47 paragraph 2 of the Law); it is necessary that the phrase *"the psychiatrist who appreciates the commitment opportunity"* should be rewritten to read *"the psychiatrist who orders forced commitment*";

c) concerning the deadlines provided in the law, we appreciate that they are too extended both in terms of informing the "representatives" of the committed persons thereof, and confirming the commitment by the review board; according to Article 49 of the Law, the psychiatrist who decided the forced commitment must inform *"the patient's personal or legal representative"* thereof *"in not more than 72 hours"*; it is worth mentioning firstly that, quite unnaturally, the doctor is not under any obligation to inform the family of the person forcedly committed (of course, if the latter has any family at all), and secondly that the deadline of *"not more than 72 hours"* (that is three days) is too extended; it is completely excessive that a committed person could be deprived of any type of assistance provided by his legal or personal representative (including a potential lawyer) for three days and it is also outrageous that his family could not know anything about his absence (disappearance) for three days and could not provide him with support and protection of his legitimate interests; we consider that the doctor (hospital) must notify *"immediately"* the person's family (the personal or legal representative) about the commitment – this is a solution that becomes mandatory inclusively if compared with the situation provided in Article 57 paragraph 2, according to which *"the healthcare establishment must* ***immediately*** *(our emphasis) seize the law enforcement bodies and the prosecutor's office attached to the competent court, as well as the patient's family, personal or legal representative when the person subject to an non-voluntary commitment procedure leaves the healthcare establishment in the absence of any decision by the review board or by the competent court"*; the deadline of *"not more than 72 hours"* for a confirmation by the review board of the commitment decided by the psychiatrist is also much too extended; based on the same argument,

namely that this is a case of persons being deprived of their liberty, we feel that it is necessary to shorten as much as possible the deadline within which these persons may be deprived of their liberty other than based on a court decision; we consider that this deadline should not be more than 24 hours and following it, the person forcedly committed (the personal or legal representative) should have a possibility to challenge this measure in court;

d) concerning the making-up of the procedure review board (art 52), tasked mainly to confirm the commitment decision taken by the psychiatrist, and, respectively, to deny it following its challenge by the committed person (by his personal or chosen representative, we feel that it is unnatural that one of the three members of the board should be the doctor who decided the commitment; it is an obviously unnatural situation likely to raise serious doubts concerning bias – to have the person who decided the measure under scrutiny be the same to review it; obviously, nothing can prevent it, quite on the contrary, the recommendation is to have the psychiatrist who decided the commitment invited to provide explanations that are likely to be necessary for the information and deliberation by the board; in connection to the membership in the board of a *"civil society representative"*, we feel that this should not an alternative but a mandatory condition and this member of the board should be mentioned in the text of the act in the following terms: *"a representative of a non-governmental organization which implements programs to safeguard the rights of persons with mental disorders or appointed by such an organization"*; the benefit of this solution is that it may strengthen the objectivity of the process to have a person outside the "system" take part in the decision-making by the board, a person with the minimum amount of knowledge in the field which makes them compatible with the nature of the decision-making they are called to participate in;

e) concerning the review of the forced commitment decision by the prosecutor's office, we feel that this possibility provided under Article 53 of the Law is completely inappropriate in connection with the role and tasks of the prosecutor's office within the Romanian judicial system; thus, according to Article 131, paragraph (1) of the Constitution of Romania, the role of

the Public Ministry shall be exclusively connected with the *"judicial activity"* – in the criminal and, respectively, civil matters (according to Law No. 304/2004 concerning the judicial organization – Article 1, paragraph (3) – *"the Public Ministry shall carry out its tasks through the prosecutors organized in prosecutor's offices, according to the law*"); yet, in the case of forced commitment of persons with mental disorders, we find ourselves within an administrative procedure which ends in a decision (a document) of the same nature, likely to be exclusively subject to court scrutiny, and not at all to prosecutorial "review"; the fact that such a *"sui-generis"* power entrusted on the prosecutor's office is inappropriate is also a consequence of its link with the tasks of the Public Ministry, as they are set in Article 63 of the Law No. 304/20044; as the

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[4] "The Public Ministry shall exercise the following tasks through the prosecutors:

a) conduct the criminal investigation in the cases and under the conditions provided by the law and take part according to the law in the alternative dispute resolution procedures;

b) coordinate and supervise the criminal investigation activity of the judicial police, coordinate and oversee the activity of other criminal investigation bodies;

c) seize courts to try criminal cases, according to the law;

d) exercise the civil action, in cases provided by the law;

e) take part in court sessions according to the law;

f) exercise the remedies against court decisions according to the law;

g) defend the rights and legitimate interests of the underage, of the persons whose freedom of movement has been restrained, missing persons and other persons, according to the law;

h) act to prevent and combat criminality, under the coordination of the Justice Minister, to uniformly develop the criminal policy of the state;

i) study cases which generate or favor criminality, develop and submit proposals to the Justice Minister with a view to eliminating them, as well as improving legislation in the field;

j) check the observance of the law in the pretrial detention facilities;

k) exercise any other tasks as provided by the law."

It is worth pointing out that both the tasks provided under letter k – "exercise any other tasks as provided by the law" – and under letter g – "defend the rights and legitimate interests of the underage, the persons whose freedom of movement has been restrained, missing persons and other persons, according to the law" – shall be exercised as circumscribed to the role set in the Constitution of Romania for the Public Ministry, which is a role in exclusive connection with the "judicial activity" (in the case of the tasks provided under letter g, one could be reminded of, for instance, the conclusions of the prosecutors in cases when the restraining

forced commitment has one consequence, namely to deprive persons of their liberty, we feel that a decision by the prosecutor regarding such a measure may be criticized from the perspective of the status of magistrate of the prosecutor, which is still a matter of debate, since the European Court for Human Rights has already given a decision in the case of Romania wherein it appreciated that the prosecutor does not fulfill the independence from the Executive branch requirement to be deemed a "magistrate" within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms (case Vasilescu vs. Romania, case Pantea vs. Romania); it is also a matter of critique that the Law does not provide any deadline wherein the prosecutor's office shall take a decision concerning the commitment *"review"*, which would allow for a *sine die* extension of such a measure, with consequences that may be extremely severe for the person forcedly committed and their interests; out of the above-mentioned arguments, we appreciate that it is mandatory to repeal provisions concerning the review by the prosecutor's office of the forced commitment decision, and the person committed (their chosen or legal representative) should have the possibility to challenge this administrative procedural measure in court;

f) concerning the challenge in court of the forced commitment measure, we consider that the current wording of the Law provides the legally satisfactory safeguards for the efficient protection of the rights and interests of the persons in such situations; one aspect that we feel should be under consideration is the need of having specific provisions concerning the legal regulations applicable in the case when the committed person *"seizes"* the *"competent court"* (a provision must specify whichever of the legal provisions in the matter of administrative procedures shall be applicable, if there will be any remedy for the court decision thereof etc.); the fact that it is stipulated that such cases *"shall be tried within emergency procedures"* is positive; we also feel that the proposals gathered following the consultation between the MoJ and the judges and prosecutors from the Courts of Appeals

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of the freedom of movement of some persons, including the underage is on trial – Article 142 to Article 144 of the Family Code).

and the Prosecutor's Offices attached to the latter are most welcome: Article 53 should stipulate that the non-voluntary commitment decision of the review board shall be notified within 48 hours to the court, jointly with all proposals to confirm it; the healthcare establishment should make available to the court all the medical files in connection with the respective patient; with Article 54 amended, trial should take place within an emergency procedure in the judge's chamber; participation and hearing of the patient shall be mandatory if their health condition allows it, if not, the judge should be able to order hearing of the patient in the healthcare establishment; the patient shall have a lawyer appointed, if they have not chosen one already; prosecutor's participation shall be mandatory; the patient and their legal or personal representatives may apply for a new forensic and psychiatric evaluation, according to the law; the court decision may be appealed in three days since its reading in court or notification, as the case may be; the appeal procedure shall not suspend the enforcement; if it considers that the extension of the commitment is not mandatory, yet the treatment is necessary, the court may order a substitution of the medical commitment with the outpatient treatment, in the absence of a consent by the patient.

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