

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 26/20, 26/12, 33/9, and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged arbitrary detention and other human rights violations perpetrated against at least 48 persons with psychosocial and intellectual disabilities placed at the State-run Maciuca institution, in Valcea County**. The allegations of violence and abuse, including the use of solitary confinement and restraints, documented from 2014 to 2017, may constitute a form of torture or other ill-treatment.

According to the information received:

The Maciuca Centre for Recovery and Neuropsychiatric Rehabilitation, Maciuca institution hereinafter, established in 1972 and functioning under the administration of the General Direction for Social Assistance and Child Protection (GDSACP) of the Valcea County, is a closed type institution for persons with psychosocial and intellectual disabilities. The people placed there are not allowed to leave the premises of the institution at their own will and are kept under constant surveillance. Outside visitors are granted access to the premises only with the director's consent.

As of 26 January 2017, 21 women and 27 men with psychosocial and intellectual disabilities, aged between 20 and 48 years, were placed at the Maciuca Institution.

Confinement to the institution does not require a court order and may be authorised by a close relative of the person with psychosocial and intellectual disabilities or the legal guardian. The majority of people has been placed there at

the request of their family members who are in a situation of poverty and lack community based support services. According to the information received, four people, deprived of legal capacity, have been institutionalized by the decision of their legal guardians. The others have been transferred from children's institutions when they turned 18 years old, and detained there against their will for over a decade.

According to independent monitoring reports, people placed at the Maciuca institution are forced to live together in groups of three to seven people per room and share a total of ten bedrooms, located on the ground and first floors of an old dilapidated building. Each person has less than six square meters of personal space. All furniture and other items in the rooms are shared. The rooms have an ascetic appearance, with walls covered in hospital tiles, no decorations, carpets or curtains. In their rooms, people have no personal items or belongings, not even personal clothes.

There are one bathroom and several toilets located on each floor and shared by both women and men. Because of the poor hygiene, everyone has their hair cut short.

Meals are served at fixed hours, three times per day, in a common dining room. People placed at the institution do not exercise any preference or choice over the food that is provided.

A number of persons with disabilities using wheelchairs have been located on the first floor, which can only be accessed by a staircase. They are therefore completely isolated and deprived of any possibility of leaving the floor independently or being immediately evacuated in case of emergency. In addition, reports indicate that the institution has no clear emergency action plan with evacuation procedures and no staff members trained to assist the evacuation of people who are unable to leave the building without support.

According to the restraints register kept by the institution, staff can apply mechanical restraints at their own discretion, in order to calm down those who are deemed agitated or violent. The methods of restraint that have been applied include strapping to the bed or chaining to an immovable object. As a result of prolonged detention under such restraint, people were left with deep visible wounds around their wrists and ankles. According to some accounts, restraint measures could last for long, ranging from 40 minutes up to several hours. It has been alleged that, while keeping the people restrained, the staff of the Maciuca institution left the premises to perform maintenance works at the director's house in exchange for paid days off.

The institution is also equipped with a solitary confinement cell, which is under renovation so as to be brought into compliance with the requirements established by Ordinance No. 488/2016 providing guidance for the implementation of the mental health law. According to the above mentioned Ordinance, the solitary confinement cell should be equipped with a metallic door with a barred observations window, acoustically insulated from the outside world, with walls and floors fully covered in durable fabric without visible seams, and with dim inside lighting.

An analysis of relevant legislation indicates that both restraints and solitary confinement are allowed under Law No. 487/2002 on Mental Health and the subsequent implementation guidance adopted by the Ministry of Health.

The reports received suggest that after being placed under the institution's custody, there is no recourse available to persons with disabilities to challenge their detention and raise complaints related to human rights violations that they have suffered while in detention. There are no State designated monitoring and complaint mechanisms that could detect violations and help victims in bringing complaints and requesting reparations in court proceedings. On the other hand, independent civil society monitoring teams are denied access to the premises. People placed at the institution lack basic information regarding their human rights, including their right to bring complaints before domestic law enforcement bodies. Furthermore, it was observed that those with limited or no speech capacity had no access to communication support to help them report violations and to be understood by the national institutions mandate to identify and act on human rights violations.

According to data collected by civil society organizations, the number of deaths occurring at the Maciuca institution is alarmingly high. In 2016, ten persons, born between 1937 and 1995, passed away. According to their medical files, deaths occurred as a result of cardiorespiratory insufficiency caused by pneumonia or complications related to acute bronchitis. However, there is no medical record of emergency interventions or urgent hospitalization in an attempt to provide appropriate life-saving treatment. According to other reliable sources, the total number of deaths in the four institutions for persons with disabilities located across the Valcea County during the period from 1 January to 28 September 2016, amounted to 21 children and adults.

In spite of their legal obligation to investigate the cause of the deaths in institutions, including to carry out an autopsy of the body, as established by Law No. 135/2010 on the revised criminal procedures and the Joint Order no. 1134/255/2000, the Maciuca police unit refused to order the necessary forensic examinations.

In December 2016, the Valcea General Direction for Social Assistance and Child Protection (GDSACP), the Agency for Payments and Social Inspection, and the County Council have been alerted about severe human rights violations taking place in Maciuca institution, but no action seems to have been taken to protect the people placed at the institution from further grave human rights violations and to redress the situation. In a letter of 14 February 2017, the Valcea Prosecutor's Office has been requested to intervene on allegations of torture or other ill-treatment and initiate investigations in relation to the circumstances leading up to and surrounding the deaths in the Maciuca institution. However, there is no official confirmation that the Prosecutor's Office has opened an investigation in response to those allegations.

Before December 2016, the number of people placed at the Maciuca institution amounted to 95 persons. In December 2016, 47 persons have been relocated from the Maciuca institution to similar institutions in Bistrita (seven persons), Milcoiu (four persons), Zatreani (two persons), and Babeni (34 persons). The rooms in which they were previously residing could no longer be used due to their deplorable state. None of the persons concerned was consulted on the matter of their transfer or offered support for alternatives of transitioning into community. The decisions were taken at the level of the directors of the Maciuca institution and of the receiving institutions mentioned above. The transfers were based on the argument that some of the rooms no longer offered adequate living conditions and could not be renovated.

It is estimated that, across Romania, over 24.000 people with disabilities are detained in similar institutions.

Without prejudging the accuracy of these allegations, we are expressing serious concern at the situation of the 48 persons with disabilities reportedly deprived of their liberty in the Maciuca institution and the other 47 persons who have reportedly been relocated to other similar institutions across the country, allegedly without their consent and without being offered adequate support to enable their transition to independent lives and inclusion into the community. We would like to recall that your Excellency's Government bears the primary responsibility for guaranteeing enjoyment of human rights by persons with disabilities, and protecting those rights that are prone to disability-specific forms of violations, including deprivation of liberty on grounds of actual or perceived disability, denial of access to essential support services, segregation and institutionalization, and deaths in custody.

In particular, we are concerned about the systemic practice of institutionalization, which for the purposes of this communication entails the involuntary placement of persons under the custody of institutions on grounds of their actual or perceived disabilities and without securing their access to meaningful recourse. This disability-specific form of deprivation of liberty is discriminatory in nature and contradicts the

fundamental human rights principles related to liberty and security, including the important due process guarantees that should be applicable to every person deprived of their liberty.

Therefore, we call on your Excellency's Government to undertake all necessary legislative and administrative reforms, and judicial measures to prevent and remedy involuntary institutionalization of persons with disabilities. In this context, appropriate remedies for human rights violations may include the provision of free or affordable housing, economic support and community-based services in order to facilitate independent living and inclusion in the community, including alternatives that are free from medical diagnosis and non-consensual interventions.

In particular, we urge your Excellency's Government to introduce a moratorium on new admissions to institutions and set up a policy framework to guide the deinstitutionalization process and ensure transition to community based alternatives. This framework should include the adoption of a plan of action with clear timelines and concrete benchmarks, the redistribution of public funds from institutions to community services and the development of adequate community support for persons with disabilities such as housing assistance, home support, peer support and respite services.

At the same time, if accurately reported, the deplorable conditions of living at the Maciuca institution and the exposure of the people placed there to coercive measures, including the use of mechanical restraints and the use of solitary confinement, potentially may amount to cruel, inhuman or degrading treatment or punishment and, in certain circumstances, even to torture. Therefore, we call on your Excellency's Government to take immediate actions aimed at enforcing the prohibition of torture and any other forms of ill-treatment, to investigate all allegations of human rights abuse, to hold perpetrators accountable and to provide remedies for victims, including adequate compensation and rehabilitation.

Furthermore, we express grave concern at the deaths occurring under the custody of State-run institutions and the apparent lack of investigations. In particular, we urge your Excellency's Government to investigate and elucidate the circumstances which led to the death of ten people placed at the Maciuca institution in 2016 and to prevent any further deaths by putting an end to life-endangering situations and taking strong measures aimed at safeguarding the right to life of persons with disabilities.

We are equally concerned that victims at Maciuca and other similar institutions do not enjoy the effective exercise of their rights to access justice. It appears that institutions are not subject to any form of external independent monitoring and that people have little opportunities to reach out to the law enforcement bodies while in detention. Moreover, we are concerned that the people held under the custody of institutions are not informed about ways in which they can effectively and promptly secure their release including injunctive relief. In upholding the rights of persons with disabilities, we encourage your

Excellency's Government to ensure regular and appropriate independent monitoring of all relevant institutions until they are phased out, and to design accessible procedures, support and accommodations as may be needed to assist individuals to claim their rights.

In connection with the above mentioned allegations and concerns, we would like to remind your Excellency's Government of the applicable international human rights norms and standards relevant to this case, including the obligation to ensure that persons with disabilities may exercise fully and effectively all their human rights and fundamental freedoms on an equal basis with others, notably in the enjoyment of the right to life, the right to physical and mental integrity, health, housing, independent living, and freedom from exploitation, violence and abuse.

We would like to draw your Excellency's Government's attention to article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by your Government on 9 December 1974, which guarantees the inherent right to life of every individual and that no one shall be arbitrarily deprived of his or her life. Following General Comments 6 and 31 of the Human Rights Committee, the inherent right to life must not be narrowly interpreted. States are not only prohibited from directly violating the right to life but also required to adopt positive measures to protect this right and prevent violations, both by State and non-State actors, from happening. In the above-mentioned case of the Maciuca institution, a State-run facility, both the responsibility of the State to respect the right to life of people with disabilities as well as its obligation to protect and ensure their right to life appear to be engaged.

In relation to the reported high number of deaths at Maciuca institution and the lack of investigation into the causes, in particular the refusal of the Maciuca police unit to order the necessary forensic examinations, we would like to recall that Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (ECOSOC resolution 1989/65) provide that all cases where complaints by relatives or other reliable reports suggest unnatural death should be subject of thorough, prompt and impartial investigation (Principle 9).

We would also like to refer to the right of persons with disabilities not to be arbitrarily deprived of their liberty and the right to equal recognition before the law as enshrined, inter alia, in articles 9 and 14 of the International Covenant on Civil and Political Rights.

We also refer to articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Romania on 18 December 1990, which provide for the prohibition of torture and other acts of cruel, inhuman or degrading treatment or punishment as one of the few absolute and non-derogable human rights standards. We would also like to draw the attention of your Excellency's Government to article 12 of the Convention, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are

reasonable grounds to believe that torture has been committed, and article 7 of the Convention, which requires State parties to prosecute suspected perpetrators of torture.

In this context, we recall that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment has stated that solitary confinement and restraints, applied for even a short period of time, are conflicting with the prohibition of torture and ill-treatment and called for an absolute ban on such practices (see A/HRC/22/53, para 63).

Furthermore, the above-mentioned facts appear to be in contravention of Convention on the Rights of Persons with Disabilities, ratified by Romania on 31 January 2011, which is the highest international standard to promote and protect the rights of persons with disabilities. We would like to stress in particular the rights of persons with disabilities, as enshrined in articles 10 (right to life), 14 (liberty and security of the person), 15 (freedom from torture or cruel, inhuman or degrading treatment or punishment), 16 (freedom from exploitation, violence and abuse), 17 (protecting the integrity of the person), 19 (living independently and being included in the community), 25 (health), and 28 (adequate standard of living and social protection) of the Convention on the Rights of Persons with Disabilities.

Article 14 in conjunction with article 5 of the Convention prohibits unlawful and/or arbitrary detention on grounds of disability, including confinement to residential facilities. Article 15 of the Convention complements other human rights instruments on the prohibition of torture or any form of cruel, inhuman or degrading treatment inflicted under any pretext or circumstance and article 16 affirms the right of persons with disabilities to be free from violence, abuse and exploitation. In order to prevent the occurrence of all forms of abuse and to assist victims in bringing complaints before the law enforcement bodies, article 16 (3) sets an obligation for States to ensure the independent monitoring of all facilities and programmes designed to serve persons with disabilities.

Article 19 secures the right of persons with disabilities to “choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangements” as well as provides for the State Parties’ obligation to ensure “access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation and segregation from the community”. Living in the community requires recognition of the right of persons with disabilities to enjoy access to public housing programmes, as provided by article 28 of the Convention on the Rights of Persons with Disabilities.

With regard to the rights to seek accountability and remedies for violations, article 13 of the Convention refers to an all-encompassing and stand-alone right of access to justice for persons with disabilities. As long as institutionalization continues and where

persons with disabilities are deprived of their liberty through any process, States should secure effective exercise of their rights to bring proceedings before court to challenge the lawfulness and arbitrariness of detention and to receive appropriate remedy. In order to ensure effective access to justice for persons with disabilities, States should establish complaint procedures and provide legal advice and other support services in a manner that takes into account the individual needs of persons with disabilities to assist them in bringing their case before the justice actors.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide the legal framework which permits the detention of persons with disabilities in institutions, noting how it complies with Romania's international obligations.
3. Please provide information regarding the deinstitutionalization processes and other measures taken to secure that persons with disabilities are not forced to live in institutions and can access support to transition to communities and lead independent lives.
4. Please provide the details of any consultations conducted with persons with disabilities transferred from Maciuca institution to other residential institutions to determine the most suitable living arrangements of their choice, as well as measures taken to ensure that those choices are respected.
5. Please provide the details on what measures have been taken to prevent, detect and address all forms of violence and abuse perpetrated against persons with disabilities, including measures aimed at deterring disability based human rights violations and remedies provided to victims.

6. Please provide the details, and where available the results, of any investigations carried out in relation to the alleged death of the ten persons at Maciuca institution in 2016. Have penal, disciplinary or administrative sanctions been imposed on the responsible authorities and remedies provided to the families of the deceased? If no inquiries have taken place, or if they were inconclusive, please explain why.
7. Please explain any measures taken to prevent further human rights violations and casualties among the persons with disabilities remaining in residential institutions across the country. Please explain if there is any independent monitoring of such facilities, accessible complaint procedures and legal or other appropriate support, such as communication support to enable victims to speak out.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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