CENTRE FOR LEGAL RESOURCES

PROGRAMUL DE COOPERARE ELVEȚIANO-ROMÂN
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MOBILE LEGAL CLINIC
FINAL REPORT

"SOS: Romanian NGOs, together for the rights of persons with mental disability in closed institutions"

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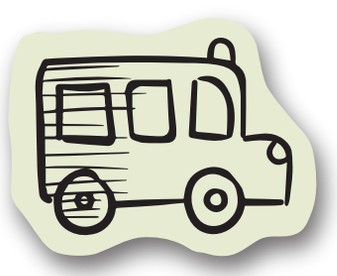

Mobile Legal Clinic

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CHAPTER 1

Analysis of the observance of the right of "access to justice" from the perspective of the centers monitored under the Project, as well as of the cases received by the Center for Legal Resources (CLR)

The social context of institutionalized adults with intellectual disabilities is a factor with an important role in the life course of these people, as well the way they get locked up in these institutions.

First of all, many of the adults in the institutions are those who were foster children, in centers or with maternal assistants, who do not have a family and are therefore transferred to adult centers when they reach the age of 18. The biggest problem in this context is the fact that this phenomenon is widespread because community support services are lacking, and therefore there are insufficient resources and support for young people to leave the residential system and live in the community, thus being violated their freedom of choice and the freedom to live in the community as provided by art. 19 of the United Nations Convention on the Rights of Persons with Disabilities (CDPD), ratified by the Romanian State by Law 221/2010.[1]

The lack of community support services and the lack of alternatives can also be seen from the practice of the Social Assistance and Child Protection Departments through which some of the children who are in foster care do not have certificates of handicap during childhood, but when they become adults, they issue these certificates for them so as to become residents of adult centers. Also, for those who have been certified since childhood, the certificates are reviewed annually, but when they become adults, the certificates become permanent, so there is no obligation to periodically review them. Thus, even if, in the course of time, the state of these persons improves, the residents remain with the permanent handicap certificate, which they cannot challenge at the time of issuance, because they have no information and support in this respect, creating a disadvantage, a stigma and a serious

[1] *Article 19*
Independent life and community integration
States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community with equal opportunities with others and will take effective and appropriate measures to ensure that persons with disabilities fully enjoy this right and full integration into and participation in the community, including by ensuring that:
(a) People with disabilities have the opportunity to choose their place of residence, where and with whom to live, on an equal basis with others, and are not obliged to live in a particular living environment;
(b) People with disabilities have access to a range of home, residential and other services, community support services, including personal life support and community integration to prevent isolation or community segregation;
(c) Community services and facilities for the general public are available in a similar way for the people with disabilities and they should respond to their needs

violation of the rights of these individuals both at the time of issuance of this certificate and subsequently by depriving them of a number of rights and by failing to ensure equality before the law provided for in Article 12 of the CRPD[2].

As far as the family members are concerned, the number of these people in residential centers is considerably lower. Sometimes, however, there are situations where families prefer the person with disabilities to be at a center rather than at home, as it is difficult for the family to provide him with all the care and support he needs without the support of the state through adapted services, thus becoming institutionalized due to lack of alternatives. Also, most of the time, the parents/legal representatives do not know how to address such a situation in the absence of community-based services that provide support and services.

As a result of visits in the residential centers by the Juridical Mobile Clinic teams, we have often found a problematic situation, that of transfers. The staff claims that all transfers are made as a result of consulting residents, based on their will and preferences. However, we express reservations about this, as we noted that in renovated or newly-built centers in recent years, residents live with less severe illnesses, as there is less risk of them damaging newly acquired furniture or equipment. Thus, their freedom of choice is restricted.

Also, institutionalized people with disabilities have no opportunity to challenge transfer decisions if they are abusive because they have no support to be guided in this regard. These people are locked up in institutions, without access to legal services, they are not presented with the rights they have, so they know even less, to whom they can address to use them. We have even encountered a few cases where the transfer was done without documents, so that finding the will of the residents was not even questioned.

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[2] *Article*

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

"*According to the discussions with the center staff, the beneficiaries were moved during the modernization work. (...) In the beneficiaries' files, the CLR monitors did not find any documents attesting to this move, how the beneficiaries agreed and what services they received at that provisional location. CLR's monitors warn that this practice is a serious violation of the rights of people with disabilities. Human beings, even if they are in a state where they cannot fully express their desires, cannot simply be moved from place to place like objects. Article 19 of the CRPD establishes that persons with disabilities have the possibility to choose their place of residence, where and with whom to live, on an equal basis with others, and are not obliged to live in a particular living environment*".

Another situation of transfer problem was found by the experts at the Juridical Mobile Clinic in a center in Valcea County where about 50 residents were transferred between county centers without considering the opportunity and necessity of the transfer without being consulted. Also, no documents have been found indicating the reasons for these transfers, transfer decisions, or even a record of the transferred persons.

"*At the request of the CLR experts, social assistance service could not provide a nominal statistic and the reasons behind the transfer of the residents transferred in 2016, declaring that there was no such record, but only numerically how many people were transferred, that is 47 of residents ... It is obvious that the transfer was carried out without an analysis of the psycho-medical-social needs of the residents. (...) From the discussions with the staff it was not possible to determine precisely what the reason was for the transfer of the residents, since it should have been known by all those involved, staff, residents and the center that took over them.*

Apparently, no commission has been drawn up at DGASPC[3] level to analyze the appropriateness of the transfer of each individual resident and no talks have been held with residents in this regard. Moreover, from the findings of CLR experts, the staff did not even know what the reasons for the transfer were and on what criteria the residents were selected, showing that the closest people (social workers, nurses etc.) and those who know best the status and evolution of residents have not been consulted about the need to take such a measure."

Also, as a result of the visits, we also found situations where residents want to be transferred, perhaps even to a private provider of social services, they apply to exercise this right that they know but the applications do not go to the direction or, if they do, management does not agree with the transfer for financial reasons, which again represents a serious violation of these people's rights.

"They are filed for S.T. 3 transfer requests as follows: 02.03.2015, 03.08.2015, 17.08.2015. S.T. was admitted to the CIA on 26.02.2015. According to the DGASPC

[3] *General Directorate of Social Welfare and Child's Protection*

Director General's statements, the applications submitted by a resident at the Center for transfer / termination of social services are transmitted as soon as possible to DGASPC (max 48 hours) and are settled according to the legal term of 30 days. Please note that there is no response to transfer requests filed in the resident file, nor is DGASPC aware of any transfer request, according to the Director-General's statements. However, the resident claims that the Director of the DGASPC has told him that he does not agree to leave because the Director will have to pay the maintenance costs for him to the association."

We also express our concern about the deinstitutionalization plan for the coming years, since, from the discussions with the staff of the centers, we concluded that they would identify those residents who could live in the protected dwellings to be built and we cannot express our position about the extent to which they will also take into account the desire of the residents.

As regards the patients in psychiatric wards / hospitals, they are often in the same situation as those in residential centers, living in practice in these institutions due to the authorities' lack of involvement in the idea of having a living independently in the community. In addition, the staff of the institutions often thinks that they cannot recover and should spend their entire lives in specialized institutions, not in the community, so no attempt is made to try to retrieve and acquire skills for independent and community living.

"The medical staff replied to the team that patients for whom the CLR requires sheltered housing and access to independent living services are in fact people with a" mental retardation ", which is why it is advisable for them to remain hospitalized throughout their lives there. (...) The CLR draws attention to the fact that institutionalization due to lack of places in community-based services constitutes an illegal deprivation of liberty and, implicitly, a severe violation of human rights, as they are also mentioned in the Convention on the Rights of Persons with Disabilities. "

Therefore, the lack of social and community support services is also invoked by the representatives of the institutions to justify the fact that people with intellectual disabilities and / or mental health problems are practically closed in these institutions, but it is also a justification for them not to take all steps to ensure the independence of these people, which is a serious violation of their rights, as laid down in the United Nations Convention on the Rights of Persons with Disabilities.

LIFE IN THE COMMUNITY. INCLUSION

The usefulness of such support services is subsequently applied to a certain degree of independence for people with mental health problems who only need support in order to assert their rights.

The steps for independence of the people in the institutions are to prepare them as much as possible for a future living in the community. That's why these people have to learn to live alone and take care of themselves. The problem with the system is that, in general, people with intellectual disabilities and / or mental health problems in institutions are considered irrecoverable; the state does not offer alternative living in the community, so there is not even the least effort to prepare them for such a life.

However, most of these people, especially young people, want a community life and independent living, as guaranteed by art. 19 CRPD. They are eager to even overcome the fear that they certainly feel, given that many of them have lived all their lives in institutions. Many of these young people also want to work, some of them being fit and having even professional qualifications. Unfortunately, the alternatives for an independent and yet monitored life, at least for a transitional period, are offered by only a few NGOs, and this is closely related to situations where placement minors reach adult residential centers.

"Center staff says that the independent life opportunities offered by NGOs are getting fewer, some organizations that helped them in the past even to end. NGOs are not an alternative, and independent living after leaving the child protection system is an increasingly difficult task to achieve.

As a result of less and less options for inclusion in the community, placement center residents reach adult institutions."

For these reasons, according to data from the center staff statements, the percentage of reintegration into the community per year is very small, with only a few people in each center living in the community who usually return home. This percentage of reintegration, even in the family, is low, and because families lack the resources and support they need to take care of a person with intellectual disabilities, they do not know and cannot manage the difficult situations, including because of fear, but also because they cannot ensure permanent supervision of these people, prefer to institutionalize them, in the absence of alternatives.

"The level of socio-familial and professional reintegration is very low, about 1.75% / year in the last two years."

"According to the employees' statements, the success of the reintegration into the family and society of the residents has not been successful. Thus, between 2014 and 2016, a single resident was reintegrated into the family."

We believe that inclusion is not supported by the system, which is also noted in the fact that there are very few centers where residents are encouraged to have a personal life, let alone have a couple or set up a family with which to reside later in the community. However, we have also encountered some situations where residents are encouraged to do so.

This phenomenon of lack of inclusion also occurs due to the lack of adequate activities within the center, activities that should prepare residents for an independent living and community life. However, typically these activities that formally aim at social and professional reintegration are more specific to small children than adults (e.g. coloring, drawing, puzzles), this situation being perpetuated and because the staff consider residents' disabilities too ill to be reintegrated, thus violating art. 16 p.4[4] CRPD. *"The only educational activities I have encountered on the sections were the "puzzle" by the beneficiaries without taking into account the needs and peculiarities of their age*. There is no activity timetable or educational monitoring of the beneficiaries - which includes objectives, deadlines, and progress assessments. "As a result, from monitoring reports drawn up as a result of the visits, we also found that active life is not encouraged, and functional autonomy and an independent life are not preserved. The staff of the centers also thinks it is a problem of the system and does not see a solution for the residents of the centers where the activities for an independent living are carried out.

> *"The staff said that the ergo-therapy workshops should have been designed to train residents, support them to develop certain skills that would contribute to their socio-professional reintegration, but given the progress of society, it is difficult for someone to take them home when families are poor. And even more difficult it is for residents to engage and become autonomous, given that the center is in a region of the country where "things are very difficult."*

A minimal link to community life could be provided to residents and community outreach to discover the locality, the surroundings, what services the community offers, and, in particular, to reduce the bias existing among the other inhabitants by interacting with them. However, these trips are quite rare, they are only made with a ticket, so these people need approval to leave the center, and often they are accompanied, the trips from some centers being made exclusively with an attendant.

> *"The Center does not have staff to accompany the beneficiaries in meeting these activities, and given their degree of disability, health and unpredictable attitudes, it is far too risky to be accompanied by strangers, such as potential volunteers."*

[4] *States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.*

"Beneficiaries rarely come out of the center; sometimes go shopping with staff at the center. Do not go out in the community for cultural / sporting activities but they can play football in the courtyard of the center."

Taking into account the lack of staffing at national level, the number of these visits is further diminishing.

Even these exits often involve only walking or going to church without focusing on activities that prepare residents for a future living in the community. *"As far as the cultural and sporting activities of the beneficiaries are concerned, we are told that they go to the church (NOTE: in the beneficiaries' evaluation sheets, the attendance of church services is one of the evaluation indicators)."*

We also consider necessary to mention the fact that residential centers are hardly accessible in terms of locations, possibly on hard-to-reach roads, in rural areas, on the outskirts of the settlements, still operating in old buildings (even if some of them are rehabilitated). The purpose at the time of construction was the segregation and removal of these people from the community. Including newly introduced centers are all following this specific. And for this reason, the community does not have too many activities and services to offer to these residents.

The relationship with the community and its activities are closely related to the employment opportunities of residents. The location of centers in rural areas makes employment even more difficult, as job offers are low, which is cumulative with employers' bias and fears about people with mental health problems. That is why there are only a small number of residents in centers that manage to get a job, although most young people want to work.

Even if there are situations in the country where there is a residential complex where there are also protected dwellings, but also a residential center, so it is practically the same institution, people coming from protected dwellings can enter the labor market, while the ones coming from the center no. However, even people in sheltered housing need staff support as they face difficulties, which reinforces the idea of the need for support services for these people.

"Less than half of the LP residents are employed (with individual employment contracts) at various companies. The other residents, according to the employees of the complex, are looking for active work with the support of the social workers and the management of the institution. (...) From the analysis of the employment contracts of residents in sheltered housing, we found the involvement of staff by supporting residents both in finding a job and defending their rights to employers."

MEDICAL SERVICES. ACCESS TO SERVICES

The lack of support services for people with intellectual disabilities and / or mental health problems often leads to a lack of access to services, such as blocking access to medical services.

The most common problem is the refusal of doctors of other specializations to intervene for a patient as long as a person does not sign for the patient concerned, although he is not under a ban, so he can exercise his full legal capacity and benefit from the legal presumption of discernment. Thus, physicians other than psychiatric doctors refuse to make certain interventions by considering that a patient who comes from a psychiatric rehabilitation and rehabilitation center has insufficient discretion to understand the consequences of medical intervention, although, according to the legislation, only the psychiatrist has the power to appreciate the presence or lack of discernment.

> *"For medical admissions, anesthesia, surgery, etc., the signature of the legal representative is required, as physicians always see that the actual beneficiaries have no discernment, so they do not take the risk of medical act without a prior consent. Under such conditions, the CLR's monitors note that there have been even situations where doctors have refused to intervene."*

In addition, and if there are no longer situations where there is definitely a need for another person's support for the patient in such a vulnerability, the need for support services persists as the patient to undergo an intervention medical must make a decision. This assumption presupposes knowing the advantages and risks of the intervention in question, so that there is no risk of refusal due to fear or misunderstanding of the consequences and benefits. Therefore, there is a need for a person specialized in the work and support of people with mental disorders, in order to have the best communication that will lead to the most appropriate decision.

> *"If the change of treatment or the supplementation of doses of psychotropic substances is necessary, the family doctor of the center contacts by telephone one of the psychiatrists with whom the center collaborates. The family doctor finds the clinical situation and sends it to the psychiatrist and the psychiatrist indicates the new treatment to be administered. (...) At the same time, I have encountered situations for which we have not been able to establish the correlation between a prescription of psychotropic substances by the center's family physician and the corresponding prescription indicated by the psychiatrist by telephone. This situation may suggest that, by virtue of medical habits and the experience of the family doctor, psychiatric prescription is sometimes not formulated by the psychiatrist, but just by the family doctor."*

Even if the patient is present in the psychiatric assessment, sometimes this procedure is performed without consulting the documents that show the evolution of the patient's state of health. All these are human rights violations with regard to these people, violations that they cannot stop or complain of, because they do not have access to the competent organs or support services to help them and to address to the competent bodies in this respect.

COMPLAINTS. THE POSSIBILITY TO FILE A COMPLAINT

The only way people in residential centers can complain is by writing a complaint for the complaint box that, according to legislation, must exist in all centers.

The complaint box is present in almost all centers and never contains complaints, and staff always presents this situation as one indicating that there are no problems in the center.

> *"Residents have the opportunity to formulate and address complaints, with a Suggestions and Complaints box placed at the entrance to the administrative body. At the time of the monitoring visit, the box contained no complaints or suggestions, the unit's staff confirming that this form of complaint was not used by residents. "*

> *"Asked what is actually the procedure to be followed by residents to file a complaint, the social worker answered the experts that if anyone wishes to complain, residents have the opportunity to write and record the complaint. (...) Concluding, on the basis of the above-mentioned state of facts, in the view of CLR experts, apparently the situation is the following: from the discussions we had with the staff, it turned out that he did not know what the national legislative standard is and international law in relation to the right of residents to complain, beyond formalism. The fact that there is a box for complaints does not automatically mean that residents have a real opportunity to use this tool, and it has not been clear from the staff discussions that residents have been guided to follow this procedure, nor would they be effectively explained, adapted to their state of health, which implies the formulation of a complaint."*

In addition to the fact that residents do not know that they can make a complaint, they do not know what it means or do not have the tools to do so, there is also the problem of the recipient of that complaint. Given that the box is located in the center, under the key and the staff is has access to it, there is a possibility that residents will not want to use this procedure, as these complaints go first to the staff of the institution. Residents cannot complain about possible abuses or violations of their rights by staff, and a clear conflict of interest has been created. As a result, the possibility for these people to assert their rights is almost non-existent, especially as in some visits we were personally told that if the residents have a request to the social assistance department, it is communicated to the staff who passes on it, so the complaint is not made directly.

The only way residents can sometimes complain directly is by phone, but the institution's phones have access only at certain times and do not have a cell phone.

PUTTING UNDER INTERDICTION. GUARDIANSHIP.

From the discussions with the staff of the centers, the biggest legal problem they encounter is legal representation for people under interdiction. The banning institution has many difficulties in practice and many restrictions in relation to those concerned by this protection measure, as it is considered by Romanian legislation. These institutionalized persons are not consulted on the decisions that concern them, they cannot influence the tutor's activity and cannot complain about the way in which they perform their duties, being in a closed environment, lacking access to services and information, and support for the valorization of their rights.

The difficulty also arises from the fact that persons with intellectual disabilities and / or mental health problems coming from the institutional system and without families have to find a person to be appointed guardian. The practice of the courts is to designate some of the center's staff as a guardian, but this is not a solution that fully ensures the respect and valorization of the rights and interests of residents, as the staff of the centers is employed by the social welfare department, the person under the ban gives rise to a clear conflict of interest. In addition, it is not ensured the impartiality of the guardian who has to deal with the interests of the protected person, according to the legislation in force[5]. Thus, the institution of the legal representation of the person under interdiction fails to achieve its intended purpose, namely the real defense of their rights and interests.

There are also cases in which the courts appoint the guardianship authority as guardian, and the latter, through administrative procedures, will subsequently designate a guardian. This practice is contrary to the guardianship institution, since the court cannot effectively control the designation of the person concerned and will not be able to ascertain whether it is able to ensure representation, which is contrary to the legislative provisions[6]. Moreover, the appointment of a guardian from the Tutorial Authority generates a major conflict of interests, as this authority has powers to verify and supervise the speedy fulfillment of the tutor's duties. In such a situation, the authority controls itself.

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[5] *4 Art. 174 NCC: Tutorial Obligations*
(1) The tutor is obliged to care for the person who has been subjected to a judicial interdiction, to speed up his healing and to improve his living conditions.

[6] *Article 118 NCC: Appointment of the tutor by the guardianship court. In the absence of a designated guardian, the tutelage court appoints, as a matter of priority, as a guardian, unless there are good reasons, a relative or a cousin or a friend of the minor's family who is able to perform this task, taking into account, as the case may be, the proximity of the domiciles, the material conditions and the moral guarantees of the guardian.*

All these practices are in line with the national legislation of Romania. However, Romania's legislation is not in line with the UN Convention on the Rights of Persons with Disabilities, as it opposes the model of guardianship that involves the substitution of decision-making capacity, a preferred model of the Romanian Civil Code through the institution of interdiction. The Convention favors a system in which decision-making capacity remains an attribute of a person with disabilities, vulnerable, who, in turn, needs to be assisted in making a decision by a person in support of it.

Also, the Convention does not deal with capacity in a restrictive way, in the sense that it exists or does not, but recognizes, in Article 12, that the person's judgment and legal capacity is a spectrum in which different individualized measures are needed to ensure effective protection of the person in need of support.

General Comment no. 1[7] of the Committee on the Rights of Persons with Disabilities clarifies the Convention's view on measures restricting the legal capacity of the person, specifying the obligation for States to replace systems providing for substitution with assisted decision-making systems (point 26). This assisted decision involves taking into account the wishes and preferences of the person, acting for their capitalization through support, not only looking at the superior interest of this person, viewed objectively (point 29). In addition, the person concerned may at any time choose to give up this support for decision-making. Also, the assessment of the need for such a measure should not take into account mental capacity, but a set of new and non-discriminatory indicators (point 29).

[7] *https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement*

CHAPTER 2

The analysis of the impact of the results of the implementation of the projects financed under the ROP 2007-2013, as well as the analysis of the strategies of the projects that will be financed through ROP 2014-2020, from the point of view of respecting the Convention on the Rights of Persons with Disabilities, adopted at New York, by the United Nations General Assembly, on 13 December 2006

SUMMARY

This analysis is based on information extracted from the documents published on the website of the Regional Operational Program (ROP) 2007-2013 and the Regional Operational Program 2014-2020, corroborated with the provisions applicable both at the date of the unfolding of the 2007-2013 programmatic exercise and at present, as well as with information received from ministerial and General Directorates for Social Assistance and Child Protection level, as responses to requests submitted by the Legal Resources Center (LRC).

Regarding the ROP implementation analysis, this analysis also took into account the information gathered by the LRC experts in the monitoring actions of the centers that were financed by ROP 2007-2013.

The purpose of this analysis is to identify how national legislation has been and is being applied in the process of funding the social services infrastructure for institutionalized people with disabilities.

Regional Operational Program 2007-2013

Analyzing the documents which lie at the basis of the financing of the social services infrastructure for the period 2007-2013, it is noted that, despite the fact that during the ROP 2007-2013 programmatic exercise, the Monitoring Committee issued several decisions amending and supplementing the conditions for implementation, including the decision on the change of the immediate achievement indicator “output” - “Rehabilitated / Modernized / Extensive / Equipped Social Centers”, from the 2007 initial value (270 centers) to the final value of 223 centers, state institutions empowered to implement and program monitoring did not bring changes regarding the eligibility of funded operations with regards to the social infrastructure, especially residential centers for people with disabilities, by reference to national and international legislation regarding the deinstitutionalization of people with disabilities.

Thus, it is noted that the provisions of the UN Convention on the Rights of Persons with Disabilities have not been adapted to the ROP 2007-2013 programming strategy, which

is also highlighted in the Evaluation Report, final version (March 2015), "Impact Assessment of DMI 3.2. "Rehabilitation / Modernization / Development and Equipping of Social Infrastructure", Contract No. 261 / 23.07.2014.[8] The beneficiary of this report was the Ministry of Regional Development and Public Administration, respectively the ministry that was responsible for the management and implementation of the financial assistance allocated to this program.

As it can be seen from the present analysis, the activities that were funded under this program aimed to create services for disabled people within the centers, contrary to the principles and obligations of providing services within the community, so as to ensure that there are no differences between people with disabilities and other people and to ensure the integration of these people into society.

More than this, the funds used in the Regional Operational Program 2007-2013 for the Key Area of Intervention 3.2: Rehabilitation / modernization / development and equipping of the social services infrastructure, as it results from the documents at the foundation of the program unfolding, as well as from the evaluation report requested by the ministry that has had attributions regarding the management and implementation of the program, had as object the extension of the residential centers to receive even more beneficiaries in an institutionalized system exclusively.

This programmatic approach has been sustained throughout the implementation of the 2007-2013 program, during which investment in residential centers was not diminished to be directed to measures that allow community integration independent living for the beneficiaries.

From the results of the implementation of ROP 2007-2013 it is concluded that Romania perpetuated the regime of institutionalization of persons with disabilities in mammoth centers, a situation confirmed today by the Statistical Bulletin[9] issued by the National Authority for Persons with Disabilities (NAPD) on 31 March 2017. According to these statistical data, the number of institutionalized persons in public residential institutions for social assistance for adults with disabilities under the methodological coordination of MMJS-NAPD was 18,032 persons.

Regional Operational Program 2014-2020

Analyzing the information provided by the General Directorates for Social Assistance and Child Protection, as they were called in the Social Services Analysis Document, for the Transfer to Family Types Alternatives for Persons with Disabilities from the Old Type Res-

[8] *http://www.inforegio.ro/en/rapoarte-de-evaluare.html Impact Assessment of DMI 3.2 - Rehabilitation / Modernization / Development and Equipping of Social Infrastructure (Annexes)*

[9] *http://anpd.gov.ro/web/transparenta/statistici/trimestriale/*

idential Institutions[10] " 1] adopted in May 2017 by the National Authority for Persons with Disabilities (ANPD) and amended in July 2017, it is noted that:

- Up to the date of submission of the responses to LRC (October-November 2017), Directorates nominated by the NAPD had not submitted the applications for funding under the "Project Call R.O.P. /8/8.1/8.3/B/1, Vulnerable Group: Persons with Disabilities".

- Even if the NAPD states in the above-mentioned Analysis Document that the nominated Directorates "are to receive funding under the program", some Directorates state that they have not yet decided whether to apply for funding or not;

- Some of the Directorates were at the time of submitting responses to the LRC (October-November 2017) in the stage of elaboration of the technical and economic documentation, the DALI and SF phases;

- As regards the Center's Restructuring Plan drawn up by the nominated Directorates, it is noted that they are mainly focused on the description of the current centers and the brief breakdown of some technical elements of the protected homes. The plans do not include information on the concrete measures that will be taken for beneficiaries who stay in old centers, about which many Directorates admit that they do not offer safety, hygiene and comfort.

- It is also noted that the Plans do not contain any concrete information neither on the precursory measures to be taken for the beneficiaries to be transferred, nor on measures subsequent to the transfer, with some Directorates merely stating that the protected dwellings will comply with the minimum quality standards.

- In the Directorates' responses, there have been identified cases in which the assessment of the beneficiaries to be transferred takes place after obtaining the funding, which shows that the respective Directorates require funding for unidentified / unquantified a priori needs.

- With regard to the tools used to evaluate the beneficiaries behind the decisions to be transferred to protected housing, most Directorates specify the ROM-CAT assessment.

- The Directorates did not provide documents on the proof of support of the beneficiaries' preferences regarding the transfer to another locality.

- Regarding the fulfillment of the criterion established by both the NAPD and the Applicant's Guide, namely the obligation to identify the locations of the day centers, so

[10] *http://anpd.gov.ro/web/transparenta/statistici/trimestriale/*

that they can be accessed by persons with disabilities from the community as well, it is observed that the Directorates do not have a statistic of the respective persons in the community and, more than this, they do not have a statistic of the needs of the respective persons which would correspond to the services that will be provided through the respective day center.

- From the analyzed documents, it is not understood how a new residential center can provide the beneficiary with respect of the rights enshrined in the UN Convention on the Rights of Persons with Disabilities, including: personal control over day-to-day decisions, freedom to choose whom to live with, diminishing routine, activities that are not identical and in the same place.

- Although the NAPD[11] states that the process of deinstitutionalization involves taking steps, including "community preparation by informing and advising the factors contributing to local development (mayor, priest, teachers, community nurse, school mediator, social mediator, assistant social, etc.), none of the Directorates have developed such an Information and Counseling Plan, even if this stage has to be carried out before the transfer of the beneficiaries and even if this stage is an activity that takes time to create the optimum conditions.

- Out of the 9 Directorates nominated by the NAPD, only GDSACP (General Directorate for Social Assistance and Child Protection) Prahova considered that 17 persons placed under interdiction were eligible to be transferred to protected homes. Many of the Directorates have invoked the residents' disabilities as reasons why they must remain in institutional care. In this regard, we draw attention to the fact that, in line with the provisions of the General Comment on Article 19: Independent Living and Community Integration[12], issued by the UN Committee on the Rights of Persons with Disabilities, at the Eighteenth Session, held from 14 to 31 August 2017, "People with intellectual disabilities, especially those with complex communication needs, among others, are often assessed as unable to live outside the institutionalized environment. Such an argument is contrary to Article 19, which extends the right to live independently and to be integrated into the community for all persons with disabilities, irrespective of their level of intellectual capacity, the degree of autonomous functioning or the need for support. Therefore, the Directorates must also respect the right to independent living and community integration, for those who have been placed under interdiction included.

- Regarding the request of the LRC on how protected housing will ensure "autonomy, social and professional integration and participation in community life", the Directorates have invoked compliance with these minimum standards of quality by these

[11] *The Social Services Analysis document for ensuring the transfer to family-type alternatives of adults with disabilities from old residential institutions adopted in May 2017 by the National Authority for Disabled Persons (NAPD) and amended in July 2017, page 22*

[12] *www.ohchr.org/Documents/.../CRPD.C.18.R.1-ENG.docx*

homes.

In this regard, it is observed that most of the protected homes and their day-care centers are set up in villages at significant distances from county municipalities, where resources and facilities (health, education, labor, culture, and leisure) are easier to identify / access.

- Despite the fact that the NAPD has ordered site identification to be in communities that ensure the development of social infrastructure: “access to all resources and facilities (health, education, work, culture, leisure)”; “Access to means of public transport”; “Access to community services”, the NAPD has established that these social services are to be established in villages and communes that do not have these facilities. Moreover, most of the locations are communities that do not have a developed economy and do not allow for the identification of protected jobs.

- Moreover, in contradiction with the provisions of the related Applicant’s Guide and NAPD provisions establishing that the establishment of Day Care Centers must ensure the access of the beneficiaries of the related protected homes, GDSACP Vaslui proposes the establishment of centers that are at the following distance from the protected dwellings to support them:

- 20 km between the Vutcani protected home and the Tomsa Day Care Center;
- 50 km between the protected home in Cozmeşti and the corresponding day center in Olteneşti;
- 43 km between the Bogdăneşti protected home and the corresponding day center in Găgăşti;

Taking into account the elements identified above, the following measures are recommended regarding the implementation of ROP 2014-2020 regarding deinstitutionalization:

- reconsideration of Restructuring Plans of old centers, by including concrete and time-limited measures, including for those who will not be transferred to the protected homes covered by the ROP 2014-2020;

- reconsideration of Restructuring Plans of old centers by identifying protected housing locations to ensure “access to all resources and facilities (health, education, work, culture, leisure)”; “Access to means of public transport”; “Access to Community services”;

- reconsideration of the assessment of individuals by respecting the right to indepen-

dent living and community integration, including for persons under judicial interdiction, in accordance with the provisions of the UN Convention;

- reassessment of the deinstitutionalization strategy proposed by the NAPD by linking it with the provisions of the UN Convention on the Rights of Persons with Disabilities;

- modification of minimum quality standards for social housing services organized as protected homes for adults by linking them to the UN Convention on the Rights of Persons with Disabilities and the General Comment on Article 19: Independent Living and Community Integration13, issued by UN Committee on the Rights of Persons with Disabilities.

[13] *www.ohchr.org/Documents/.../CRPD.C.18.R.1-ENG.docx*

Chapter 3

GENERAL RECOMMENDATIONS

According to article 12, para.1 of the Convention on the Rights of Persons with Disabilities (CRPD) that Romania ratified through Law no.221/2010, the States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

Article 12 of the CRPD makes a clear distinction between legal capacity and mental capacity. Thus, the existence of a mental disability does not constitute not legal grounds to reject that person's right to legal capacity (both capacity to use and exert). Therefore, mental disabilities, either perceived or real, cannot be used as justification for denying the legal capacity of a person. **Legal capacity is an inherent right accorded to all people, including persons with disabilities.**

As we know, civil capacity includes two elements: the first is the legal standing, which refers to the general and abstract aptitude to have rights and obligations. We can include here, as example, the right to have a birth certificate or the right to medical assistance. The second is legal agency, which refers to the ability to exercise one's rights and take on obligations. The latter is often refused to or limited for persons with disabilities.

In most of the states, the concepts of mental and legal capacity have been conflated so that where a person is considered to have impaired decision-making skills, often because of a cognitive or psychosocial disability, his or her legal capacity to make a particular decision is consequently removed. **Article 12 does not permit such discriminatory denial of legal capacity, but, rather, requires that support be provided in the exercise of legal capacity.**

Article 12, paragraph 3, recognizes that States parties have an obligation to provide persons with disabilities with access to support in the exercise of their legal capacity. States parties must refrain from denying persons with disabilities their legal capacity and must, rather, provide persons with disabilities access to the support necessary to enable them to make decisions that have legal effect.

Support in the exercise of legal capacity must respect the rights, will and preferences of persons with disabilities and should never amount to substitute decision-making. Article 12, paragraph 3, does not specify what form the support should take. "Support" is a broad term that encompasses both informal and formal support arrangements, of varying types and intensity.

The type and intensity of support to be provided will vary significantly from one person to another owing to the diversity of persons with disabilities. This is in accordance with article 3 (d), which sets out “respect for difference and acceptance of persons with disabilities as part of human diversity and humanity” as a general principle of the Convention. At all times, including in crisis situations, the individual autonomy and capacity of persons with disabilities to make decisions must be respected.

Access to finance and property has traditionally been denied to persons with disabilities based on the medical model of disability. That approach of denying persons with disabilities legal capacity for financial matters must be replaced with support to exercise legal capacity, in accordance with article 12, paragraph 3. In the same way as gender may not be used as the basis for discrimination in the areas of finance and property, neither may disability.

Article 12, paragraph 4 requires States parties to create appropriate and effective safeguards for the exercise of legal capacity. The primary purpose of these safeguards must be to ensure the respect of the person’s rights, will and preferences. In order to accomplish this, the safeguards must provide protection from abuse on an equal basis with others.

Safeguards for the exercise of legal capacity must include protection against undue influence; however, the protection must respect the rights, will and preferences of the person, including the right to take risks and make mistakes.

Article 12, paragraph 5, requires States parties to take measures, including legislative, administrative, judicial and other practical measures, to ensure the rights of persons with disabilities with respect to financial and economic affairs, on an equal basis with others.

Through Governmental Decision no.655/2016, Romania approved the “A society without barriers for persons with disabilities” National Strategy 2016-2020 and the Operational Plan to implement this Strategy.

Through this document, the Romanian Government acknowledges that: “Persons with mental deficiencies, without exercise of capacity are deprived of the right to take decisions that concern their personal lives and, in this situation, the decision making process falls to their tutors and, during this process, it often happened that the will of these persons is neglected or even abuses take place.”

One of the objectives of the Strategy is to “Ensure full participation of persons with disabilities in all areas of life.”(V3 point 2) Full and effective participation in society implies both identification and elimination of restrictions, as well as adoption of active and efficient measures to guarantee full exercise of fundamental rights. Participation refers also to adopt efficient measures in view of changing attitudes and behaviors that may lead to the stigmatization, marginalization or exclusion of the persons with different deficiencies/ afflictions.

However, the Civil Code do not foresees, in the process of decision making for persons with disabilities, sufficient support measures for the persons to fully exert their legal capacity. Moreover, in what regards the guardianship, there are no appropriate procedures and practices to contest it and manage it.

According to art 164 of Civil Code: “the person without the necessary power of discernment to look after their own interests, due to their mental alienation or debility, shall be places under court injunction.”

The request for placement under interdiction may be done by the persons stipulated at article 111 of Civil Code, namely:

a) Persons close to the minor, as well as the administrators and inhabitants of the house where the minor lives;

b) The civil registry service, when the death of a person is registered, as well as the public notary, when a process for inheritance is being opened;

c) Courts of law, when parental rights are banned as criminal conviction;

d) The bodies of local public administration, foster institutions, as well as any other person.

For the court of law to admit a proceeding aiming at placement under interdiction, the following conditions must be met:

1. The lack of discernment of the person whose placement under interdiction is requested;

2. The lack of discernment to be the result of the mental alienation or debility from which the person who is going to be put under interdiction suffers;

3. The lack of discernment to not permit the person who is going to be put under interdiction to look after their own interest; this shall result from hearing witnesses and the person who is going to be appointed guardian for the best interest of the person placed under interdiction, from carrying out a social inquest and a medical-legal psychiatric evaluation expert report. In the same time, the court of law is compelled to listen to the person whose placement under interdiction is requested, by asking questions in order to ascertain their mental state. If the person whose placement under interdiction is requested cannot appear before the Court, they will be listened to at their place of residence.

In practice, when analyzing the files of placement under interdiction from the centers visited by the Mobile Legal Clinic, the court either does not hear out the person who is going to be placed under interdiction or appoints as legal guardian persons who obviously cannot represent the interests of the person placed under interdiction (case of a court appointed legal guardian, although he was not in the country).

The numerous visits carried out by the experts of the Mobile Legal Clinic showed that the centers' staff and representatives of DGASPC in the field do not know the stipulations of the Convention for the Rights of Persons with Disabilities (CRPD) regarding their obligation to provide support to persons with disabilities when exerting their legal capacity. Moreover, the discussions with them revealed that placement under interdiction of all beneficiaries is a solution that could solve "the issue of taking decisions about medical interventions, exertion of rights etc."

Unfortunately, many times the placement under interdiction of the persons who live in centers for people with disabilities has important financial consequences for them, such as the case of M.I., resident of C.R.R.N. Sasca Mică who was placed under interdiction by Court of Law Câmpulung Moldovenesc and had his cousin, J.M. appointed as guardian. The latter, in his capacity of guardian, represented M.I. in a civil case regarding the property of a land with forest with an estimated value of 57,197[14] lei that was allotted to him. Unfortunately, this important amount of money did not get to the person placed under interdiction. The social worker I.M. told the CLR monitors that the guardian of resident M.I., respectively his cousin, J.M., has never replied to the center's request to pay the beneficiary's contribution for rendered social services or even to give them the certificate attesting the lack of incomes of the beneficiary that is necessary to sign the additional document to the contract for social services, as per Order no.1887/15.09.2016 issued by the Ministry of Labor, Family, Social Welfare and Elderly, respectively the Methodology that sets out the level of monthly contribution by the disabled persons (annex to the above-mentioned Order).

In such a case, it is obvious the indifference of the authorities and of the family towards the patrimonial interest of M.I. The amount he inherited, a considerable amount of money that could have ensured him financial independence for a long time, was handed to the guardian who refuses even to pay the necessary contribution for social services for the

[14] *Approximately 13,000 EUR (translator's note)*

beneficiary. The intervention of the experts of the Mobile Legal Clinic and legal representation for the beneficiary in the civil case regarding the land would have been extremely useful in terms of protecting the rights of M.I.

Another situation where providing support in the decision making process would have positively impacted the right to dignity of a beneficiary is the case of R.O. She was sexually abused by the guard of the center she resided in. The documents in her file show that the guard invited R.O. in his booth where they drank wine together and then he forced her into sexual relations. As result of the inquiry done by DGASPC Iasi, a complaint had been filed at the local police station on 17.03.2015. Note that the complaint was lodged after 72 hours, the term within which a medical-legal certificate to attest sexual aggression can be obtained. This 3 days tardiness in starting the investigation had severe consequences on solving the case: on 17.03.2015 when a physician examined R.O., the resulting medical-legal certificates notes that "no vaginal secretion was taken and analyzed, as the timeframe between the alleged aggression and the date of the medical examination is longer than 72 hours."

Thus, the Prosecutor's office of Iasi Court of Law, in the Decision in file no.246/P/2015, closed the case due to the lack of preliminary complaint from the victim. In what regards the lack of preliminary complaint as grounds to not prosecute the crime of rape, crime stipulated in art 218 para 1 pf Criminal Code, the documents in file no. 246/P/2015 made available do not reveal if R.O. did file a preliminary complaint to the law enforcement officials, namely to the local police station. According to art.218, para.5 of Criminal Code: "Prosecution for the crime stipulated in para 1 and para 2 starts as result of filing a preliminary complaint by the injured party." Therefore, the local police station officers could not have started the investigation without this complaint. In fact, as per address no. 545/19.03.2015 registered at DGASPC Iasi, section "Conclusions regarding he case of beneficiary R.O." signed by C.R.R.P.H. Cozmești (where R.O. resided), notes that "we went several times to file the complaint of the victim, but we didn't find anybody at the police station". Despite this, the decision to not prosecute notes that "when hearing the injured party on 17.03.2015, she mentioned she didn't want to file a preliminary complaint against F.V. for the crime of rape."

In the situation presented above, the lack of reaction from the persons who should have provided the legal and moral support led to closing a case of sexual aggression against a beneficiary. This lack of reaction affected the dignity and honor of the person in question and, according to the beneficiary's testimony, her being moved to another center as result of this incident affected her even more.

The prompt intervention of the Mobile Legal Clinic in such a case, by providing legal and psychological support, could have prevented such an outcome, by not only ensuring appropriate legal representation, but also by supporting the right to dignity of the person who lives in a center for persons with disabilities.

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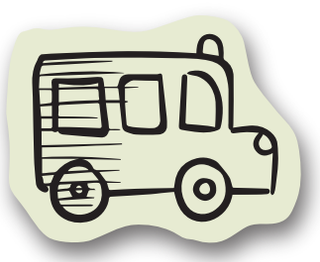

Mobile Legal Clinic

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