



Center for  
Legal  
Resources



# SUMMARY REPORT

MONITORING VISITS  
October 2013 - March 2014



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*This summary has been drawn up following the unannounced monitoring visits paid by the experts of the Center for Legal Resources to the residential centers for persons with disabilities between October 2013 and March 2014.*

*The institutions were accessed on the basis of the written Protocols signed by CLR, the Ministry of Labor, Family, Social Protection and Elderly and of the Ministry of Health and on the provisions of Article 33 of the Convention on the Rights of Persons with Disabilities and Law No. 487/2002.*

*According to such Protocols, CLR representatives have the right to make unannounced visits to the public or private residential centers for persons with disabilities.*

*Experts have made those visits in order to observe how human rights are complied with in the institutions. The experts, collaborators of CLR, are psychologists, lawyers and legal advisers.*

*This summary is a WORKING DOCUMENT.*

The Report presents the most pressing problems identified based on the observations of the CLR monitoring experts during the unannounced visits in residential institutions. Throughout this Report, the problems are presented in a concise manner, with the indication that more detailed individual reports will be available on the CLR website ([www.crj.ro](http://www.crj.ro)).

## THE CONTEXT OF THE MONITORING VISITS

On the basis of the written Protocols signed with the Ministry of Labor, Family, Social Protection and Elderly and the Ministry of Health and the provisions of Article 33 of the Convention on the Rights of Persons with Disabilities and of Law No. 487/2002, CLR representatives have the right to pay **unexpected** visits to public and private residential centers for persons with disabilities.

### PROBLEMS CONCERNING THE ACCESS TO INSTITUTIONS:

At the Neuropsychiatric Recovery and Rehabilitation Center in Cotesti, **the visit could begin only with a 1 hour and 20 minutes delay**, on the pretext that the main officials of the Center, as well as the deputy manager of the Directorate for Protection of Adults with Handicap and the general manager of GDSACP were not present. **CLR reiterates that it is justified to suspect that such practices adopted by the officials from the centers and from the county councils / Bucharest district councils are aimed at avoiding that the CLR experts see the real conditions**

**of the centers.** An even more problematic situation was that of the Center for Assistance and Recovery of Young People with Handicap in Adjud, an institution subordinated to the City Hall, on the basis of a Protocol signed with Pro Armonia Association (an NGO coordinating the Center). **CLR representatives could only "look around, but for information about the Center they must submit a formal request for access to information"**. During the follow-up visit to the Home for Elderly and Adolescents in Aldeni (a private Home) CLR representatives were permitted to stay inside only for approximately 30 minutes, until the owner of the Home arrived and forbade the experts to continue their activity.

## WHO ARE THE PERSONS ADMITTED IN RESIDENTIAL INSTITUTIONS

The target of the unannounced visits were residential institutions for children, which are subordinated to county councils / Bucharest district councils and are coordinated by GDSACP. In the visited centers there were children/young people aged between a

few months to 31 years old. Children/young people, boys and girls, have different levels of disability (mainly mental) or constitute "social cases" or have committed an offence under the criminal law and cannot be held criminally liable.

The CLR unannounced visits evaluated the respect of human rights standards in the case of the following categories of persons, considered “**persons deprived of their freedom**” (Within the meaning of Article 4 (2) of the Optional Protocol to the Convention against Torture) (1):

- persons for which there is a decision for placement (in residential centers, public or private, in foster care or with a person/family, according to Law No. 272/2004 on the protection and promotion of children’s rights);

- persons institutionalized in public or private residential centers for persons with disabilities (according to Law No. 448/2006 on the protection and promotion of rights of persons with handicap);

- persons institutionalized in psychiatric units under Law No. 487/2002 on mental health and protection of persons with mental disorders.

Children are admitted in residential centers when placement is decided by the Commission for Child Protection (CCP) / GDSACP or by a court. In principle, when reaching the age of majority, young people leave these centers and are admitted in centers for adults with disabilities. However, in some institutions (2), CLR representatives have found out from the personnel that “when reaching the age of majority, **children continue to live here if they do not go to the family**” because the Center provides “bed and meals” and “they can perform household activities for the Center”. In another institution (NRRC in Cotesti), CLR representatives were told that after reaching the age of majority, young people would continue to live within the Center because “no law was adopted regarding the professional assistant who could help include beneficiaries in the community and there is no other realistic solution”.

Some institutionalized young people (Center for Recovery of Young People with Neuropsychiatric Disorders –CRYPND- in Babeni) complained that they had been **transferred to centers in order to attend a special school, not because of a mental disability, but mainly because of behavioral problems or learning difficulties.**

## THE MAIN PROBLEMS REGARDING THE RESPECT OF THE RIGHTS OF PERSONS ADMITTED IN RESIDENTIAL INSTITUTIONS



### DENIAL OF ACCESS TO JUSTICE:

During the monitoring visits, the CLR representatives have made the following observations:

- **there are no procedures to record and settle complaints;**
- to justify this situation, the representatives of the institutions often argue, in contradiction to CLR representatives' findings, that "there are no complaints" from the admitted persons;
- almost no institution keeps a registry for recording complaints, not even formally; in most cases, **the information about beneficiaries' rights, addresses and contacts of public institutions or non-governmental organizations are not displayed;**
- the admitted persons do not receive copies of national and international regulations and are not told about them;
- Law No. 272/2004 states that the circumstances for special protection measures taken by the Commission for Child Protection or the court must be verified quarterly by the General Directorate for Social Assistance and Child Protection;
- during some visits, (3) the children's files were found to contain court decisions for placement, but the decision did not mention the actual foster care center where the child would be sent, meaning that **the transfer between different centers within the county can be done even when the child is opposing that measure;** both aspects mentioned here show how much children's rights can be affected by the practice of designating the officials of centers/GDSACP as the children's "legal representatives";
- there are cases (e.g. SCIE Peris) in which **the patients' documents** regarding the reasons for placement, the authority that made the decision, the day and the hour of admission, the transfer and discharge, the physical and mental problems etc., **are not kept at the center, but at GDSACP headquarters, and this is against Havana Rules** (mainly Rule 21);
- CLR representatives have found that **there are situations in which children are brought to the Sanatorium for children within the Psychiatric Hospital in Voila because they are not admitted in ordinary schools;** a very special case ("patient" E.I.N. aged 7) (5) was identified in this Sanatorium and CLR requests the management of the hospital to take all legal steps related to the authorities of the Ministry of Health, in order to find a solution for this case.

**In practice, the verification of the circumstances is done (in the instances when it is actually performed) only once a year. There is no unitary procedure for reassessing admission and no guarantee for a frequent and transparent reassessment.**

### EXAMPLE:

At the Center for Recovery of Neuropsychiatric Young People in Babeni, only one young man went to an ordinary school, although, as the Center's personnel admitted, there are more beneficiaries who could attend ordinary schools, but, due to social and family problems, they do not have access to this system (this would require support measures, including measures to catch up on and

cover the curricula of ordinary schools). Young people are aware of the social stigma attached to going to a special school and of the fact that going to a special school reduces their future opportunities (4). **There is no way to regularly revise placement in such a center**, especially because placement is justified by school orientation, and, as the young people stated - "**once in a special school, there is no way back to an ordinary school** .

## VIOLATING THE LEGAL FRAMEWORK REGARDING THE LEGAL REPRESENTATIVE OF THE CHILD AND ADULT ADMITTED IN RESIDENTIAL INSTITUTIONS

The three laws mentioned in Chapter 1, regarding the rights of persons living in residential institutions state that such persons' rights and interests are also protected by the "legal representative" against acts and deeds of the representatives of the institutions they live in. **In the field, the CLR has observed a practice which violates the above-mentioned provisions, as well as those of the relevant international treaties to which Romania is a party, in residential centers for persons with mental disabilities: designating the manager of the General Directorate for Social Assistance and Child Protection (GDSACP) (6), a social worker within the institution (7) or GDSACP (8) as "legal representative" of the institutionalized person.** Such a practice runs contrary with the national and international legal framework for the following reasons:

- it has no legal foundation:
- it constitutes a conflict of interests, understanding that the main obligation of the "legal representative" is to care for the interests of the repre-

sented person (i.e. the child's rights laid down in Law No. 272/2004 must be respected also by GDSACP and its subordinate centers);

- by assuming the status of a "legal representative" of the persons living in such centers, GDSACP also assumes the role of a protector of the rights and interests of such persons against the acts and deeds of its subordinate centers;
- it deviates from the provisions of Law No. 448/2006; an example is Article 25 (1) and (6): "(1) Persons with handicap are entitled to protection against negligence and abuse, irrespective of where they are. (6) The parent, the legal representative, the guardian, as well as the non-governmental organization whose member the person with handicap is can assist them before competent courts";
- it also violates Law No. 487/2002, for example Article 29 which states that the psychiatrist can establish the treatment without the patient's consent if the patient is a minor or is under interdiction, in which case the doctor must request and obtain the legal representative's consent.

### EXAMPLE:

A concrete example in terms of special child protection measures is the measure of specialized supervision (Article 67(2)): "*In case of consent from the parents or the legal representative* (which, in the cases mentioned above, is GDSACP, an institution subordinated to the county council / local councils of the districts of Bucharest), "the specialized supervision measure is taken by the Commission for Child Protection" (an institution also subordinated to the county council / local councils of the dis-

tricts of Bucharest); another similar example can be found in the provisions of Article 68 of the Law: "(1) The circumstances that led to special protection measures taken by the Commission for Child Protection or by the court must be verified quarterly by GDSACP. (2) If circumstances provided for in paragraph (1) have changed, GDSACP has the obligation to notify immediately the Commission for Child Protection or the court, as the case may be, in order to change or end the measure, as necessary.

### EXAMPLE:

Consequences generated by such a practice are exemplified by the case of child A.B., aged 13, now living in the Family-type House of GDSACP Maramures, in Universitatii Street. Due to some "mental disorders", child A.B., who behaved violently, without hitting anybody, has changed four foster carers. CLR representatives have considered the possibility that the child's mental problems are a consequence of the "transfer" from a foster carer to another, and, if there was a predisposition, the lack of specialized services, in this case, has contributed to the aggravation of the mental problem. The practice of moving children from one foster carer to another is almost generalized within the system and it raises the question of how

ready a child with disabilities is to be heard by a judge in order to change the placement measure. According to Law No. 272/2002, hearing a child is mandatory after the age of 10. In practice, sometimes judges do not hear the child on the grounds that he/she holds a certificate of disability, although they should see that the child is more vulnerable in such circumstances, in a closed system. Such situations disadvantage the child even more due to the practice of designating the manager of the center/GDSACP as "legal representative" etc. etc. If a child is abused by his/her family, GDSACP takes him/her out of the family. If a child is abused within the center/house, the manager of the center ("his/her legal representative") should file a complaint against himself, on the child's behalf

## MANAGING COMPLAINTS OF INSTITUTIONALIZED PERSONS

During the monitoring visits, the CLR representatives observed that **there are no procedures to record and settle complaints**. To justify this situation, the representatives of the institutions often argue, in contradiction to CLR representatives' findings, that "there are no complaints" from the admitted persons. Almost no institution keeps a registry for recor-

ding complaints, not even formally; in most cases, **the information about beneficiaries' rights, addresses and contact persons from public institutions or non-governmental organizations is not displayed**. The admitted persons do not receive copies of national and international regulations and are not told about them.

## TORTURE, INHUMAN AND DEGRADING TREATMENTS

During the monitoring visits, the CLR has observed situations which amount to torture, inhuman and degrading treatments.

### EXAMPLE:

At the Home for Elderly and Adolescents in Aldeni, Buzau County (CVDA Aldeni), during the first visit on November 21, 2013, serious infringements of patients' rights were found. During the visit on February 14, 2014, CLR representatives found again serious infringements of the rights of those persons:

- lack of hygiene, persistent smell of urine, number of patients exceeding the real capacity (number of beds) and legal capacity (m/person) of the visited building; **beds without pillows or mattresses; all persons had ecchymoses, wounds or swollen limbs due to having been tied with rope;**
- there were only 3 functional toilets for about 60 persons and they were used by both men and women;
- in a locked room, 3 beds accommodated **6 persons under deep chemical sedation** (by Order of the Minister of Health No. 372/2006 on Implementing Rules for the Law of Mental Health No. 487/2002, Article 21, only "physical" restraint is allowed), **their limbs (both legs and hands) were tied with rope and presented serious injuries;**
- in another locked room, to which the personnel insistently referred as empty, **there was a person completely covered with the blanket, left without supervision, with strong tremor;**
- all persons that discussed with CLR experts mentioned that **the medicines received since having been admitted there did them harm** and the experts' findings agreed with the patients' statements, and, because their situation had become visibly worse during the 3 months from the first visit, without exception, **all persons asked desperately for help to be brought back to Bucharest: "they are going to kill us all if we stay here";**
- **all patients' heads were shaved** "in order to avoid a head lice epidemic";
- **all patients were very lightly and inadequately dressed, with ripped clothes (trousers were tied with rope because they were too large); due to lack of cold-weather clothes, they were not allowed outside;**
- all patients said **the food was very "gross";**
- **they do not have access to specialist doctors**
- **any form of external communication is removed;**
- other infringed rights: **forced abortion, infringement of privacy, infringement of dignity (the personnel are helped by workers or young beneficiaries (men) in order to undress the girls, to wash them using force, to tie them).**

Taking into account the inhuman and degrading treatment applied to such institutionalized persons and considering the great number of deaths in the last years, there could be a direct causal link between the treatment and the deaths. Although District City Halls in Bucharest pay RON 2,200-3,480/month/person for the services provided by this Home, it has been found that the beneficiaries' rights are seriously infringed and their life is in danger.

Considering the big number of deaths, 6 young people in less than 3 months (as compared with, for example, the Center for Recovery and Social Reintegration, Canaan Sercaia, where patients have more serious disabilities: 9 deaths in the last 5 years), **we strongly call for denunciation of the above-mentioned acts and legal measures to protect the life and physical and mental integrity of the persons from the Home.**

#### **OTHER EXAMPLES:**

At the Center for Assistance to the Child with Special Education Needs in Galati, one of the beneficiaries (E, aged 12) has complained that **one of the trainers sometimes pulls her hair** as punishment (and she does the same with the other girls). At the Center for the Protection of the Child with Disabilities in Turnu Rosu, for example, because there are

two types of patients living together (some normal intellectual development, but socially disadvantaged, and others with mental disabilities), **some abuse the others**. Not monitored by the personnel, at the Complex for Social Services in Campulung Muscel, **a girl was thrown out the window** by a colleague suffering from schizophrenia and suffered serious injuries and mental trauma.

Regarding **the restraint of persons placed/admitted**, there were **situations in which this measure was excessively applied, the means used for immobilization were inadequate and caused psychical injuries to the patients**.

Two such cases were found at the Foster care center in Tancabesti (9). In the Foster care center in Tancabesti, as well as in other institutions (e.g. the Foster care center No. 2 in Slobozia, the Family-Type House in Bora, the Center for Recovery of Young People with Neuropsychiatric Disorders in Babeni), **illegal chemical restraint is common practice, as shown above.**

The absence of procedures and records for restraints is almost generalized. Some of these irregularities have also been found by the National Agency for Payments and Social Inspection (NAPSI) and mentioned in its report in October 2013.

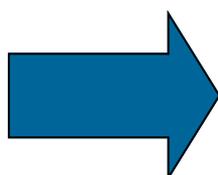
CLR had access to the Report on the basis of a request submitted according to Law 544/2001 on free access to information of public interest; the document is published on CLR website at [http://www.crj.ro/\\*articleID\\_1284-articles](http://www.crj.ro/*articleID_1284-articles)

## FAILURE TO INVESTIGATE DEATHS

Although they occur in institutions involving deprivation of freedom, **there are no clear records regarding the deaths, and people are buried without medical certificate and without performing autopsy** or other further investigations regarding the causes of death (e.g. the Home for Elderly and Adolescents with Disabilities in Aldeni, NRRC Brancovenesti, the Family-Type Houses in Bora, CRYPND Babeni. The **CLR strongly call for changing this practice as soon as possible,** **so that autopsy and medical certificates to be mandatory in all cases of death, as this obligation is provided for, for instance, in Law No. 254/2013 on execution of sentences and measures involving deprivation (Article 52(2))** and as, unfortunately, it is not provided for in Order No. 559/2008 of the National Authority for Persons with Handicap, on the approval of specific quality standards for residential centers, day centers and protected homes for adults with handicap (Standard 12.12).

### EXAMPLE:

At CRYPND Babeni, for example, if the death occurred within the Center, the family doctor and the head of the Center are called to "record the death, documents are prepared and then the burial takes place" (in case of a death in the hospital, "the case manager and the head of the Center go to the hospital, documents are prepared, the burial takes place, the family participates. Not all deaths occurred in the Center are considered suspect death, so that no intervention of the police or the prosecutors and no autopsy are requested").



## INADEQUATE LIVING CONDITIONS AND SOCIAL AND MEDICAL REHABILITATION

### LIVING CONDITIONS: ACCOMMODATION AND FOOD

**In many cases, accommodation conditions are inadequate, the spaces used for this purpose are unaired, unheated and receive little natural and artificial light** – in some situations they constitute inhuman and degrading treatment themselves.

In many residential institutions, persons living there complain about the quantity and quality of food. NAPSI Report of October 2012 also mentions similar findings, inter alia, at NRRC Balaceanca. (10)

### EXAMPLE 1:

At PC No. 2 in Slobozia, **the requirements for separation of adults (over 18) and children, as well as boys and girls are not fulfilled.** The Center operates in an old building which is quite untidy, not sanitized for a long time, facilities are untidy, the walls are dirty etc.

The upstairs bathroom was not adjusted for persons with special needs, it had a slightly pestilential smell and received poor natural and artificial light. Facilities were not sanitized – dirty walls, damp, old sanitary appliances, no soap, no toilet paper or holders for toilet paper, no towels etc."

### EXAMPLE 2:

Another example is the Center for Integration through Occupational Therapy Tanta where food is insufficient and lacks variety. The persons living there rarely receive meat, milk, butter or eggs. They eat mainly tinned vegetables and cooked vegetables. In the morning of the visit they had eggplant dip and tea and for lunch cooked green beans. The manager of the Center confirmed that their food lacked variety and, moreover, in the last days the catering company had not provided food because they had not been paid, so the employees had to feed the beneficiaries using the Center's own resources (eggplant dip, tea etc.).

## SOCIAL REHABILITATION

With rare exceptions (11), the situation is almost the same in all the other visited centers: **lack of almost any organized form/method for recovery and socialization.** T.V., cartoons and, rarely, Lego or puzzle games are the only ways of spending time, even in house-like centers arranged according to standards. **Besides living in centers and, therefore, having their freedom of movement restricted, children and young people have only partial access to school and to correspondence, they are not visited by parents etc.**

Even the above-mentioned NAPSI Report states that almost 65% of children and young people "do not participate or participate only occasionally in recovery programs. Grounds: the programs are not provided (lack of personnel, adequate space, materials etc.) or they are not sufficient / adapted to the beneficiaries' needs or the beneficiaries are not involved or stimulated to participate."

CLR representatives (e.g. when visiting the "Sf. Andrei" Complex for Children with Disabilities in Bucharest) found that children and young people living there **needed 'to be provided implementation of proper and active assessment and therapy procedures in order to ensure full care services, according to international regulations:** psychotherapy specialized for each disorder – schizophrenia, autism, Down syndrome etc. – with clearly defined objectives (e.g. improvement of communication, training and development of independent skills, socialization, improvement of affective behavior, higher self-esteem), in conjunction with individualized schemes for intervention and periodic assessments.

For instance, at the Psychiatric Sanatorium for children within the Psychiatric Hospital in Voila, there were **young people with autism spectrum disorders who were not provided the necessary specialized services** (13 cases in 2013).

#### EXAMPLE 1:

CLR Report on the visit to RSRCD Ramnicu Valcea emphasizes that: **"Children have no perspective when they leave the Center, taking into consideration that the**

**services are oriented towards provision of accommodation, food and healthcare". CLR reiterates that recovery and rehabilitation are the main reason for which those persons are locked up in those institutions.**

#### EXAMPLE 2:

Regarding the contact with the outside world, there is usually no limitation for visits. At CRYPND Babeni – a situation that that is problematic – **young patients can meet their visitors only in a specially arranged room,**

**"the visiting room", which is small, has only a few pieces of furniture and is kept locked on grounds that "we had problems, they are aggressive".** The manager of the Center mentioned that he forbade visits to the young people's rooms because "arguments might occur".

Generally speaking, children and young people who ask are granted "permission" to go into the town and, as the case may be, to visit their families. CLR call for this right to be ensured with as few restrictions as possible. The findings of CLR representatives **have shown that the rules regarding permissions for admitted children and young people are**

**unclear** (see, for example, the Report on the visit to SCIE Peris). Therefore, CLR demand that this aspect be regulated as soon as possible, as clearly as possible and with the least limitation. We also call for urgent involvement of GDSACP Ilfov in clarifying the situation and finding the two children who left the Peris Center with permission but have not returned.

## MEDICAL CARE

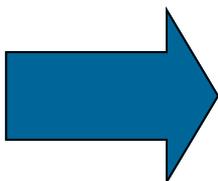
The main problem related to medical care was the lack of oral medical care. This problem is related to the insufficient medical personnel, but also to the discrimination that persons with disabilities who live in institutions face.

**EXAMPLE:** At CCD "Domnita Balasa" in Bucharest, although 3 of 5 children with whom CLR representatives discussed had dental problems, some serious, they did not have access to a dentist.

## PERSONNEL

The CLR monitoring experts observed that there is a personnel shortage and poor remuneration in the institutions that were visited. The CLR considers that this situation is a cause for many other problems regarding the violation of the rights of persons with mental disabilities.

**EXAMPLE:** At SCIE Peris, no less than 19 persons from the staff establishment plan are missing and the absence of 2 social workers, 1 administrator (this function has not been filled for 2 years), 1 psychologist, 1 doctor (they have none), 4 nurses and auxiliaries is most acutely felt; in the girls' house 20 girls live together with 12 little boys (most of them with enuresis) – these 12 small children were accommodated in the space intended for girls so that the girls could take care of them from time to time.



## THE ISSUE OF E.U. FUNDS FOR TRANSITIONING TO THE COMMUNITY

From the information available to the CLR it results that there have been **investments of tens of millions of Euros, mainly coming from structural funds**, (within the Operational Regional Program 2007-2013, Priority Axis 3, Key Area of Intervention 3.2), **for "the rehabilitation / modernization / development and equipping of the infrastructure of social services" for persons with disabilities** (including children). **Such investments have been flagrantly conflicting with the principles regarding the provision of social services mainly within the community and the transfer from institutional to community services. This principle has been enshrined by the international treaties to which the European Union (EU) and Romania are parties, by the specific strategies of EU and Romania and by the Romanian laws** as follows.

In December 2010, Council Decision 2010/48/EC of November 26, 2009 the E.U. adhered to the United Nations Convention on the Rights of Persons with Disabilities, which was signed on behalf of the Community on March 30, 2007. This way, EU undertook to promote, through all its relevant laws, programs and funds, the rights of such persons, as defined by the Convention (including Article 19) (12). In November 2010, the European Commission adopted the "European Strategy 2010-2020 for Persons with Disabilities: a Renewed Commitment to a Barrier-Free Europe".

Romania, being a member state of the

E.U., must respect the following commitments that The Commission thus undertook. Namely, "to promote the transition from institutional to community-based care by: using Structural Funds and the Rural Development Fund to:

- support the development of community-based services and raising awareness of the situation of people with disabilities living in residential institutions, in particular children and elderly people";
- "to achieve the transition from institutional to community-based care, including use of Structural Funds and the Rural Development Fund for training human resources and adapting social infrastructure, developing personal assistance funding schemes, promoting sound working conditions for professional carers and support for families and informal carers";
- "to achieve full participation of people with disabilities in society (...) by providing community-based services, including access to personal assistance".

Commitments such as those included in the Partnership proposed by the Government to the EU for 2014-2020 (13), contain provisions which are not in conformity with the abovementioned Commission's Strategy. For example, the "acceleration of transition from institutional to alternative care for children deprived of parental care" (14), is not dedicated to the target group of children and young people with disabilities who are institutionalized.

**EXAMPLE:** The Foster care center / the School Center for Inclusive Education in Peris, Ilfov County (RON 3,499,987), the Center for Integration through Occupational Therapy in Tantava, Giurgiu County (RON 3,491,373); a building of the Neuropsychiatric Recovery Center for Adults in Movila was rehabilitated in 2012-2014 with EUR 800,000 from European funds.

## RECOMMENDATIONS:

### ESTABLISHING THE NATIONAL INDEPENDENT MONITORING MECHANISM FOR THE PREVENTION OF TORTURE

By ratifying the UN Convention on the Rights of the Child, Romania has undertaken, according to Article 37 thereof, "to see that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment". Romania also signed the Optional Protocol to the Convention against Torture on September 24, 2003 and ratified it on April 14, 2009. Now, when the second deadline for the establishment of the National Mechanism for the Prevention of Torture (NPM), set by the UN Committee against Torture, is around the corner, Romania must apply the Protocol this year, no later than August. In 2009, Romania was granted a three-year postponement for the establishment of the Mechanism. In 2012, when the first deadline expired, **Romania** asked for and received a two-year extension, **so it is the only country in the world that asked twice for a postponement for the establishment of the mechanism.**

**Back in 2009, CLR published a legislative proposal concerning the esta-**

**ishment of NPM.** In 2013, in the context of numerous abuses against persons with disabilities that are institutionalized, the bill was discussed and supplemented together with other non-governmental organizations and members of the Commission for Human Rights of the Senate. 19 senators and deputies had the legislative initiative in the Parliament. **On December 18, 2013, the bill was silently adopted by the Chamber of Deputies and it will be debated within the Senate which is the decision-maker in this case;**

During public debates organized for the establishment of NPM, one of the proposals was that the Ombudsman take over this role. **CLR considers that the institutions of the Ombudsman would prove inadequate for such a mission because its members do not respect the standard of independence established by the OPCAT.** The Ombudsman and the Ombudsman's Deputies are named according to political criteria.

### THE ADEQUATE ALLOCATION OF E.U. FUNDS FOR THE COMMUNITY INTEGRATION OF CHILDREN AND YOUNG PEOPLE WITH DISABILITIES

The CLR considers that European funds must be adequately allocated, which implies:

- ceasing any allocation of current and future European funds for the "rehabilitation, modernization and development" of institutions for persons with disabilities (adults and children);

- for the programming period 2014-2020, allocating European funds to Romania (in the reference area, only for taking out of use the 395 residential institutions while moving to community-based care), only after the Government has proven, genuinely and not only formally, on the basis of parameters determined as precisely as possible, the fulfillment of the following ex-ante conditionalities, general and thematic, established by the Regulations of the European Parliament and the Council, regarding the Structural and Investment European Funds (on the date this report was drawn up, the Government had not published yet these regulations on the website of the relevant ministry, the Ministry of European Funds; see the Annex to this Report);
- "Promotion of social inclusion and transfer from institution services to community-based services" - ex-ante conditionality for funds from the European Regional Development Fund (ERDF), and "Disability - The existence of administrative capacity for the implementation and application of the UN Convention on the Rights of Persons with Disabilities in the field of ESI Funds, according to Council Decision 2010/48/EC" - general ex-ante conditionality (15);
- "The European Structural Funds (ESF) should promote transition from institutional to community-based care. ESF should not support any action that contributes to segregation or to social exclusion" (16);
- "Community-based services should cover all forms of in-home, family-based, residential and other type of services which support the right of all persons to live in the community, with an equality of choices, and which seek to prevent isolation or segregation from the community".

#### NOTES:

<sup>1</sup> According to the Protocol, deprivation of freedom refers to any form of detention or imprisonment or placement of a person in a public or private custodial setting which the person is not permitted to leave at will by order of any judicial, administrative or other authority.

<sup>2</sup> For example, the School Center for Inclusive Education in Peris.

<sup>3</sup> For example, to the Psychiatric Hospital in Voila.

<sup>4</sup> At Babeni, a young man declared that he had got to CRYPND against his will, coming from a foster care center. He stood before the representatives of GDSACP and argued that he did not want to be in a center for young people with mental disabilities, and during the hearings he was alone with the manager of the center who, as he states, "is the one acting as a representative for all children in the center". He argued that the reason for this transfer was a correction measure for a dispute with a member of the personnel from the center where the young man was transferred.

<sup>5</sup> E.I.N. was admitted in the Sanatorium because she was no longer accepted in the ordinary school in Bordenii Mari, near Campina. The patient told us that she got to the Sanatorium after she had been hit by the teacher - "the teacher used to hit me". The teacher refused to accept her in the school and asked her parents "to take her where her sister is". E.I.N. has an older sister (aged 9) with mental retardation who is a patient of the Sanatorium. Both sisters currently attend the hospital school and are in the second grade. As the hospital representatives admitted, E.I.N. has no mental disorder, but is a victim of the fact that she is no longer admitted to an ordinary school. Monitors noticed that E.I.N.'s intellect seemed to be above average (she was very communicative, her discourse was above her age of 7 years and she was trying to protect her older sister suffering from mental retardation), and this was also noticed by the hospital representatives who assisted to the conversation with E.I.N. However, E.I.N. was a patient there, even if she had no mental disability or disorder. The girl says she does not want to be there and she would love to go back to the school in the village.

<sup>6</sup> E.g. the Neuropsychiatric Recovery and Rehabilitation Center in Cotesti

<sup>7</sup> E.g. the Recovery and Rehabilitation Center for Persons with Handicap in Pastraveni

<sup>8</sup> E.g. the School Center in Peris.

<sup>9</sup> In one of the boys' bedrooms there was a young man on a bed (D.I.), his hands were tied behind his back with strips of cloth. His legs were also tied together (with strips of cloth). His head, shoulders and body were covered with a piece of blanket. He was not tied to the bed. The personnel argued that the boy suffered from autism and if he were untied and uncovered he would be aggressive towards himself. He had scars and traces of healed wounds that could come from the ties and the materials used for tying him. Another young man with serious mental problems was physically restrained in four points, like a "boat", and his head was covered with a blanket.

<sup>10</sup> We quote from NAPSI Report: "At NRRC Balaceanca, the team of social inspectors found that most beneficiaries were underweight, as mentioned in the reassessment records. From discussions with beneficiaries, they noted the lack of varied food and the low quality of the menu. For clarification, discussions were held with the employees of the center, relevant documents were analyzed (notification sent to the manager of GDSACP Ilfov, the report of findings etc.) and the content of the lunch was verified during the whole inspection mission. All this highlighted that the menu provided by the catering company did meet NRRC's requirements, the food was not of proper quality, i.e. although the first course was supposed to contain meat, it did not. It was also found that the daily allowance for food is not established by county council decision, although it meets the legal provisions in force, amounting to RON 8.3/day. The representatives of GDSACP Ilfov argued that the sum was increased with RON 2/day/beneficiary without documented evidence.

<sup>11</sup> Such as the Residential Service for the Recovery of the Child with Disabilities (RSRCD) in Ramnicu Valcea.

<sup>12</sup> "Living independently and being integrated in the community": Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, in order to have access to a range of support services and personal assistance to support living and inclusion in the community and to prevent isolation or segregation from the community.

<sup>13</sup> Second draft, February 2014

<sup>14</sup> Chapter "Social inclusion and poverty" or "supporting the transition from institution care to community-based services", Thematic Objective No. 9 "Promotion of social inclusion, fighting poverty and any form of discrimination".

<sup>15</sup> EU Regulation No. 1303/2013 of the European Parliament and of the Council of December 17, 2013 - Annex XI Part I Point 9 and Annex XI Part II Point 3.

<sup>16</sup> EU Regulation No. 1304/2013 of the European Parliament and of the Council of December 17, 2013 - Paragraph 19 of the Preamble.



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