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**Concerning: 1302nd meeting of Committee of Ministers (December 2017),
with regards to the Action Plan submitted by the Romanian State for the execution of the
Center for Legal Resources on behalf of Valentin Campeanu against Romania (App. No.
47848/08) judgment**

COMMUNICATION UNDER RULE 9.2

The Centre for Legal Resources (the CLR) is a non-governmental organization established in 1998 in Romania, with the aim to observe the respect for human rights. The CLR brought Application no.47848/08 on behalf of Valentin Campeanu to the European Court of Human Rights and manifests a legitimate interest in observing the execution of the Court's judgment.

The CLR would like to communicate to the Committee of Ministers its point of view regarding the Revised action plan (18/10/2017) submitted by the Romania Government, under **Rule 9.2** of the Rules of the Committee of Ministers for the execution of judgments and of terms of friendly settlements.

Your faithfully,



Georgiana Iorgulescu

Executive Director

Centre for Legal Resources

1. Termination of the Protocol under which CLR conducts monitoring visits in institutions for persons with mental disabilities under the supervision of GDSACP

CLR has been conducting unannounced monitoring visits in residential centers for persons with mental disabilities under the supervision of GDSACP and under the coordination of NAPD, as well as in psychiatry hospitals ever since 2004. As a result of such a monitoring visit, CLR took over the case of Valentin Campeanu, an emblematic case for the condition of persons with mental disabilities without next of kin placed under the state's custody. The case is under supervision of the Committee of Ministers in terms of enforcement ever since 2014.

- A. The Decision of the Committee of Ministers adopted in its 1280th meeting (7-10 March 2017) on the enforcement of the judgment rendered in the case initiated by the *Center for Legal Resources on behalf of Valentin Campeanu against Romania* (App. No. 47848/08), referring to the general obligations of Romania, stipulates under point 4 as follows:

The Deputies noted with satisfaction the authorities' initiative to involve the Centre for Legal Resources in their action aimed at ensuring the effectiveness of investigations and strongly encouraged them to put it into practice.

The Romanian State, by its response transmitted on 18 October 2017, omits deliberately the informative note of the CM in relation to the termination, starting from 01.07.2017, of Cooperation Protocol no. 1493/294/01.10.2013 concluded between CLR and the Labor Ministry, a protocol that allowed for the conducting of dawn raids in institutions in which there were persons with mental disabilities. The purpose of the Protocol was to contribute to the implementation by Romania of the UN Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, i.e. to monitor the observance of the rights of persons with mental disabilities admitted in residential centers. Thus, under Art. 33, para. 3 of CRPD, CLR acted as an independent mechanism for the promotion, protection and monitoring of the Convention implementation.

In this sense, we attach hereto the Termination Notice sent by the Labor Ministry and the correspondence between the Commissioner for Human Rights of CoE and the Romanian Labor Minister. This correspondence can be accessed also at <https://www.coe.int/en/web/commissioner/-/romania-ngo-expertise-still-vital-for-monitoring-institutions-for-persons-with-disabilities>

The fact that Romania adopted Law no. 8/2016 on the Creation of Mechanisms Provided for by CRPD, with major involvement of CLR, does not trigger as a consequence the preclusion of non-governmental organizations to conduct dawn raids in institutions.

Also, the mere adoption of Law no. 8/2016 does not trigger the effective operationalization of the Monitoring Council, an institution set forth by this legal norm. In fact, at the moment, there is not yet a body of inspectors hired by this Council to conduct monitoring visits in institutions accommodating persons with mental disabilities. In fact, CLR expressed its availability to contribute to the training of these inspectors, at the moment of their hiring, and to conclude a Cooperation Protocol with this new institution (see the related correspondence attached hereto). Despite this, the response received by us was an equivocal one. Besides, even if this Council were fully operational, it is in the benefit of institutionalized persons to be visited by as many public or private entities as possible, for the protection of their rights.

We would like to mention the communication transmitted by the Commissioner for Human Rights of CoE to the Labor Ministry, encouraging the resumption of the Memorandum of Understanding with CLR: *„I take the opportunity to reiterate the importance of close co-operation between national authorities and NGOs with extensive expertise in the protection and promotion of the human rights of persons with disabilities. Romania will only gain from making the most out from this valuable expertise.”*

We mention that, even though it is not operational, the Monitoring Council was mandated by the Government of Romania to conduct a monitoring visit to „Maciuca” Neuropsychiatric Recovery and Rehabilitation Center, Valcea County, a center that was subject to journalistic investigations and to a criminal complaint filed by CLR following a monitoring visit at the beginning of 2017 (<http://www.CLR.ro/en/crnn-maciuca-un-nou-episod-din-lungul-serial-al-abuzurilor-din-romania/>).

The Council resorted to representatives of two non-governmental organizations, APADOR- Helsinki Committee and the Association of Social Assistants, which do not have expertise in monitoring the rights of persons with mental disabilities and, as a result, in our opinion, their report is not valid.

Therefore, we ask publicly what is the reason why the Government of Romania, through the Labor Ministry, decided to terminate such Cooperation Protocol, despite the Decision in the *Center for Legal Resources on behalf of Valentin Campeanu against Romania* case (App. No. 47848/08),?

We also ask who is conducting at the moment monitoring visits in the institutions of Romania?

B. In the communication sent by Romania to the CM on 18/10/2017, the former states:

The cooperation of POHCCJ with non-governmental organizations is ongoing. The General Prosecutor's office was notified in 2017 by the CLR on some aspects relating to the opening and progress of a criminal procedure initiated after a complaint lodged by the same organization (...); the Prosecutor Office remains open to cooperation and to receiving notifications from non-governmental organizations (...) Moreover, the POHCCJ is preparing, for mid-November, a seminar on the respect for human rights and fundamental freedoms, four NGO's (including the CLR) being requested to participate in the event.

We mention that a Cooperation Protocol has existed between POHCCJ and CLR ever since 2015, under which the parties mutually inform on the status of cases initiated based on complaints filed by CLR, CLR participates in the professional training of prosecutors, and they identify together legislative solutions in the area of interest.

Given that the Cooperation Protocol between CLR and the Labor Ministry was terminated, how can CLR send in the future notifications to POHCCJ concerning potential abuses identified on the occasion of monitoring visits? In fact, on the date of the communication sent to the Committee of Ministers, 18.10.2017, the termination of the Protocol between CLR and the Ministry was notorious already.

So far, CLR transmitted 6 criminal complaints to the prosecutors' offices of jurisdiction and to POHCCJ. Even though the latter had a legal possibility to take over such cases initiated in 2013, 2014, 2015 and 2017, only „Maciuca” case has been taken over by it this year, upon express request by CLR sent in May 2017, and before the Government of Romania transmitted its communication to the Committee of Ministers in October 2017. Unfortunately, „Maciuca” case is a representative one for the way in which persons with mental disabilities are treated (inhumane and degrading treatments), which was initially closed at the level of the local prosecutors' office through an order to close the case.

In fact, except for one case, all others were closed by an order to close the case.

In case no. 7270/P/2013, which involves ill treatment against minors, deprivation of freedom, abuse of office against minors accommodated in a placement center, a case initiated in 2013, which was finalized by an order to close the case, which was appealed by CLR, the center's staff was sent to trial for abusive conduct. This way, a regrettable aspect was noted, i.e. the appetite of prosecutors' offices for offences committed in the course of employment to the detriment of offences against a person's integrity. From the act of indictment, it does not result that the minors, even though part of them reached the majority age, benefitted from legal assistance. CLR appealed this act of indictment but this means of appeal was dismissed as being filed by a person lacking capacity to

sue. Had these minors benefitted from all the procedure guarantees, including from legal assistance by a lawyer, which is mandatory for minor victims, this decision could have been appealed by their lawyers? Even though the manager of GDSACP has been sent to trial, he continues currently to hold this position.

In case no.165/P/2014 handled by the Prosecutors' Office under Buzau Tribunal, which involves ill treatment offences against adults with disabilities placed under the care of a private entity contracted by the local authorities, the final resolution of the prosecutors' office was to close the case. We mention that no beneficiary of the center's services has been heard (on the ground that such entity was closed down) in order to establish the truth. CLR requested the prosecutor to grant it access to the case file, in order to be able to address the ECHR, but such access was denied to us, even though we attached the decision in the *Center for Legal Resources on behalf of Valentin Campeanu against Romania* case. As a result, this case can no longer be appealed with any domestic or European court.

In a case initiated in 2014, which involves forged forensic medical reports fraudulently issued, and the conclusion by GDSACPs of contracts with an entity that did not have a legal right to take in custody persons with mental disabilities, the prosecutors' office has not yet issued a decision, despite the fact that the case contains all the required evidence.

In cases involving offences against persons with mental disabilities, a common element exists: despite the fact that the representatives of CLR filed criminal complaints as a result of aspects identified indirectly, except for one case, they were not called to testify as witnesses, this being an extremely important means of evidence; persons with mental disabilities, passive subjects of offences, did not benefit from legal assistance; and there are also preconceptions of police and prosecutors' office workers regarding the persons with disabilities (as being persons who do not perceive correctly what happens to them, who suffer from „behavior disorders”).

In case of minors placed in residential institutions, as a rule, their legal representative is the manager of the General Directorate for Social Assistance and Child Protection. He/she does not participate in judicial proceedings, whether civil or criminal, together with the minors, and does not participate when minors bring civil actions in criminal proceedings, because the civilly liable party is precisely the employer GDSACP. The same goes also in the case of adult persons placed under guardianship who have a GDSACP representative as guardian.

Even though Art. 63, item f) din Law no. 304/2004 on Judicial Organization stipulates that the role of prosecutors is to protect the rights of minors and of persons placed under guardianship, the practice indicates that these do not perform effectively these obligations. For instance, at the level of Romanian tribunals, in the civil law area, CLR

identified in 2013 a single case in which the prosecutor filed an appeal against a special protection measure concerning a child with disabilities.

We conclude by saying that, compared to the *Valentin Campeanu* case initiated in 2004, these new cases are settled much more difficult and much more superficially by prosecutors' offices. Justifications are extremely brief, reiterate a quasi-factual situation, which is not translated by them into a legal situation, and no attempt to find the truth transpires from this. Therefore, from the perspective of Art. 3, the procedure part in particular, and of Art. 13 of ECHR, Romania is in the same situation as that existing in *Valentin Campeanu* case.

All these aspects were included in an informative note transmitted to the General Prosecutors' Office in 2015. Yet, until now, no specialized training has been organized for prosecutors in the area of investigation of offences against persons with mental disabilities placed in institutions.

As a result, CLR cannot understand the reasons why the Government of Romania communicated to the Committee of Ministers on 18.10.2017 that „targeted training sessions do not seem necessary anymore at this stage”.

As for Order no. 144/26 June 2017 issued by the General Prosecutor of the Prosecutors' Office under the High Court of Justice on the creation of a mechanism of protection for institutionalized persons who are in vulnerable situations, this order is salutary, with a single observation: Art. 10 stipulates that, in situations of adult victims about whom there are indications of their debility or mental alienation (this the terminology used in the Civil Code, even though it is factually obsolete) and who do not have a guardian or trustee appointed, prosecutors shall initiate procedures for their placement under guardianship (such persons being fully deprived of their legal capacity), in order to allow for the appointment of a temporary trustee.

We mention that the complete deprivation of a person of his/her legal capacity contravenes to the provisions of Art. 12 of the UN Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, which is ratified by Romania. Thus, the Convention sets forth an obligation for the party states to take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity. Therefore, the Convention emphasizes the legal capacity and support in making decisions, where the case. In the Romanian context, the placement of a person under guardianship generates serious issues related to his/her adequate representation in a context in which, as a rule, the guardian is an employee of the entity having that person in custody, and the conflict of interests is obvious.

In consideration of the aspects mentioned above, we believe that the Romanian State is far from having fulfilled its general obligation derived from Art. 46 §1 of the Convention, corroborated with Art. 2, in terms of procedures.

2. As far as Art. 13 of the Convention, corroborated with Art. 2 and Art. 46, is concerned, in the letter sent to the Committee of Ministers in October 2017, the Government announced the adoption of a Memorandum containing elements of reflection related to the implementation of a guardianship system, which would meet the exigencies related to independence and effectiveness, and would have the required human and financial resources secured.

We believe that, 3 years after the Judgment in the *Center for Legal Resources on behalf of Valentin Campeanu v. Romania* case, Romania had the time necessary to amend the Civil Code accordingly in respect of the concept of guardianship and trusteeship and to create an adequate system to support persons with mental disabilities to make decisions in such a way to secure the premises of a full use of their rights. Moreover, the way in which the Government describes the potential creation of a mechanism intended to secure the effective and independent representation of persons with mental disabilities indicates a perpetuation of the current system for placement under guardianship (the civil death of a person), focusing exclusively on finding an independent guardian. Therefore:

- a) Romania has not yet taken actual measures in respect of the legal protection of persons with mental disabilities;
- b) Romania has not shifted from the stage of intention to that of implementation of actual measures intended to secure the fulfillment of the general obligations deriving from the *Valentin Campeanu* judgment.
- c) Romania is still assessing the need for and timeliness of amending the Civil Code (which mentions only the total incapacity)
- d) The new guardianship mechanism identified by the governmental working group provides for the selection of a number of persons, paid by local authorities, subsequently appointed by a tribunal as representatives of persons with disabilities; their activity would be monitored by the Monitoring Council.
- e) The Government mentions that 3721 adults do not benefit from special protection and 1950 are represented by administrative authorities or residential centers.

On the other hand, we need to mention that there is a trend, at least at the level of some districts of Bucharest, to outsource the services for adults with disabilities to private entities that are located in other counties. This raises serious concerns related to the monitoring of the rights of such persons by those paying for such services. Three of the criminal cases initiated by CLR involve suspect deaths in locations that are at a significant distance from Bucharest.

The data obtained by CLR at a local level also reveal a perpetuation of the trend to place under guardianship persons who are in the custody of various Neuropsychiatric Recovery and Rehabilitation Centers. In all situations where there are no next of kin, the guardian appointed by courts is a specialized body of the local authorities, either the

Guardianship Supervisory Agency or GDSACP. This is not allowed by Law no. 448/2006 on the Legal Protection and Promotion of Rights of Persons with Disabilities. In its response sent to the Committee of Ministers, the Government does not appear to have an intention to amend this obsolete legal norm, which focuses on the person's disability, on his/her inclusion in a disability category, and on his/her medical problems. In other words, despite the fact that Romania ratified CRPD, it has not succeeded to perceive the change of paradigm set by this Convention, and, for this reason, all plans continue to consider the assisting of such persons, not the use of their rights.

In conclusion, as long as the Government does not consider substantive amendments to the Civil Code in force (and not only), which would provide support to persons with disabilities in making their decisions, their right to choose where to live and with whom, their right to work (a right that becomes inexistent by declaring such persons legally incapacitated), the mere appointment of representatives does not secure a full observance of the rights of persons with mental disabilities. Moreover, these persons will continue to live in a closed environment (only 1300 adults with disabilities out of 17,900 will live in the community until the end of 2023, as it results from the documents of the Regional Operational Program). As far as children with disabilities are concerned, there is no plan for their deinstitutionalization.

Therefore, in the absence of a comprehensive plan concerning the life in community of persons with mental disabilities and their support in making decisions, the appointment of personal representatives in an uncertain future does not solve effectively the actual protection of such persons' rights.

3. Condition of minors with mental disabilities approaching the majority age

Paragraph 6 of the Decision of the Committee of Ministers of March 2017 stipulates:

The Deputies recalled that information is awaited on the legal framework governing the placement of protected persons after attaining majority and on the legal remedies allowing them to complain before the courts or other independent bodies of their treatment.

A. Condition of minors with mental disabilities placed under the state's custody (residential system)

In cases of minors placed in state institutions, deprived of parental protection, the parental rights and duties are exercised by the manager of GDSACP. In fact, he/she does not represent minors either directly or by contracting a lawyer, either in civil

proceedings or in criminal ones. In terms of civil proceedings, for instance, when the transfer of a minor from a center to another or from a maternal assistant to another is decided, the law does not provide for an obligation for the legal representative or a lawyer to participate in civil proceedings. As a result, in civil proceedings, minors do not benefit from any kind of representation, which is extremely serious in a context where, ever since that moment, their institutional path is decided. In most cases, judges do not hear minors when they decide on changing special protection measures, on the ground that these are persons with disabilities.

Regarding the guardianship of minors, it is quite clear that we deal with a major conflict of interests between the legal representative of the minor and the minor himself. For instance, any inclusion of a minor in a disability degree will remain not appealed, because such inclusion is done by a service under the supervision of GDSACP.

What we tried to explain above is the fact that the drama of the institutional path of a person begins at the age of his/her minority and, once he/she becomes an adult, that person has no other options outside a closed institution. Such minors are not used to be consulted or asked about their wishes. When they become adults, it is all the more difficult for them to express their opinions or to make decisions.

Therefore, we are surprised that the Government of Romania does not consider any amendment to the legislation providing for the protection of minors, given that the life of a person represents a whole that cannot be separated only by the mere passage of time.

We wonder, for instance, who handles the destiny of children with mental disabilities at a central level: the National Authority for Persons with Disabilities or the National Authority for Child Protection and Adoption?

B. Status of minors with disabilities approaching majority

At the level of intent, the Government proposes the following:

The minors approaching the majority age are to be evaluated by the social assistance services in order to determine if, once the majority age attained, they will be in need of representation; if in the matter case, three months previously to their majority they will be designated a personal representative, who will exercise the parental authority for the remaining time until majority and who will assist the individual during his or her complex evaluation on the establishment of the measure of social protection he or she will be benefiting from after majority.

We believe that this intention is rather a form without substance. How will a personal representative, who meets a minor only three months prior to his/her majority, be able to create a close bond with him/her, a bond that would enable him/her to provide the minor with informed assistance? This way, the Government tries to compensate for the

complete lack of representation of minors all along their minority age. If a person appointed during the minor age period were an independent person, who would exert effectively the guardianship in respect of the minor, such person could certainly assist the minor also in the three months prior to his/her majority age.

The fact that, once an adult, a person with disabilities may appeal in the administrative courts any certificate including him/her in a disability category or the social rehabilitation and integration individual program (?) represents also wishful thinking in the absence of a robust system for providing support in decision making and free-of-charge legal assistance.

As it is, this intention of the Government does not respond either to the request of CM related to the amendment of the legislative framework or to that concerning punctual legal remedies allowing people with mental disabilities to complain before courts.

4. Deaths in residential facilities for persons with intellectual disabilities or with mental health problems.

„On the issue of death of vulnerable persons while in the custody of domestic authorities, the Government confirm that deaths occurring in psychiatric hospitals or psychiatric hospital wards as well as deaths occurring in social care facilities are considered suspicious deaths and therefore, the performance of an autopsy is mandatory for the judicial authorities. For such an act to be fulfilled, the Government agree that notification of the demise should be given to judicial authorities by the facility where the death occurred” (C.2. Measures taken to remedy the causes of the violation C.2.1. Measures taken in order to ensure the systematic notification of death of an institutionalised vulnerable person, pg. 8)

On October, 19th, 2017, the CLR requested to the 47 directorate of social work and child protection to provide with information related to the number of deaths occurred in social care homes for persons with intellectual disabilities or with mental health problems and number of autopsies ordered by the investigative authorities. According to their answers between September 29, 2016 to October 19, 2017, 945 persons have died and 264 autopsies have been ordered. For example, in the county of Arges 37 people died, but no autopsy was ordered. In Mehedinti County: 14 deaths and no autopsy. We recall the situation observed by CLR at the Gura Vaili psychiatric ward, where 30 adults with intellectual disabilities are arbitrarily detained and locked in conditions that are hard to describe and due to lack of social housing and services in the community (<http://www.crj.ro/comunicat-crj-gura-vaili-depozitul-de-fiinte-umane/>).

In addition, the same answer shows that 1,883 persons with disabilities have been placed under the guardianship. For example, in the response received by the CLR on 27 October 2017 from the Social Work and Child Protection Directorate of Sector 4 - Bucharest, it appears that a total of 38 persons with disabilities have been placed under the guardianship while institutionalized in a private center but funded by public money. We recall that at the time when the CLR drew attention to the situation of the violation of the rights of the institutionalized youth with mental disabilities in Bragadiru, the young people with disabilities had not yet been placed under the guardianship. The response received by the CLR on 27 October 2017 from the Social Work and Child Protection Directorate of Sector 4 does not show who is the guardian of these young people. The owner of the company told the CLR experts (2016) that he was going to be their guardian (<http://www.cri.ro/vasilica-constantin-o-viata-de-cosmar-in-grija-statului-roman-din-patut-pana-la-cimitir/>).

The UN Convention for the Rights of Persons with Disabilities mandates that „States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity” (Art.12.3). In all the examples mentioned above (Bragadiru and Gura Vaii) the National Authority for Persons with Disabilities has not shown the slightest interest in the pattern of „involuntary” admission in social care homes of persons with intellectual disabilities, to regularly review the placement in institutional care instead of community care based. The right to an attorney is essential to ensure that the rights of the persons with intellectual disabilities or with mental health problems are protected in the guardianship process especially when they are already in a secluded system. It is not enough to have legislation that allows a person to instruct or request an attorney to represent them, as many are simply unable to pay for an attorney or unaware that they have this right. The law should be modified to clearly state that a persons with mental disabilities while institutionalized has a right to representation by an attorney and the right to receive information on an adequate manner from an independent part. In none of the CLR visits a situation of this kind could be observed.

We are concern that, unless meaningfull and broad – based community based services are established in a comprehensive manner in Romania, the litigation that has been undertaken by the CLR to reform the access to justice of those institutionalized persons with mental disabilities, can not possibly have long-term value. We have to consider again the article 22 of the UN Convention for the Rights of Persons with Disabilities: *„No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.”* By not taking into consideration the principles of participation and choice in all the above examples

mentioned in this communication, the Romanian government has shown how little respect have for the inclusion of people with disabilities in decision making process.

5. Final conclusions:

CLR believes that, despite the grace period of 3 years after the publication of the judgment in the *Centre for Legal Resources on behalf of Valentin Campeanu v. Romania* case, the Government of Romania:

- has not succeeded to identify a robust and efficient system for the protection of persons with mental disabilities, and, as a result, failed to offer a calendar of punctual measures;
- has not punctually identified a need for legislative changes, even though there are successful models in the region;
- contrary to Art. 12 of CRPD, it perpetuates the system for placement under guardianship of persons with mental disabilities;
- there is no plan for the effective protection of minors with mental disabilities, including through their independent representation;
- POHCCJ will conduct the first assessment of cases involving offences against persons with disabilities in 2018, and such assessment does not exist so far at a national level;
- decided to terminate the Memorandum of Understanding with CLR, with a clear intention to block access of CLR representatives in institutions accommodating persons with mental disabilities.

