

FAKE IT INSTEAD OF MAKE IT

A Romanian approach to human rights protection

Centre for Legal Resources UPR statement at the UPR-Info pre-session – December 14, 2017

CLR is a human rights watchdog-type of organization functioning since 1998. We have worked in combating discrimination, advocating for the rights of people with mental disabilities in closed institutions and in pursuing the rule of law in Romania. One of the main problems related to adequate protection of the rights of those vulnerable that we have identified in Romania has to do with an institutional and policy setup that seems to moreover serve to tick off assumed international commitments rather than provide actual change and protection of rights. I shall refer here to institutional and policy setups related to the protection of those most vulnerable among us, also included in various recommendations from the previous UPR evaluation of Romania.

Firstly, I shall link with our organizational UPR submission. As stated, for 14 years, our organization has been paying unannounced monitoring visits to residential facilities and psychiatric wards for people with disability. We have published monitoring reports and, on numerous occasions, we have informed prosecutor's offices, so serious were the situations we found. One such case resulted in the European Court of Human Rights case Centre for Legal Resources on behalf of Valentin Campeanu v. Romania. Mr. Campeanu was a young Roma man, with an intellectual disability and HIV/AIDS infection, who died in state care in appalling conditions in a psychiatric institution. My colleague saw him on a monitoring visit a few hours before he died. The case reached the ECHR on account of numerous failings of the Romanian state to firstly prevent his death and secondly to do justice for him. We won in 2014. CLR was able to pay such visits and thus to keep the public and international focus on the situation of these vulnerable people on the basis of cooperation agreements with various central level institutions – the latest one being the Ministry of Labour.

In January 2016 also with our advocacy efforts, Romania established a Monitoring Council for the implementation of the UN Convention on the rights of persons with disability. This Council can pay monitoring visits to closed facilities for people with disability, can inform further the criminal investigation authorities and can even contest, if warranted, any decisions of these authorities not to pursue the cases. This Monitoring Council is also supposed to facilitate access of NGOs to such institutions, either in cooperation with the monitoring done by the Council, or independently, in order to ensure both the independent monitoring of the rights of these persons, and legal representation for them.¹ Since its establishment, two years ago, this Council has not functioned. It has remained silent and has also never received sufficient resources to actually start fulfilling its mandate. However, on the basis of the provisions mentioned – namely that the Romanian state established this Monitoring Council, and in spite of the fact that the Monitoring Council is different from civil society in terms of roles and mandate, the Ministry of Labour decided to cease the cooperation agreement with CLR². We cannot fail to notice that this decision came after our organization communicated internationally troubling results from some of our monitoring visits - you can find more details in our UPR submission³. To our request to close a cooperation agreement with

¹ Law 8/2016 for the establishment of the mechanisms foreseen by the UN Convention on the rights of people with disability.

² Notification from the Ministry of Labour and Social Justice No. 1673/DLMAAN/2447/DPPS/30.06.2017, No. 1495/AMR/30.06.2017 to the Centre for Legal Resources.

³ Centre for Legal Resources UPR submission 29.06.2017, available at: www.crj.ro/wp-content/uploads/2017/07/CLR_3rd-cycle-submission_RO_final.pdf.

the Monitoring Council, which, as mentioned, can also facilitate our access, but also to help them with setting up their monitoring mechanisms, a year and a half after its establishment, the Monitoring Council did not take us up on our offer to help, and did not grant us access, saying:

“Regarding your request to send you the conditions and the date upon which we can close a monitoring agreement between the Council and the Centre for Legal Resources, we’re informing you of the following:

The Monitoring Council is going to elaborate and publish a Methodology on the modalities of facilitation and full participation of civil society, especially of people with disability and the organizations they represent, to the monitoring process, as well as of representatives of nongovernmental organizations foreseen under art. 5, para. 1 from the law on the functioning of the Monitoring Council.”⁴

The Monitoring Council is an institution that has never actually functioned. While befitting from a law that could actually help it make a difference in protecting people with disability, Romania has never actually allocated the resources necessary so that it could also adequately function.

On the other hand, Romania constantly reports internationally the great achievement of setting up such an institution. In fact, the example of this institutional setup is indicative also for other areas, namely strategies for the protection of various vulnerable groups (Roma, people with disability, children, or victims of domestic violence). A chronic problem with such strategies is the almost permanent practice, for almost 20 year now, of the Romanian state, to not make financial estimations for their full implementation, to clearly identify the concrete sources (as opposed to listing all possible sources, sometimes even NGOs - such as in the strategy on children⁵) and then actually commit those budgets on a yearly basis. This again entails an assumed lack of accountability on the side of the Romanian state when it comes to protecting those most vulnerable to having their fundamental human rights breached. Another issue is the fact that the main institutions in charge of coordination/monitoring such strategies are usually subordinated to line Ministries, but they’re supposed to hold accountable Ministries or local authorities which tend to invoke autonomy in decision-making. They therefore lack either the institutional rank or the adequate setup to hold the relevant actors accountable. The effect is that nobody becomes responsible for non-implementation of strategies in the field of human rights. But the Romanian state is constantly proud of such strategies which it does not cease to report on internationally.

Regarding societal attitudes towards difference, the latest poll, from 2017, commissioned by the “Elie Wiesel” Institute for the Study of the Holocaust in Romania showed an increase of an already high intolerance level towards ethnic minorities (e.g.: only 2 in 10 Romanians would accept a family member or friend from a different ethnic background, 54% consider Roma to be a problem or a threat to Romania, etc...)⁶. In this context, the Romanian educational system does not have a

⁴ Address 633/30.08.2017 of the Monitoring Council to the Centre for Legal Resources. Correspondence also available on the page of the Centre for Legal Resources here: <http://www.crj.ro/comisarul-pentru-drepturile-omului-al-coe-isi-exprima-ingrijorarea-serioasa-fata-de-oprirea-accesului-crj-in-centrele-rezidentiale-pentru-persoane-cu-dizabilitati-intelectualeprobleme-de-sanatate-min/>

⁵ Government Decision 1113/2014 for the approval of the National strategy for the protection and promotion of the rights of the child 2014-2020, Chapter 8.

⁶ „Elie Wiesel” Institute for the Study of the Holocaust in Romania, *Press release – Only 2 in 10 Romanians would accept to have amongst their family members or friends persons of a different ethnicity*, 19.10.2017, available at: <http://www.inshr-ew.ro/ro/presa/anunturi/452-doar-2-din-10-romani-ar-accepta-sa-aiba-in-familie-sau-printre-prieteni-persoane-de-alta-etnie.html>.

human rights-based approach to education. In our experience⁷, there is high resistance when it comes to including diversity in all its aspects in the curricula, and in adopting real human rights education, the one that goes beyond general, formal statements, but one which starts with changing the way we teach teachers and ends with concrete activities that explicitly mention all those who are different/possibly discriminated against. Also in this context, Romania ceased to have a strategy on anti-discrimination since 2013. In the same trend of reporting on achievements, the Romanian state is proud of its new 2016 legislation on combating school segregation, comprising of various categories of children.⁸ In Romania segregation of Roma children has been documented by various actors. While figures differ, some go around 50%.⁹ Children with disability are also segregated in special schools or simply not in schooling at all.¹⁰ The Government had however adopted comprehensive legislation prohibiting Roma school segregation since 2007¹¹. As far as we are aware, there is no reporting on the implementation of this legislation, although the Ministry of education was supposed to report on it regularly. New legislation on the same matter is now being adopted as if nothing existed beforehand and we now, almost 10 years later, achieved something meaningful in the fight against discrimination.

One last aspect I am going to refer to is related to the functioning of the justice system when it comes to breaches of rights of the most vulnerable. Various indicators point to the fact that there is serious blockage at the level of law enforcement and particularly prosecution, with extremely few cases actually reaching courts, which is de-facto denial of access to justice. For example, recent data coming from NGOs showed that, out of the criminal complaints lodged on domestic violence, 50% are withdrawn and only 2-3% are finalized with a decision to prosecute (prosecution sends the case before a judge) yearly.¹² According to the “Elie Wiesel” Institute, in the period 2007-2015, of 107 cases having to do with criminal legislation on Holocaust denial, banning fascist, racist, xenophobe organizations, and the cult of persons guilty of crimes against peace and humanity, only 7 were sent to court by prosecutors.¹³ According to official statistics from the National Authority for the Protection of the Rights of the Child and Adoptions (at the end of June 2017), of 7622 cases of abuse, neglect and exploitation of children, the criminal investigation had been initiated only in 506 cases (physical abuse: 584 cases, investigation started in 115; emotional abuse: 941 cases, investigation started in 74; sexual abuse: 417 cases, investigation started in 205; neglect: 5345 cases, investigation

⁷ Centre for Legal Resources project „Education without discrimination is also my business!” at: <http://www.crj.ro/en/antidiscrimination/educatia-fara-discriminare-e-si-treaba-mea/>.

⁸ Order 6134/2016 prohibiting school segregation in pre-university learning units.

⁹ ERRC and Romani CRIS letter to European Commission on school segregation in Romania, 30.05.2016, at: <http://www.errc.org/article/romania-failed-to-provide-equal-access-to-education-for-romani-pupils/4486>

¹⁰ Special Rapporteur on Extreme Poverty and Human Rights, End of Mission Statement, Romania, November 2015, at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16737&LangID=E>

¹¹ Order 1540/2007 on forbidding school segregation of Roma children and approving the Methodology for preventing and eliminating school segregation of Roma children.

¹² The network on preventing and combating violence on women, *Exploratory study on the implementation of the protection order and the domestic violence provisions of the Romanian criminal code for 2012-2016*, available at: <https://violentaimpotrivaefemeilor.ro/studiu-exploratoriu-cu-privire-la-implementarea-ordinului-de-protectie-si-a-prevederilor-referitoare-la-violenta-in-familie-din-codul-penal-al-romaniei-in-perioada-2012-2016/>

¹³ Elie Wiesel National Institute for the Study of the Holocaust in Romania, Press release, 27.03.2017, available at: <http://www.inshr-ew.ro/ro/presa/comunicate-de-presa/405-comunicat-de-presa-15-ani-de-la-adoptarea-oug-31-2002-privind-interzicerea-simbolurilor-si-ideologiilor-fasciste.html>.

started in 85; labour exploitation: 219 cases, investigation started in 5; sexual exploitation: 30, investigation started in 10; exploitation with a view to committing crimes: 86, investigation started in 12).¹⁴ The US Department of State report on Romania for 2016 says that: “The NGO Romani CRISS (...) stated that in 43 cases of police brutality against Roma it documented over the previous 10 years, there were no convictions at the national level, in part because of prosecutorial decisions not to send the cases to court. Racism was not investigated as a motive in any of the cases. (...) At the national level, the average time for resolving a case involving police abuse of Roma was 3.76 years (...).”¹⁵ In spite of international recommendations, including in the UPR framework, Romania continues to refuse to collect hate crime data that allows for discerning which groups are being affected. In reality, this is another way of pretending that if we block knowledge about it, we do not have a problem.

These are just a number of indicators of what for years of working in the area of human rights has represented for us an attitude of covering up the mess, inventing institutions and strategies which are either meant by design not to work, or are rendered useless by lack of financing. And, when everything else fails, and one resorts to justice, serious human rights breaches of the most vulnerable to discrimination are not considered important enough to let them through. Sufficient damning jurisprudence against Romania from the European Court of Human Rights comes to confirm our conclusions regarding human rights and the Romanian justice system, as well as, in the past years, more and more human rights bodies and procedures, such as the UN Special Rapporteur on extreme poverty and human rights, professor Philip Alston, who came to Romania in 2015¹⁶ or the Council of Europe Commissioner for Human Rights,¹⁷ who has intensified his work on Romania lately. We consider this to be a fake it instead of make it attitude of the Romanian state which, we say again here, needs to stop.

¹⁴ National Authority for the Protection of the Rights of the Child and Adoptions, *2017 Statistical data*, available at: <http://www.copii.ro/statistici-2017/>.

¹⁵ US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2016 - Romania*, available at: <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.

¹⁶ End-of-mission statement on Romania, by Professor Philip Alston, United Nations Human Rights Council Special Rapporteur on extreme poverty and human rights, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16737&LangID=E>.

¹⁷ Council of Europe Commissioner for Human Rights, *Romania page*, at: <https://www.coe.int/de/web/commissioner/country-monitoring/romania>.