

The Centre for Legal Resources (Centrul de Resurse Juridice – CLR) is a Romanian non-governmental, non-profit organization, founded in December 1998 by the Open Society Foundation. The Centre for Legal Resources engages in the establishment of a legal and institutional framework that guarantees respect for human rights and equal opportunities, free access to a fair trial, and promotes legal expertise in the interest of all individuals. The CLR carries out activities in two major areas: protecting human rights and promoting the rule of law in Romania. Programs developed and continues by the CLR in the first area are: “the Advocate for Dignity” (advocacy for the enforcement of fundamental rights of people with mental disabilities) and “Fighting discrimination”, while in the area of promoting the rule of law the CLR has developed following programs: Justice reform, Public integrity and Strategic litigation.

Since 2003, the Centre for Legal Resources (CLR) has been running ad-hoc (unannounced) visits to monitor the respect of the rights of the people suffering from mental health disorders or intellectual disabilities and who are institutionalized in psychiatric hospitals or in rehabilitation centres for disabled people. The monitoring visits helped identify a large number of people with mental disabilities who, one way or another came from child care institutions: either they had been transferred there from such an institution or their former “hospital-home” had become an institution for adults with disabilities. It was easy to see that these young people, unlike the other beneficiaries coming from a regular family environment, were bearing the negative effects of long-term institutionalization (for example, significant physical and mental underdevelopment). Besides these young people, in some adult care institutions (psychiatric hospitals or centres for rehabilitation and recovery of people with disabilities) there were children as well, some with mental disabilities, others undiagnosed in that respect. Several of these children were residing there illegally and were not registered with child protection authorities.

The Amnesty International Memorandum from 2003 described the conditions of a number of children encountered during a monitoring visit paid at a psychiatric hospital from Mocrea, the County of Arad: “A.C., 17 years old, was brought to hospital by the police when she was 13 years old. She was diagnosed with 2nd level oligophrenia.”¹⁵ In the very same document, the researcher talks about another young girl, age 24, who was admitted to the hospital from Poroschia when she was 18 years old. According to the researcher, the young girl was raised in a child care institution for mentally disabled children.

In July 2006, an answer that the representatives of NACRP and NAPH forwarded to the Human Rights Commission of the Romanian Parliament quoted the NAPH web page where there was information about over 140 disabled children who were in residential centres for handicapped adults at that time.

On the basis of Law No 544/2001 on free access to public interest information, the CLR forwarded to the county child protection departments a series of questions regarding the

¹ See The 2003 Amnesty International Memorandum, page 8;

number of children with mental disabilities living in placement centres who were to turn 18 years old in 2004-2005, where they were to be transferred, the number of HIV/AIDS-infected mentally disabled children and the institutions where they would be transferred at the age of 18. The data collected² revealed that around **2,267** children with mental disabilities from placement centres were to be transferred in another residential care institution in 2005-2006, due to age limit. The type of care to be provided to **155** children with mental disabilities and HIV/AIDS could not be indicated due to lack of specialized care centres at that moment³.

In the light of the findings of previous institutional visits, these data made our organisation get interested in studying the transition procedure from the mentally disabled child care system to the mentally disabled adult care system and the issues regarding the respect and promotion of child rights within this transition process, which are crucial for integrating and rehabilitating such a beneficiary. As the project went on, the monitoring visits brought up data on other issues related to the children in the monitored institutions. Therefore, this report refers also to living conditions, treatment, care and protection from abuse provided to children with mental disabilities.

The Romanian Constitution guarantees special care to persons with disabilities, and the government has committed to promote a policy of equal opportunities allowing people with disabilities to fulfill their fundamental rights. The current child care legislation protects children with disabilities. When the monitoring was carried out, according to the statistics of the National Authority for Children's Rights Protection (NACRP), in Romania officially there were 73,983 children with a certificate establishing their (both physical and mental) handicap level, out of whom, 6,342 were living in placement centres and 6,694 were in other conditions⁴. The statistics of the National Authority for Persons with Handicap (NAPH) recorded a number of 14,700 children with mental disabilities and 10,257 with neuropsychiatry disorders, out of whom 175 were in NAPH-run institutions⁵. The exact number of children with mental disabilities, as well as the type of care or number of institutions accommodating them are hard to establish⁶ and these

² According to the answers received by the Centre for Legal Resources to its forwarded requests, between 2004-2005.

³ A series of documents received from a number of general departments for social care and child protection prove that it is inappropriate to send these young adults to care centres for people with handicap, as these institutions do not suit this particular group of beneficiaries;

⁴ According to the NACRP statistics for June 2005 - June 2006, www.copii.ro

⁵ Statistics Newsletter of NAPH – June 2006

<http://www.anph.ro/Statistici/august2006/BULETIN%20STATISTIC%20ANPH%20II%202006.doc>. It is unclear what 'other conditions' means;

⁶ A child is recorded as disabled and receives specialised care rights only if the County Commission for Child Protection issues a *certificate establishing the handicap category*. This certificate is to be renewed, but many children don't get certificate renewal help. This may partially explain why the number of children with disabilities can only be estimated. On the other hand, most of the children come to the Commission only when they reach school age to be guided to special schools. A child with disabilities under 7 years old rarely goes to the Commission, which means that they are often left out of official statistics. The Commission for Child Protection does not even issue this type of certificate for the majority of children with mild disabilities, which makes data collection even harder. In some counties, children with mild disabilities are included in the reporting system, while in others they are not recorded at all.¹⁰ Finally, an unknown number of children don't even have birth certificates and cannot meet the standards of receiving a certificate establishing the handicap category because they officially do not exist;

figures are not clearly reflected in official statistics⁷. The child care reform started in 1997 did not initially cover the issue of children with disabilities. The omission was due to the fact that at that moment the latter were the responsibility of the Secretary of State for the Handicapped, as the predecessor of NAPH was called, and not the responsibility of the Department for Child Protection, the predecessor of NACRP. Thus, the disabled children issue was reform-included only after the year 2000, when these children and the related care institutions were transferred under the care of the county child protection departments (CPDs)⁸. Minimum compulsory standards for residential child care targeting children with disabilities were adopted in 2004.

The CLR organised monitoring visits to 15 medical-social institutions (hospitals and psychiatric sections, centres for mentally disabled children, neuro-psychiatric recovery and rehabilitation centres, centres for integration through occupational therapy and medical-social centres) for persons with mental disabilities between December 2006 and March 2007. The monitoring process mainly targeted evaluations regarding:

- a) the openness of medical-social institutions to non-governmental organisations working on the rights of persons with mental disabilities;
- b) the mechanisms and procedures to register and solve the complaints and petitions of the beneficiaries/ patients in the medical-social institutions;
- c) the implementation of regulations regarding the measures to restrict the liberty of movement of patients/ beneficiaries in the medical-social institutions;
- d) observing the other rights of the patients/ beneficiaries in the medical-social institutions.

The management representatives in the medical-social institutions have shown greater openness to CLR's monitoring activities, compared to previous years. There were also cases when the access of CLR representatives in the institutions met with unjustified reticence. We consider this reticence as unjustified mainly due to the fact that prior to the monitoring visits CLR obtained from the authorities governing those institutions an approval to enter the respective institutions. In this respect, a relevant case is that of a visit to the „Gheorghe Preda” psychiatric hospital in Sibiu that was impeded by the refusal of the institution's management representatives. On the one hand, they ignored the agreement between CLR and the Ministry of Public Health, and, on the other hand, to justify their refusal, they brought up „provisions of the internal regulations”, which allegedly prevent third parties from visiting the institution without the manager's approval. Upon further proceedings from the monitoring team members to gain access to the regulations that were brought up, they were given a document that was in fact the institution's daily programme.

⁷ For example, a part of the data received can be confusing. Some counties consider children attending special boarding schools as institutionalized children, even if they live there only because their school is far from their home and not because their family has abandoned them. Moreover, in some institutions, children with disabilities live together with healthy children. In several counties, the homes for children with disabilities are now in the charge of the Child Protection Departments (CPDs), while in others they are still run by the National Authority for Persons with Handicap (NAPH), which further complicates their overall coordination;

⁸ Based on Government Emergency Ordinance No 192/1999 establishing the National Authority for Children's Rights Protection and reorganizing child care, and Government Decision No 261/2000 reorganizing institutions, hospital units and other special child care units within specialized public services in the charge of county councils or local councils in the case of Bucharest districts (OJ 171 of 21 April 2000);

A frequent problem in the institutions that were visited was that the residents are afraid to complain because of the consequences they would have to bear from the part of the personnel (but also the colleagues that the complaints refer to). As an example, we relate the conclusion formulated in this respect by the monitoring team that visited the Services Complex for disabled children in Ramnicu Sarat: *„Although there is a complaints register, children and youth don't call on it to solve a problem, as they don't want anyone to know they were the ones to signal the respective situation, thus protecting themselves from children's or educators' reactions”*.

There aren't any clear procedures in the institutions that were visited for the cases where the residents in these institutions – persons with special needs – would like to submit petitions to public institutions/ authorities, according to the provisions of the Governmental Ordinance no. 27/ 2002 regarding the resolution of petitions, approved with modifications through Law no. 322/ 2002. (At the same time, CLR signals the fact that the medical-social institutions for persons with mental disabilities have themselves the statute of „public institutions”, in the sense of article 2 of the Governmental Ordinance no. 27/ 2002, and they must proceed themselves to solve the petitions of the residents according to the provisions of the act mentioned above). Residents in these institutions should be informed regarding the public authorities these institutions are subordinated to, which have the legal competence to solve the petitions they can submit regarding the way their legal rights are observed: the Ministry of Public Health, the county public health authorities, the county councils, the county general departments for social assistance and child protection, the National Authority for Disabled Persons, the National Authority for the Protection of Child's Rights, the Social Inspection. Considering the fact that the residents of these units are persons with special needs, who are supposed to have difficulties in knowing the legislation and legal procedures that need to be followed in formulating a petition, these persons need to be informed regarding both the specific regulations and the contact data of the authorities/ institutions that cover the petitions they formulate, including those referring to violations of their rights and interests through deeds of a criminal nature (contact data for the central and local Police and Prosecutor's offices). When the management representatives of the medical-social institutions, and the authorities coordinating them, learn about residents' complaints about violations of their legal rights and interests through deeds of a criminal nature, they must ensure their complaints are submitted to the competent institutions. As seen on visits to the institutions, there were cases when residents have shown interest in the contact data of the non-governmental organisations whose mission is to protect the rights of mentally disabled persons. Residents must also be informed on how to contact these organisations. The situation in many of the institutions that were visited renders evident the necessity of the facts mentioned above. To give an example, we present two of the observations the teams had while visiting the centre for disabled children in Siria, Arad County and the centre in Reghin, Mures County: *„We spoke to 16 residents during the monitoring visit”* (e.n. The team's report gives the names of the residents). *„They told us there is a series of problems in the Centre that they don't complain about because they don't know where to go and they are convinced that if they call on the Department nothing would be solved.”* *„During the discussions we had with the beneficiaries, they*

were revolted about the fact that the Centre's management doesn't take into account many of their complaints (some of them critical)."