

Foundation Centre for Legal Resources submission to the Universal Periodic Review of Romania – 3rd cycle

Bucharest, 29.06.2017

The Foundation Centre for Legal Resources (CLR) is a non-governmental, non-profit organization, established in 1998 in Bucharest by the Open Society Foundation Romania. It applied for and received in 2016 ECOSOC consultative status. CLR actively advocates for the establishment and operation of a legal and institutional framework that safeguards the observance of human rights and equal opportunities, free access to fair justice and which capitalizes on its legal expertise for the general public interest. To achieve its objectives, CLR uses advocacy tools such as: monitoring and reporting (CLR has been national focal point for the EU Agency for Fundamental Rights during 2006-2014), campaigning, issuing policy positions and press statements, training relevant professionals and stakeholders, engaging in strategic litigation. CLR has a unique programme in Romania, whereby for 13 years it has paid unannounced human rights monitoring visits to psychiatric hospitals and other closed facilities for people with mental disabilities. As a result of such visits, CLR has initiated numerous cases, one of which was won before the European Court of Human Rights - Romania received a conviction for the deplorable treatment of people with mental health problems living in closed facilities (the case Centre for Legal Resources on behalf of Valentin Câmpeanu v Romania - 2014).ⁱ

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109.125. , 2nd cycle, Ireland, - on deinstitutionalization and community living for people with disabilities

Not implemented. Romania has not facilitated greater inclusion and community living leading to the reduction of the number of people with disabilities in institutional care. In fact, the number of people with disability in public financed social care centres is on an overall increasing trend: 17,123 at the end of 2013, 17,202 at the end of 2014, 17,844 at the end of 2015, 18,090 at the end of 2016 and 18,032 at the end of March 2017.ⁱⁱ

In 2014, the European Court of Human Rights (ECtHR) handed down the decision against Romania: *Centre for Legal Regal Resources on behalf of Valentin Câmpeanu v. Romania*.ⁱⁱⁱ The case, documented by CLR in 2004, concerns the situation of Mr. Câmpeanu, a young man of Roma origin, HIV infected, with a severe mental disability who was abandoned at birth and spent his life in state institutions, and who eventually died at the age of 19 in a psychiatric hospital. Once he reached 18, he was taken from the orphanage and sent in between a social care center and the psychiatric hospital – nobody would take him -, also no longer being administered his anti-retroviral medication at some point in the process. In spite of having a severe mental disability, once he turned 18, he was not appointed a guardian that could have cared for his interests. CLR found him in February 2014, alone, in an unheated room, in a bed without sheets, dressed only in a pajama top and without any assistance, thus being unable to eat or use the toilet. He died the same day. The ECtHR found Romania had breached Mr. Câmpeanu’s right to life and his right to an effective remedy. It also found that Mr. Câmpeanu’s case reflected a wider problem and recommended that Romania take general measures to make sure that people with mental disabilities have the adequate independent representation to be able to complain on issues related to their health and treatment and have their complaints examined before an independent body.

Since 2004, CLR has continued to carry out dozens of independent monitoring visits^{iv} to facilities where people with mental disabilities can be found in Romania.^v Not only has Romania not implemented deinstitutionalization, but we continue to find sordid conditions similar to those in which Mr Câmpeanu died. Absent a system reform and significantly improved professional training standards together with adequate staffing and financing, the mentality and perception regarding people with mental disabilities has overall not changed since the communist period. Too many of

the facilities we visit resemble “deposits” of human beings and not communities of people whose dignity is respected and who have the opportunity to achieve their potential.

Some of the main issues that we find are:

- 1. People with disabilities die in state custody and there is still no policy of effective investigations in all such cases.** From the beginning of 2016 until the 28th of September 2016, at least 886 adults with mental disabilities died while institutionalized in social care centres. Other 4699 deaths took place in psychiatry hospitals (2010-2016).^{vi} Romanian legislation requires that any death in a situation where the person is deprived of their liberty in state custody should be considered as *de plano* suspicious and a forensic autopsy should be performed.^{vii} Romanian authorities rarely apply this legislation when it comes to social care centres.

Criminal investigations concerning victims who are institutionalized persons with mental disabilities are still not effective and proceed at a very slow pace. The investigative authorities do not know the applicable legislation and often hold prejudices against persons with mental disabilities. The General Prosecutor’s Office does not exercise adequate supervision, and neither does it take over investigations where warranted by inadequate or too lengthy investigations at lower level. In one case, the CLR filed a criminal complaint on 29 October 2013, concerning abused children in a foster care centre in Oradea, Bihor County. The Prosecutor’s Office dismissed the complaint on 17 March 2014, arguing that the children are untrustworthy and that, in any case, using violence against children is sometimes permitted and necessary. The CLR overturned this decision in court on 6 January 2015. The investigation then dragged on for almost two more years, until on 21 December 2016, the Prosecutor’s Office finally indicted several persons. However, the indictment has several flaws, including the fact that the perpetrators have been accused of abuse of official authority, which is not consistent with the serious circumstances of the case. Therefore, CLR challenged this indictment in court, asking for more serious and appropriate charges. The case is currently pending before the Oradea First Instance Court.^{viii}

In another case, CLR filed a criminal complaint on 18 February 2014 regarding several suspicious deaths and cases of inhuman and degrading treatment that occurred in a social care home for teenagers and elderly in Aldeni, Buzău County. The Prosecutor's Office took more than 7 months to perform the first onsite visit (by which time the institution was in the process of being closed down) and did not interview any of the residents. It dismissed the complaint on 11 September 2014. The CLR overturned this decision in court on 27 January 2015. The court ordered the Prosecutor's Office to complete the investigation and to interview all residents and staff. Despite this, the Prosecutor's Office again rejected the complaint on 29 February 2016, without complying with all the requirements imposed by the court. While theoretically another challenge to the rejection was possible, CLR preferred to take the case to the European Court of Human Rights. To this end, CLR filed a request with the Prosecutor's Office whereby we asked for access to the case file. Our request was denied, and as such we challenged this denial in court. Our challenge was rejected on procedural grounds, and our appeal is currently pending before the Bucharest Tribunal.

2. Human dignity annihilated.

Decisions about the lives of the people in most of the centres we visited are made to fit the interests and needs of institutions and not people's individual needs. Courts tend to confirm *ad literam* the requests of Social Assistance authorities which propose, for example, to move a person from one social care centre to another. People are not involved in decisions which concern them, and neither are they generally aware of their rights. The main therapy for psychiatric diagnoses still consists of pharmacological treatment only with psychotropic active substances. In many places, people are not allowed to personalize their space (in some places there is overcrowding and there is hardly any personal space), or they all have their hair cut short, describing a Nazi era-like environment where human individuality is annihilated.

Among others, in a monitoring visit conducted in January 2017 at the Măciuca public social care centre in Vâlcea county, we observed the following: residents' rooms were sparsely furnished; the residents had no personal clothing and were poorly dressed; both men and women had their hair cut short; the walls were damp, the indoor temperature low, the dining room located in a different building to the one where the residents live, and the bathroom had no products for personal hygiene. There was no access ramp to the second floor used by the bedridden residents.^x The CLR sent the monitoring report to the responsible local and central authorities and filed in a criminal complaint – case is currently under investigation. ^{xi}

During a monitoring visit conducted in February 2017 at Poiana Mare Psychiatric Hospital, where Mr. Câmpeanu died in 2004, during discussions with patients, among others, we were told the following:

- Organized trips to church services from the hospital have to be paid for. Therefore, only some of the patients can participate in even these very limited visits to the community.
- Despite the fact that every ward has complaint boxes, the patients did not consider complaining, saying it would be useless. "Who can help us? We sometimes tell the doctor, but do nothing more". ^{xii}

During a visit conducted in March 2017 at the Gura Văii (Mehedinți county) external psychiatric section of the Drobeta Turnu Severin/Mehedinti County Emergency Hospital, we found the following:

- Living conditions are primitive and degrading. The wards are paved with cement (second floor) or with cement covered by linoleum (1st floor, the linoleum is old, degraded), they are equipped with metallic beds, have windows (many of them degraded, all having metal bars) some wards have sinks (we saw no functioning sink, they are degraded, broken, without taps, disaffected). The beds are old, degraded, rusty and dirty;
- Patients do not have the possibility to have personal items in their rooms;

- All the spaces where they live and spend their time are sterile, not personalized, without aesthetic elements, there are no posters, photos, the atmosphere is soldierly, austere;
- Patients do not have their own personal clothing, their majority use the same clothes for a week, they bathe once a week, do not use pajamas, they sleep in the same clothes they use during the day.
- Each floor has a sanitary group with the following: 3 Turkish toilets which are degraded and rusty, and 3 washing places which are not separated.
- All patients have a steel bowl and plate and a spoon. They are old and bent. The seats in the dining room are insufficient. The chairs and tables are old, rusty, some are broken.
- There is no therapist, psychologist or social worker, and the only form of entertainment is a TV set.
- We also raised concerns as to the risk that the staff working in such conditions become deprofessionalized, brutalized, dehumanized.^{xiii}

To our report and letters sent to relevant authorities, the Hospital to which the Gura Vaii section belongs and the Mehedinti County Council sent similar replies, in essence denying that they would have real any problems and blaming the patients: “Your findings related to the unattractive environment must also be seen through the lenses of the unpredictable, destructive behavior induced by the psychic disorders of the patients. Also, the circumstances whereby the atmosphere would be unwelcoming, cold, we mention that the rigors of a medical establishment which addresses a special category of ill people are in order, that the administrative possibilities are limited by a budget which is constantly insufficient, that the treatment which is being administered is non-discriminatory as compared to the patients of all the sections of the Mehedinti Emergency County Hospital, whose right to medical assistance is respected, with the respect of the therapeutic protocols and procedures in force .”^{xiv}

We raise serious concerns in general, and particularly with regards to Maciuca social care centre and Gura Vaii psychiatric section. The Government must ensure these people’s right to adequate living

conditions, rehabilitation, access to justice, community living and adequate consultation in all decisions which concern them. The Government must also be transparent and publicly accountable for how it solves the situation.

3. Conflict of interest and malfunctioning in the guardianship system.

The legal system regulating guardianship is clearly flawed and there is no obvious reason why it is not being changed, aside from lack of political will. When there is no next of kin, it is usually someone from the social care centre or the local council that is appointed as a guardian. This raises serious issues in terms of conflict of interest, since the institution/the guardian is in many cases the one against which the person under guardianship would have complaints. Guardianship itself entails the full stripping of civil capacity, and the guardian is a substitute in terms of decision-making, instead of being a support person for those who could make at least some decisions on their own. In some cases, the legal person of the Mayor's Office is appointed as guardian instead of a natural person as it should be, showing, among others, how little some courts understand the significance of the institution of guardianship. We also found situations where people would have actually needed the appointment of a guardian, but the institutions had undertaken no action to initiate the procedure, and the institutional staff would usually be the ones making the necessary decisions for the persons in question.

At the beginning of 2016, Romania passed legislation establishing an independent institution for monitoring the rights of people with disability as per Article 33 of the CRPD.^{xv} However, more than a year later, the institution is not actually functioning according to its mandate.

The serious breaches of the rights of persons with mental disabilities in closed institutions in Romania have been highlighted also by the UN HRC Special Rapporteur on extreme poverty and human rights, Professor Philip Alston, who reported on Romania in 2015,^{xvi} as well as by the Council of Europe Commissioner for Human Rights, Mr. Nils Muižnieks, whose most recent action on this matter was a Letter sent to the

Romanian Government in 2017, expressing concern over the situation and asking the Government to improve protection for persons with disabilities.^{xvii}

Recommendations:

1. End the systemic practice of institutionalization of persons with mental disabilities, and take all necessary legal, institutional and financial measures to provide for community living with sufficient and adequately trained support staff.

2. Adopt measures to investigate and elucidate the circumstances which led to the death of persons placed in social care centres and in psychiatric hospitals and to ensure the prevention of any avoidable deaths.

3. Ensure regular and appropriate independent monitoring of all relevant institutions until they are phased out, and design accessible procedures, support and accommodations, as may be needed, to assist persons with mental disabilities in claiming their fundamental rights.

4. Ensure that persons with mental disabilities may exercise fully and effectively all their human rights on an equal basis with others, notably in the enjoyment of the right to life, the right to physical and mental integrity, health, housing, independent living, and freedom from exploitation, violence and abuse.

5. Reform the guardianship system to remove all possible conflict of interest and to allow for partial guardianship thus taking into account the real abilities and needs of each person.

ⁱ Center for Legal Resources webpage, available at: www.crj.ro/en/ (accessed at: 29.06.2017)

ⁱⁱ Romanian Ministry of Labour and Social Justice, National Authority for People with Disabilities, *Statistics*, available at: <http://anpd.gov.ro/web/transparenta/statistici/trimestriale/> (accessed at: 29.06.2017)

ⁱⁱⁱ European Court of Human Rights Grand Chamber, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* (application no. 47848/08), Press Release available at: <http://bit.ly/2sitJLr> (accessed at: 29.06.2017)

^{iv} CLR monitoring reports in RO: <http://www.crj.ro/pledoarie-pentru-demnitate/lagarele-de-langa-tine-descrierea-proiectului/rapoarte-de-monitorizare/>, <http://www.crj.ro/pledoarie-pentru-demnitate/clinica-juridica-mobila/rapoarte-si-raspunsuri/> (links accessed at: 29.06.2017)

^v The information included in this submission is further elaborated in the Centre for Legal Resources Communications to the Committee of Ministers in the case of Centre

for Legal Resources on behalf of Valentin Câmpeanu v Romania, on 16.09.2016, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806abf3d and on 21.02.2017, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806f93cb (both links accessed at: 29.06.2017)

^{vi} Information collected and compiled by the Centre for Legal Resources and Centre for Media Investigations through requests for public information sent to relevant local or national authorities: <http://www.crj.ro/harta-deceselor-cate-persoane-cu-dizabilitati-mintale-au-murit-in-custodia-statului-intre-anii-2011-2014/>, <http://www.investigatiimedia.ro/investigatii/harta-mortii-o-radiografie-la-detaliu-a-dezastrului-din-asistenta-sociala-romaneasca> (links accessed on 29.06.2017)

^{vii} Joint Orders no. 1134/25.05.2000 issued by the Romanian Minister of Justice and no. 255/04.04.2000 issued by the Minister of Health on the procedures relating to medical opinions and other forensic medical services.

^{viii} Eg: One method of abuse, which was confirmed by the Prosecutor's Office, was crushing a child's fingers with a door reportedly in order to find out who stole a dessert. Such abuse clearly represents a criminal offence more serious than an abuse of official authority; Case information in RO on the CLR website at: <http://www.crj.ro/cazul-centrului-de-plasament-pentru-copii-cu-probleme-psihosociale-oradea> (accessed at 29.06.2017)

^{ix} Case information in RO on the CLR website at: <http://www.crj.ro/cazul-caminului-de-varstnici-si-adulti-cu-dizabilitati-aldeni-judetul-buzau/>

^x Report in EN of the ad-hoc monitoring visit at the Centre for Recuperation and Neuropsychiatric Rehabilitation Maciuca, Valcea County: http://www.crj.ro/wp-content/uploads/2017/02/Monitoring-Rep_ENG_CRRN_Maciuca-.pdf (accessed at 29.06.2017)

^{xi} Case information can be found in RO on the CLR website at: <http://www.crj.ro/pledoarie-pentru-demnitare/clinica-juridica-mobila/rapoarte-si-raspunsuri/>.

^{xii} Report of the Centre for Legal Resources ad-hoc monitoring visit in Poiana Mare Psychiatric Hospital, Dolj County, 15 February, 2017, at: <http://www.crj.ro/wp-content/uploads/2017/02/Raport-de-monitorizare-Poiana-Mare-2017.pdf> (accessed at 29.06.2017)

^{xiii} Center for Legal Resources Monitoring Report to the Drobeta turnu Severin Emergency County Hospital – Psychiatry Section for Chronic Patients (adults) – Gura Vaii, 8 and 14 March, 2017, in RO available at: www.crj.ro/wp-content/uploads/2017/02/Raport-de-monitorizare-Gura-Vaii.pdf (accessed at: 29.06.2017)

^{xiv} Letter No. 2576/11.04.2017 from the Mehedinti County Council to the Centre for Legal Resources, in RO available at: www.crj.ro/wp-content/uploads/2017/04/Raspuns-CJ-gura-vaii.pdf (accessed at: 29.06.2017)

^{xv} Law 8/2016 on the establishment of the mechanisms foreseen by the Convention on the rights of persons with disabilities.

^{xvi} End of Mission Statement by Professor Philip Alston, United Nations Human Rights Council Special Rapporteur on extreme poverty and human rights, November 11, 2015, available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16737&LangID=> (accessed at: 29.06.2017)

^{xvii} Council of Europe, Commissioner for Human Rights, *Letter. Romania should improve the protection of persons with disabilities*, 15.05.2017, available at: <http://www.coe.int/sq/web/commissioner/-/romania-should-improve-the-protection-of-persons-with-disabilities> (accessed at 29.06.2017)