



Bucharest, May 2017

Dear Commissioner,

Thank you for your letter regarding the human rights of persons with disabilities; I am grateful for the opportunity to respond and clarify the aspects of concern raised in your letter.

1. Living conditions and ill-treatment in medical and social care centres

I share your concern with respect to the living conditions in medical and social care centres.

As regards the situation of persons with disabilities from Măciuca Neuropsychiatric Recovery and Rehabilitation Centre, which was reported to the judicial bodies as a result of a media campaign which took place in January 2017 (tying the patients in the centre to their beds and their use for labour), investigations were conducted by the Prosecutor's Office attached to the Vâlcea Tribunal in the case. According to the solution given on 1 March 2017, the case was dismissed as regards the perpetration of the crimes of misuse of office, ill-treatment, omission to inform the authorities and illegal deprivation of freedom (article 205, partially, of the Criminal Code), and was split with a view to furthering the investigations in relation to the crimes of illegal deprivation of freedom (the entire article 205 of the Criminal Code) and conflict of interests.

The solution of the Prosecutor's Office attached to the Vâlcea Tribunal in the case is currently under examination by the Prosecutor's Office attached to the High Court of Cassation and Justice.

2. Changes in legislation concerning guardianship

The Memorandum on the measures to be adopted for the implementation of a mechanism of independent representation for the benefit of persons with disabilities is in its final stages before the adoption by the Government. Following its adoption, an enlarged inter-institutional working group will have the task to elaborate a new legal framework that will amend the existing special law on the rights of persons with disabilities. Its proposals are to be presented back to the Government in a period not exceeding nine months from the date of the adoption of the Memorandum.

3. Independent living and inclusion in the community

Starting with 2016, Romania has a *National Strategy for the period 2016-2020 in the disability field*, entitled "A society without barriers for persons with disabilities" (Government Decision no. 655/14 September 2016, published in the Official Journal no. 737bis/22 September 2016). The Strategy's aim is to ensure the implementation of the UN Convention on the Rights of Persons with Disabilities, ratified by Romania by Law no. 221/11 November 2010.

H.E. Mr. Nils Muižnieks
Commissioner for Human Rights
Council of Europe

The Strategy underlines an institutional commitment of the Romanian authorities towards effectively improving the quality of life for persons with disabilities, thus allowing the full and effective exercise, by persons with disabilities, of their rights and fundamental freedoms.

The Strategy focuses on the following eight priorities: *accessibility, participation, equal opportunities, employment, education and professional training, social protection, health and statistics and data collection.*

With regard to the *participation* of persons with disabilities in the public life, the Strategy underlines that the support of the deinstitutionalization of persons with disabilities, together with the development of measures aimed at preventing their institutionalization and supporting their life in the community represent a priority for Romania. To this aim, the Strategy provides the enlargement of the infrastructure for social services developed within the community, corresponding to the needs of persons with disabilities for improving their abilities and capacity to be active participants in the labour market and in the social life. Thus, Romania firmly commits to ensuring the transition from a system based on residential care to one that is based on alternative community services.

Therefore, one of the *specific objectives* regarding the participation of persons with disabilities in all aspects of life is the deinstitutionalization of persons with disabilities and the prevention of their institutionalization, corroborated with the development of alternative services for supporting an independent life and integration in the community. For attaining this objective, the measure envisaged is to elaborate the *National Plan for deinstitutionalization of adult persons with disabilities* by assessing their needs and available resources and by consulting all actors involved in this field.

One of the constructive steps already taken is reflected, for example, by the Government Decision no. 798/26 October 2016 on approving the national interest program in the field of protection and promotion of rights of persons with disabilities entitled "Establishing social services of day-care type, crisis centres and protected houses in order to deinstitutionalize persons with disabilities currently living in old institutions and to prevent the institutionalization of persons with disabilities." One of the eligible conditions is that the new social services have to be developed in the middle of the community and to correspond to the needs of the persons with disabilities, in order to improve their skills and their ability to be active participants in labour market and social life and to have access to resources and community facilities.

4. *Deaths in medical and social care centres*

Regarding the information on deaths of adult persons with disabilities institutionalized in care system, a number of 1.255 persons was registered for 2014 and a number of 1.298 persons for 2015; statistical information for 2016 will be available at the end of June 2017.

As regards performing of the forensic autopsy and effective investigations in all cases of questionable cause of death, the National Authority for Persons with Disabilities informed that they are obliged to put in practice all the arrangements, according to the legislative framework (Order of the minister of justice and the minister of health no. 1134/C/2000 for approving procedural rules for conducting surveys, findings and other medical-judicial works).

As regards the persons with disabilities within the psychiatric units under the authority of the Ministry of Health, at the level of psychiatric hospitals and psychiatric wards within general hospitals, in 2015 there were 678 deaths and 323 autopsies performed and in 2016 a number of 763 deaths were registered and 468 autopsies performed.

By Law no. 8/2016 on establishing mechanisms provided by the Convention on the rights of persons with disabilities, the National Monitoring Council has been set up and it has since become mandatory that residential institutions, public or private, that are intended to serve persons with disabilities, as well as hospitals/psychiatric wards notify, without delay, the deaths of persons with disabilities within their care to the competent judicial bodies, in accordance with the law (Article 12, letter f).

As concerns the autopsies performed for deceased persons within the care of psychiatric hospitals and social care institutions as a result of acute or chronic illnesses, the following are to be noted:

In the case of deaths occurring in hospitals, according to Article 10 (1) of Law no. 104/2003 on handling human corpses and harvesting organs and tissues from corpses for transplant, the anatomopathological autopsy is mandatory for a) all hospital deaths which are not forensic cases; b) when it is necessary to confirm, specify or complete the clinical diagnosis, including the death of children under the age of one, regardless of the place of death and c) for all maternal deaths which are not forensic cases. According to Article 11 of the same law, in all cases where there is a suspicion of forensic implications provided by the law, the head of the hospital's pathological anatomy service is obliged to notify the prosecution authorities, in writing and within 24 hours, in order for the case to be redirected to a legal medicine institution.

As regards forensic cases, including those that occur within hospitals, according to procedural rules for conducting expertise, findings and other forensic operations (approved by the Order of the minister of justice and the minister of health no. 1134/C/255/2000, the forensic autopsy is performed at the request of judicial bodies, only by forensic medicine doctors and is mandatory in the following cases:

- a) violent death;
- b) unknown cause of death;
- c) questionable cause of death – a death is considered suspicious in the following situations:
 - sudden death;
 - death of a person whose state of health, due to the nature of their job, is periodically checked;
 - death that occurs during a work mission, within the premises of an enterprise or of a public institution;
 - death of any person that is in custody, such as the death of persons that are detained, deprived of liberty, within the care of psychiatric wards or hospitals or within hospital-penitentiaries, in prison or in police custody or any deaths associated with police or army activity if they occur during public manifestations;
 - any death that raises suspicions of human rights violations, such as torture or any other form of violent or inhuman treatment;
 - multiple deaths – either successive or concomitant;
 - unidentified bodies or skeletonised corpses;
 - deaths that occurred in public or isolated areas;
 - deaths that are linked to a deficiency of medical assistance or in applying prophylaxis measures or work protection measures;
 - death of patients, if it occurred during or shortly after a diagnostic intervention or medical-surgical therapy intervention.

In an analysis carried out by the Prosecutor's Office attached to the High Court of Cassation and Justice in February 2017, it indicates that in 2016, according to the data sent by Prosecutor's offices attached to

courts of appeal, 95 cases dealing with crimes committed against institutionalized persons with psychiatric disabilities were completed by non-indictment.

Broken down by units, the following data were registered:

- Prosecutor's Office attached to the Alba Iulia Court of Appeal – 16 cases;
- Prosecutor's Office attached to the Bacău Court of Appeal – 3 cases;
- Prosecutor's Office attached to the Bucharest Court of Appeal – 5 cases;
- Prosecutor's Office attached to the Cluj Court of Appeal – 7 cases;
- Prosecutor's Office attached to the Constanța Court of Appeal – 2 cases;
- Prosecutor's Office attached to the Craiova Court of Appeal – 13 cases;
- Prosecutor's Office attached to the Galați Court of Appeal – 1 case;
- Prosecutor's Office attached to the Iași Court of Appeal – 25 cases;
- Prosecutor's Office attached to the Oradea Court of Appeal – 5 cases;
- Prosecutor's Office attached to the Pitești Court of Appeal – 9 cases;
- Prosecutor's Office attached to the Ploiești Court of Appeal – 7 cases;
- Prosecutor's Office attached to the Suceava Court of Appeal – 1 case;
- Prosecutor's Office attached to the Timișoara Court of Appeal – 1 case.

Out of the total number of solutions of non-indictment, 94 cases were dismissed, while one was dismissed and an administrative fine applied, in accordance with Article 19 of Law no. 255/2015 (the Prosecutor's Office attached to the Râmnicu Vâlcea Court of first instance). This last solution was adopted as a result of the fact that the ordinance issued by the Prosecutor's Office attached to the Râmnicu Vâlcea Court of first instance, by which the case was dismissed, had been invalidated *ex officio* by the ordinance issued by the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice on 13 May 2016 and validated by the preliminary chamber judge.

One can also notice that there have been three situations in which the dismissal solutions were invalidated *ex officio* by the first-prosecutor of the respective prosecution unit. It resulted from the performed analyses that the reasons which led to the invalidation of the ordinances of dismissal and reopening of the criminal investigation consisted in: unlawfulness of the solution, breaching the right to defense, occurrence of absolute nullity set out by Article 281 par. 1 letter f) of the Code of criminal procedure, incomplete criminal investigation.

Considering the data recorded in the analyses made by the prosecutor's offices attached to courts of appeal, the following aspects come to light as to the manner of completing the death cases in 2016 (solutions issued in 2016 irrespective of the time of death):

- 14 deaths at the Zam Neuropsychiatric Hospital; the Prosecutor's office attached to the Hunedoara Tribunal completed the cases by dismissal;
- 1 death at the Plătărești Neuropsychiatric Recovery and Rehabilitation Center, Călărași County; the Prosecutor's Office attached to the Călărași Tribunal completed the case by dismissal;
- 1 death at the Beclean Recovery and Rehabilitation Center for Youth with Handicaps; the Prosecutor's Office attached to the Beclean Court of first instance completed the case by dismissal;
- 5 deaths at the Borșa Hospital for Chronical Psychiatric Illness, Cluj County; the Prosecutor's Office attached to the Gherla Court of first instance completed the cases by dismissal;
- 1 death at the Craiova Nursing Care Home; the Prosecutor's Office attached to the Dolj Tribunal completed the case by dismissal;

- 7 deaths at the Poiana Mare Psychiatric Hospital facilities; the Prosecutor's Office attached to the Calafat Court of first instance completed the cases by dismissal;
- 2 deaths at the Gura Văii Psychiatry Section for Chronic Patients of the Drobeta-Turnu Severin Emergency Hospital; the Prosecutor's Office attached to the Drobeta-Turnu Severin Court of first instance completed the cases by dismissal;
- 16 deaths at the Socola Psychiatry Regional Institute and at the Grajduri Psychiatry and Safety Measures Hospital, Iași County; the Prosecutor's Office attached to the Iași Court of first instance completed the cases by dismissal;
- deaths occurred at the former Aldeni Home Care for Seniors and Adults with Disabilities, Buzău County (notification filed by the Center for Legal Resources which is mentioned in the document this foundation submitted with the Committee of Ministers); the Prosecutor's Office attached to the Buzău Tribunal completed the cases by dismissal (after invalidation of the initial solution);
- 1 death at the Urlați Recovery and Rehabilitation Center for Adults with Handicap, Prahova County; the Prosecutor's Office attached to the Ploiești Court of first instance completed the case by dismissal.

In all these cases, the authorities had a forensic examination performed in order to determine the cause of death. Although in some situations they found that the death had been violent, the investigations revealed that it had not resulted from the perpetration of a criminal action (mechanical asphyxia with bolus, suicide etc.). In other cases death was pathological.

Thus, each time the judicial authorities were notified immediately after the decease had occurred, adequate investigations were carried out.

5. *Children living in institutions*

As mentioned in the letter, Romania has made significant steps with regard to the deinstitutionalization of children, most of the classic type institutions being closed and replaced with other types of protection, aimed at generating a friendlier environment, similar to that of a family.

Continuing the process is one of the objectives established in the National Strategy on the Protection of Children Rights for 2014-2020, being assumed that by 2020 all classic type residential institutions will be closed. The funding for this process will be provided from the State budget and also from European funds.

Regarding cases in which children were subject to medical treatments, they were subject to control missions performed by the specialized bodies of the main institutions with competencies in the child protection field.

6. *Effective functioning of the National Preventive Mechanism (NPM)*

In virtue of its obligation to notify the judicial authorities concerning any incidents that may constitute criminal offences noted during the monitoring visits, the National Preventive Mechanism/NPM functioning within the Ombudsman's Office reported, in the period 2015-2016, nine such incidents to the prosecution bodies.

In all cases, the prosecution authorities had already been notified either *ex officio* or by the institution in which the incidents had taken place/the authority that supervises its activity (e.g. the National Administration of Penitentiaries in the case of penitentiaries).

As to the stage of the investigations regarding these incidents, in some of the cases there are still on-going investigations (all incidents took place in the period 2015-2016, some of them in the last part of

2016). In some case files, the commencement of criminal proceedings has been ordered, while in others (2 cases) the solution was the closing of the case.

It is to be noted that in some of these cases interim measures were ordered by the competent authorities (measures consisting, for instance, in suspending the work contracts for the employees under suspicion of perpetrating the incidents until the completion of the investigation by the prosecution authorities).

7. Cooperation with expert NGOs

The deficiencies noted by the European Court of Human Rights in the judgment rendered in the case of *Center for Legal Resources on behalf of Valentin Câmpeanu vs. Romania* led to the adoption of a set of measures by the Prosecutor's Office attached to the High Court of Cassation and Justice.

Among these measures, a collaboration protocol was concluded with the Center for Legal Resources Foundation (CLRF) on 6 April 2015. The document, initially valid until the end of 2015, allowing tacit extensions for one year periods, sets out the common general goals of the collaboration, consisting mainly in: strengthening the prevention and awareness measures in the field of the rights of persons with disabilities, continuous professional training for prosecutors, improving the investigation techniques, mutual information and promoting optimal legislative solutions in the field at issue.

By virtue of this protocol, in 2015 the National Institute of Magistracy/NIM was requested to introduce, in its centralized professional training program, topics relating to the protection and the rights of vulnerable persons, a measure which was implemented by NIM.

Also, in November 2017, a two-day seminar is scheduled to take place in Bucharest on the topic "Work with vulnerable categories or in vulnerable situations - children, seniors, persons with disabilities, institutionalized persons or falling into other categories."

Another activity performed under the collaboration protocol was the organization, in 2015, in Bucharest, together with the Centre for Legal Resources' representatives, of a seminar for prosecutors addressing subjects related to the protection of the civil rights of persons with disabilities.

In consideration of the protocol, due to some deficiencies ascertained in the way the cases dealing with crimes committed against persons with disabilities were handled, determined the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice to issue a Guidance note (October 2015). The Guidance note aimed at establishing clear principles to be followed by investigators (prosecutors and investigating bodies of judicial police) so as to provide the effectiveness of the investigation in agreement with the requirements of the European Court of Human Rights' case-law (enhanced active role, celerity/expedience, no mediation in the criminal investigation, putting in place standards broken down by categories of means of evidence).

Also, the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice issued the Order no. 204/28 September 2015 amending the previous Order no. 213/15 July 2014 on the organization and functioning of the information system of the Public Ministry, aiming mainly at the creation of the main monitoring, verification and control mechanisms in cases concerning crimes committed against persons with intellectual disabilities and/or mental health issues institutionalized in Romania.

Following a notification submitted by the Center for Legal Resources Foundation, the Service of Guidance and Control within the Prosecutor's Office attached to the High Court of Cassation and Justice verified itself, in the period September-October 2015, the criminal investigation case files opened as a result of the denunciations CLRF had filed. As a consequence, the prosecution units have been informed

of the deficiencies found and asked to take the necessary measures to bring the cases to an end. A similar control took place in October 2016.

On a quarterly basis, the Prosecutor's offices attached to courts of appeal elaborate analyses related to the solutions of non-indictment issued by the hierarchically subordinated units. Subsequently, the Prosecutor's Office attached to the High Court of Cassation and Justice centralizes and analyses these briefings. The last analysis was carried out in February 2017 and the conclusions were disseminated to all prosecution units.

Another managerial measure was to perform a targeted control, in March 2017, on cases dealing with crimes committed against persons with disabilities. This activity, as part of the 2017 control program, was carried out at the seat of four Prosecutor's offices attached to courts of appeal (Craiova, Pitești, Ploiești and Iași). The control report is currently being drafted.

Please accept, dear Commissioner, the expression of my highest consideration. I am looking forward to continuing our constructive dialogue and cooperation.



Sorin Mihai Grindeanu
Prime Minister