

## COMMENTS CONCERNING THE COMMISSIONER FOR HUMAN RIGHTS' REPORT FOLLOWING HER VISIT TO ROMANIA

- **Section 1.1** - Systemic obstacles to the effective protection of the rights of persons with disabilities

### Point 8 and 9 (the references to the Ombudsman and Children's Ombudsman)

- By Law no. 9/2018 for amending and completing Law no. 35/1997 on the organization and functioning of the People's Advocate Institution, the People's Advocate Institution, as an autonomous and independent public authority from any other public authority, has been designated as a national institution for the promotion and protection of human rights, within the meaning established by the Resolution of the General Assembly of the United Nations (UN) 48/134 of 20 December 1993, adopting the Paris Principles.

At the same time, within the People's Advocate Institution, a new Department was established: the Department for the defense, protection and promotion of children's rights, structure coordinated by the Child's Advocate, Deputy of the People's Advocate, appointed for 5 years by the Standing Bureaus of the Chamber Deputies and the Senate, at the proposal of the People's Advocate, with the opinion of the legal committees of the two Chambers of Parliament.

The Child's Advocate, under the coordination of the People's Advocate, acts to promote and protect the rights of children under the age of 18 (including, of course, children with disabilities), supports and encourages the observance and promotion of children's rights under Law no. 35/1997, republished, the UN Convention on the Rights of the Child, to which Romania is a Party since 1990, Law no. 272/2004 on the protection and promotion of the rights of the child, and Law 286/2009, the New Criminal Code, on the criminal liability of minors.

At present, at the central level, within the Department for the defense, protection and promotion of children's rights – Child's Advocate, is working a team of 3 counselors and one expert, who carry out the current work conducting hearings, ex officio proceedings, petitions, investigations and other specific activities.

At territorial (county) level, so far there is specialized staff in six county offices, for the other territorial offices of the People's Advocate Institution, the issues specific to the defense, protection and promotion of children's rights are currently managed by the experts and counselors within these offices.

### Point 11

By Government Decision no. 299/2014 on the organization and functioning of the National Authority for the Protection of Child's Rights and Adoption the Coordination Council for the Protection and Promotion of Child's Rights and Adoption was established. The Child's Advocate is also a member of the Council. The main objective of this inter-institutional body is to facilitate cooperation between institutions and organizations with responsibilities in the field of children's rights, in order to implement the national public policy and governance plan, to monitor the implementation of legislation, and to formulate proposals to improve and

strengthen cooperation between public authorities involved in the protection and promotion of children's rights and adoption.

➤ **Section 1.2** - The right to live independently and to be included in community

With respect to the statistical data regarding the number of persons with disabilities receiving residential social services as well as the number of residential services, we make the following clarifications:

- Indeed, between 2013-2018, the number of residential social services (with accommodation of at least 24 hours) increased on average by 27% as a result of the process of restructuring the high-capacity centers; the highest increase of 58.8% (from 85 in 2013 to 135 in 2018) is registered by the shelter houses, as family-type alternatives, with a maximum capacity of 10 persons.
- Concerning the number of persons which benefits of social services with accommodation, it grew by 5.2% in 2018 compared to 2013, but it is still accounting for less than 2.24% of the total number of persons with disabilities.

Regarding the "involuntary placement", it is not a practice whatsoever and it is not used in admitting a person with disabilities in a residential center (with accommodation). The admission is based on a service contract concluded between the person with disabilities, as a social service beneficiary, and the social service provider, in accordance with the Individual Rehabilitation and Social Integration Program (PIRIS). PIRIS stipulates that the commission for the assessment of disability recommends social assistance through residential centers when the person with disabilities cannot benefit of the protection and care at home or in other services in the local community where he/she resides (section III - Social Activities / Services in PIRIS).

The term "closed institutions" (in connection with "involuntary placement in closed institutions") does not correspond to the definition used by the legislation governing the rights of persons with disabilities. The term is "residential center", which is the social service with accommodation comprising a set of activities designed to meet the specific individual needs of adults with disabilities, in order to maintain / develop personal potential.

➤ **Section 1.2.1** - Human rights concerns related to the institutionalization of persons with disabilities

As regards the review of the social assistance recommendation through residential centers, the Minimum Quality Mandatory Specific Standards ("the Standards"), approved by the Minister of Labor and Social Justice Order no. 82/2019, establish the social service provider's obligation to provide "support for the beneficiary's assessment of the review / updating of PIRIS" (Module III, Standard 1 - Evaluation). In the evaluation, the multidisciplinary team involves the beneficiary, listens to and takes his/her opinion into consideration.

Among the mandatory activities to be carried out in the residential center, the Standards also establish the *assistance for making a decision*, which includes adequate actions of training,

counseling, information and direct support in order to help the beneficiary make a choice between two or more alternatives. Assistance in making a decision may include, as appropriate:

- a) information and advice on, but not limited to, existing social rights and facilities, clarifications on how to obtain them etc.
- b) assistance and support for the logical ordering of information to identify a problem, according to the context etc.
- c) assistance and support for the exploration and evaluation of alternatives;
- d) assistance and support for choosing the final version and assuming responsibility for the consequences;
- e) assistance and support in order to achieve the actions according to the beneficiary taken decision;
- f) assistance and support for reviewing the decision taken, as appropriate, depending on the context change.

Therefore, the beneficiary is constantly placed in the center of the process, in a formalized and trustworthy environment.

- **Section 1.2.2.-** Inclusion in the community, deinstitutionalization, accessibility and employment

The National Interest Program on deinstitutionalization has two parts: the review of the program started in 2016 targeting adults with disabilities and the initiation of a new program targeting young persons with disabilities from the special child protection system. Through both these components, it is intended to create 148 shelter houses and 88 day centers for 644 persons with disabilities.

Regarding the organization of social services in the community, as mentioned above, in the programs for deinstitutionalization there is also a preventive component, which includes the setting up of 88 day centers.

According to the Standards, the “shelter house” is the social service which provides accommodation and realizes, mainly through the day center, activities corresponding to the specific individual needs of the adults with disabilities, for a specific period of time, in order to prepare them for independent living. The “day center” for adults with disabilities is the social service that includes a set of activities carried out at different times of the day to meet the specific individual needs of adults with disabilities to overcome difficult situations, develop personal potential, and prevent institutionalization.

### Point 31

The Romanian legislation, in agreement with the European and international legislation, includes facilities and rights regarding the employment of persons with disabilities and incentives for employers to employ them. What could be missing, nevertheless, is that type of assessment that moves the focus from the disability to the intact skills of the person with disabilities.

- **Section 1.3 -** The right to legal capacity

As mentioned, the Standards provide, for both residential and day care centers, the obligation to carry out support and assistance activities, including decision-making.

➤ **Section 1.4 – Inclusive education**

Points 39,40,41

Romania has made sustained efforts to integrate children with disabilities into mainstream education and to respect their rights.

In this regard, the Child's Advocate, whenever it has been notified through petitions addressing these issues, has solved them in a timely and professional manner and, moreover, has proceeded ex-officio in such cases, requesting the authorities to respect these rights and to repair the damages caused. The Child's Advocate participated in inquiries, took direct contact with the problems of children with disabilities and made recommendations where irregularities were found, in order to correct them.

The Child's Advocate supports non-governmental organizations (NGOs) and participates with them in solving all problems of children with disabilities included in its area of competence.

Recently, on January 11, 2019, representatives of the People's Advocate Institution - Department for the defense, protection and promotion of children's rights, participated alongside the European Center for the Rights of Children with Disabilities (ECRCDD) at the launch of the first Civic Initiative at the European Union level for Inclusive Education - Europe CARES.

The European Initiative "Europe CARES" explains the necessity and proposes to the European Commission the drafting of a European Directive on the Education of Persons with Disabilities at EU level in the spirit of inclusion, according to the provisions of Art. 24 of the UN Convention on the Rights of Persons with Disabilities, ratified by the EU by Council Decision (2010/48 / EC). It aims a unitary regulation of inclusive education in the European space, to ensure that there is a set of minimum standards and principles to guide the implementation, at Member States level, to avoid any slippages and forms of exclusion. The Child Advocate supports these measures.

Romania is working to create a common legal framework on inclusive education at EU level for children / people with disabilities, and great progress has been made in recent years.

Also, the Child's Advocate, according to his competences, supports the children with disabilities, handling the petitions received and solving the cases in which the People's Advocate is acting ex officio.

In the last period there is a particular concern regarding the unitary implementation of inclusive education: early intervention and community services for the effective right to inclusive quality education; early identification of the requirements of children with special educational needs; children with disabilities benefit from free state education and student-centered learning; the People's Advocate advocates for the implementation of common standards to ensure access to education and prevent disability-based rejection.

The People's Advocate, together with non-governmental organizations (NGOs), will support and promote the child placement method in school, based on their support needs, starting with

the minimal restrictive environment – mainstream class – mainstream class with support – partially separated class for certain subjects – separate class with certain common activities with a mainstream class – separate class in a mainstream school, with shared breaks – special school – opting for placement in the least restrictive environment possible.

#### Point 40

With reference to the estimate made by non-governmental organizations, according to which the number of children with disabilities who do not attend any form of education would be around 20,000, we would like to point out that there is no mention of how this number was determined.

#### Points 41 and 43

With reference to the Procedure No 31852/2018 on ensuring the conditions needed for equal chances for pupils with visual / hearing impairment or autism spectrum disorders who sit national exams: the National Evaluation at the end of grade VIII and the Baccalaureate Examination – 2018 session, of which the Ministry of National Education informed the Office of the Commissioner for Human Rights in December 2018, we would like to inform about the adoption of a new procedure for the national exams in 2019 – Procedure No 26651/2019.

The step toward the new procedure was driven by the positive feedback from parents and the commissions for organizing the national exams on the utility of the 2018 Procedure, while the aim of the procedure is to ensure a unitary procedural framework to create the conditions fostering equal opportunities for pupils with certain types of disability who sit national exams.

As a novelty, the 2019 procedure widens the category of targeted pupils by including pupils with specific learning disabilities. In addition, for the sake of efficiency, applications for requesting the necessary adaptations can be submitted before the simulation of national exams, and in this connection, the educational establishments have the obligation to inform the parents.

#### Points 41 and 42

We would like to recall the fact that in Romania, centres of resources and educational assistance are in place at the level of each county and in the municipality of Bucharest (Centres for resources and educational assistance at county level – CJRAE and the Centre for resources and educational assistance of the municipality of Bucharest - CMBRAE). These centres are integrated special education institutions specialized in providing, coordinating and monitoring specific educational services provided to children / pupils, teachers, parents and community members to ensure everyone's access to quality education and the necessary assistance for this purpose. In addition to the information already provided, we list below the services provided by these centres:

- a) psycho-pedagogical assistance services and school and professional guidance, provided through county centres and school offices for psycho-pedagogical assistance;
- b) speech therapy services provided through centres and inter-school logopaedic offices;
- c) assessment services, orientation / reorientation from the special school to the mainstream school and vice versa, through the school and professional guidance commission, at the proposal of the school and professional evaluation and guidance service of CJRAE / CMBRAE;
- d) school mediation services provided by school mediators;
- e) inclusive education consultancy services provided by school centres for inclusive education;

- f) training services, through partnerships with institutions authorized to provide initial training under framework agreements;
- g) information and counseling services for teachers, children, parents, and other community members;
- h) counseling and prevention services for juvenile delinquency.

CJRAE and CMBRAE also provide expert advice to all educational establishments in order to meet the optimum conditions for providing educational support services and they organize events to disseminate examples of good practices in inclusive education. At the same time, the centres have the responsibility to organize multidisciplinary teams to identify all children / pupils with special education needs (SEN) and to apply individualized services plans. In collaboration with specialists from educational establishments, CJRAE and CMBRAE identify children / pupils with learning, development or school adaptation difficulties at risk of school failure or drop out, and by multidisciplinary teams, they provide subsequently, remedial education services and psycho-pedagogical counseling in accordance with the long-term or short-term needs of these children/ pupils.

Moreover, in compliance with the Law on National Education No 1/2011 children, pupils and young people with special educational needs, integrated into mainstream education, receive educational support through itinerant and support teaching staff, while the organization of these educational support services is under the responsibility of CJRAE / CMBRAE.

Order No 1985/1305/5805 from 2016<sup>1</sup> provides that all professionals interacting with children with disabilities and /or SEN, regardless of the system in which they operate, should respect the case management which represents an adaptation for children with disabilities and / or SEN of the provisions of the Order No 288/2006 of the Secretary of State of the National Authority for the Protection of the Rights of the Child<sup>2</sup>. The use of the case management method fosters the coordination of actions and an organized, rigorous, effective and consistent interinstitutional collaboration for the child, parents / legal representative and other important people for the child. This ensures an assessment and an integrated intervention with the aim of empowering and rehabilitating the disabled child and /or with SEN. One of the stages of case management is to develop a plan that includes the benefits, services and interventions for the disabled child and / or the child with SEN and his/her family.

Also, the special education system enjoy framework plans, school programs, psycho-pedagogical assistance programs, manuals and alternative didactic methodologies adapted to the type and degree of disability and which are approved by the Ministry of National Education. We would like to recall that by Order No 3622/27.04.2018 as subsequently amended and supplemented, new framework plans for special education for pre-school, primary and lower

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<sup>1</sup> Order No 1985/1305/5805 is a joint order, initiated by the Ministry of Labour and Social Justice, in collaboration with the Ministry of Health and the Ministry of National Education and it concerns the approval of the methodology regarding the assessment and the integrated intervention in view of assigning children with disabilities a disability level, ensuring the study and career guidance of children with special education needs, as well as enabling and rehabilitating the children with disabilities and/or with special educational needs.

<sup>2</sup> Order No 288/2006 on approving the minimum mandatory standards on case management in the field of child rights protection.

secondary levels, applying for all types and degrees of deficiency have been adopted and they shall enter into force as of school year 2019-2020. At present, the school curricula for the school subjects provided by the framework plans mentioned above are being finalized and new school textbooks will be developed based on them. One important mention is that according to the new framework plans the number of therapies provided for these children/pupils has increased.

In addition, in order to prevent and combat environmental barriers, it is provided that the educational establishments attended by children with disabilities and / or SEN ensure a reasonable adaptation of the environment, by ensuring the educational support services provided by the legal framework and the accessibility of the physical, informational and communication environment of the respective educational establishment.

#### Point 41

With reference to the case of *facilitator*, we would like to mention that the notion of facilitator (shadow) has been introduced by the provisions of art. 63 of the Order no. 1985/1305/5805. Its presence in the educational establishment is a measure of support for the prevention and combatting of attitude barriers in view of promoting inclusive education.

The facilitator may be the parent, the personal assistant / attendant (for children with severe disability), a person appointed by the parents and to whom the child has an attachment relationship, a specialist recommended by parents who may come from non-governmental organizations, universities and other institutions with which the educational establishment has concluded agreements in this respect. For severely disabled children requiring a personal assistant, the parents / legal representative ensure a facilitator.

The current legal framework does not give the possibility of employing this category of people in the education system because the school facilitator post/function is not included on the list of teaching and auxiliary teaching posts/functions provided by the National Education Law. Also this occupation does not exist in the Romanian Occupation Classification of the Ministry of Labour and Social Justice. In order to regulate this situation, the Ministry of National Education will initiate the necessary steps, formulate proposals and contact the competent institutions.

#### Point 45

There is a mention regarding *reports* that reveal cases of abuse of children with disabilities in school, but no reference is made to these reports. In order to remedy the reported situations, the Romanian authorities would appreciate an indication of the sources of information that led to the formulation of those conclusions. At the same time, we reiterate that the issue of violence in the pre-university school environment is in the attention of the Ministry of National Education, and in order to prevent and combat violence, the Strategy on reducing the phenomenon of violence within the pre-university education establishments is in force.

The Child's Advocate, through his representatives, held lectures in schools on the subject of abuse in school against children with disabilities and other children (bullying).

The Child's Advocate has advocated that teachers and parents should intervene in stopping this phenomenon and report it to the authorities, whenever they encounter it. At the same time, children should repress and report these abuses whenever they occur, both on themselves and

on other children, if they are aware of these issues. Awareness and understanding campaigns among children should be organized to help them know and understand their rights.

#### Point 47

In order to observe children's rights, the People's Advocate is working with state institutions, as well as with non-governmental organizations (NGOs). It also cooperates with international bodies, having partnerships with Children's Telephone Association, Save the Children Organization and UNICEF.

The People's Advocate Institution, in partnership with UNICEF and with the support of the National Authority for the Protection of Child's Rights and Adoption, is conducting a study on the monitoring of children's rights in residential institutions, the findings of which will be included in a Special Report.

The research starts from the national context related to the need to monitor the observance of children's rights, as provided for in the partnership agreement between UNICEF Romania and the People's Advocate Institution but also in the wider context of the Country Agreement between UNICEF and the Government of Romania.

The documentation will be carried out regarding the observance of children's rights on all levels, such as the right to be protected against abuse, neglect, exploitation, the right to education and the right to health, the maintenance of relationships with persons to whom they have developed attachment ties, and the right to grow up with their parents.

The People's Advocate Institution and Save the Children organization are working together to develop a Special Report on the Rights of the Child in Romania, containing a radiography of the child's rights situation in Romania with the following sections:

- the right to health;
- the right to education;
- the right to social protection;
- the right to protection against violence - exploitation, neglect, abuse, trafficking;
- socio-educational integration of children in the Romanian society;
- justice tailored to the needs of the child.

With the completion of the two special reports, depending on their conclusions and recommendations, substantiated proposals for normative acts or amendments to existing ones in this field are possible.