

Communication by the Council of Europe Commissioner for Human Rights

under Rule 9.4 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements

in the cases of

Parascineti v. Romania

(application no. 32060/05, judgment of 13 March 2012)

Cristian Teodorescu v. Romania

(application no. 22883/05, judgment of 19 June 2012)

Atudorei v. Romania

(application no. 50131/08, judgment of 16 September 2014)

N. v. Romania

(application no. 59152/08, judgment of 28 November 2017)

R.D. and I.M.D. v. Romania

(application no. 35402/14, judgment of 12 October 2021)

Introduction

1. This communication by the Council of Europe Commissioner for Human Rights (hereinafter: “the Commissioner”) is addressed to the Committee of Ministers of the Council of Europe, in accordance with Rule 9.4 of the Rules of the Committee of Ministers,¹ in the context of the supervision of the execution of the judgments of the European Court of Human Rights (hereinafter: “the Court”) in the case of *Parascineti v. Romania* and in the *Cristian Teodorescu* group (*Cristian Teodorescu v. Romania* and *Atudorei v. Romania*) and the *N. v. Romania* group of cases (*N. v. Romania* and *R.D. and I.M.D. v. Romania*). These cases concern:
 - Longstanding, structural deficiencies linked to overcrowding and inadequate living conditions, treatment and care afforded to patients and severe staff shortages in psychiatric establishments in Romania (*Parascineti*);
 - unlawful or arbitrary deprivations of liberty of patients involuntarily placed in such establishments, as protective measures under the Mental Health Act (*Cristian Teodorescu* group), or as security measures under the Criminal Code (*N.* group), and
 - systematic failure to seek consent to psychiatric treatment and the absence of minimum legal safeguards accompanying the forcible administration of psychiatric treatment to involuntary patients (*Atudorei* and *R.D. and I.M.D.*).
2. In these cases, the Court found violations of the prohibition of inhuman and degrading treatment (Article 3 of the European Convention on Human Rights, hereinafter: “the Convention”), of the right to liberty and security (Article 5) and of the right to respect for one’s private life (Article 8). The Committee of Ministers has subsequently [stressed](#) the humanitarian aspect of some of the violations and has voiced its grave concern at the authorities’ significant delay in implementing the judgments and the high risk of new violations this entailed in respect of individuals belonging to a particularly vulnerable group.
3. According to her mandate, the Commissioner fosters the effective observance of human rights; assists member states in the implementation of Council of Europe human rights instruments, in particular the Convention; identifies possible shortcomings in the law and practice concerning human rights; and provides advice and information regarding the protection of human rights across the region.²
4. The present communication aims to assist the Committee of Ministers in its examination of the execution of the above-mentioned cases. The communication is based on the Commissioner’s and her predecessors’ extensive country-specific and thematic work concerning the protection of the human rights of persons with intellectual and psychosocial disabilities and of human rights in mental health care.³ Section I contains an overview of the Commissioner’s relevant work with respect to Romania. Section II outlines outstanding challenges in the implementation of the human rights of persons with intellectual and psychosocial disabilities and with mental health issues in Romania. Section III provides observations on the imperative of a human rights approach to mental health care. These sections are followed by the Commissioner’s conclusions.

I. The Commissioner’s work with respect to Romania

5. The Commissioner’s predecessors have followed developments and have raised concerns regarding the rights of persons with disabilities in Romania, including those at the heart of the judgments at issue here, over the course of their mandates. These were addressed notably in [written observations](#) (2011)⁴

¹ [Rules of the Committee of Ministers](#) for the supervision of the execution of judgments and of the terms of friendly settlements (adopted by the Committee of Ministers on 10 May 2006 and amended on 18 January 2017 and on 6 July 2022).

² [Resolution \(99\)50](#) on the Council of Europe Commissioner for Human Rights, adopted by the Committee of Ministers on 7 May 1999.

³ For an overview of the Commissioner’s work in this area see her [thematic page](#) concerning the human rights of persons with disabilities.

⁴ Third party intervention by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg – Application no. 47848/08, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, 14 October 2011, CommDH(2011)37.

submitted to the Court in the case of *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* followed by an [oral intervention](#) (2013) before the Grand Chamber in the same case, and in the context of country work including a country [visit](#) and [report](#) (2014)⁵ and continuous dialogue with the Romanian authorities.⁶

6. Since the beginning of her mandate in April 2018, Commissioner Dunja Mijatović has continued to address similar issues and has formulated recommendations to the Romanian authorities. In her [report](#) (2019)⁷ following her [visit](#) to Romania, the Commissioner noted that despite an improved legislative and policy framework, there were persisting systemic obstacles to the effective protection of the rights of persons with disabilities. These included the absence of a clear deinstitutionalisation strategy, a lack of community-based services, including of services supporting transition to independent life, and discrepancies in the implementation of relevant standards across the country due to insufficient funding and a lack of technical capacity at the level of county and local authorities. The Commissioner also raised concern about the shrinking space for NGOs to monitor the situation of persons living in institutions and stressed the need to strengthen monitoring mechanisms, to improve inter-institutional co-operation and co-ordination at various levels and across sectors and to address deficiencies in data collection and sharing.
7. As regards involuntary placements, the Commissioner noted the persistent lack of basic safeguards including the lack of provisions for a periodic judicial review of psychiatric placements under the Mental Health Act. She also noted practical barriers to challenging psychiatric placements under criminal law, despite the existence of some safeguards. The Commissioner recommended a review of the mental health policy, aimed at drastically reducing and progressively eliminating recourse to coercive practices in psychiatry in favour of care and treatment based on free and informed consent in line with Article 25 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD). However, she stressed that as long as involuntary placements continued, they had to remain subject to a wide array of safeguards, including those under Article 5 of the Convention.
8. The Commissioner also expressed concern about the improper living conditions, including overcrowding, prevailing in many institutions and the numerous reports of abuse against persons in institutions, among which the excessive use of restraints and of prolonged solitary confinement. She urged the authorities to ensure that those responsible for such abuse are brought to justice and to strengthen reporting obligations regarding deaths in institutions. On this matter, she welcomed the enhanced review procedure introduced by the prosecution authorities with respect to decisions to close cases concerning ill-treatment and deaths in institutions. The Commissioner further called on the authorities to ensure that persons in institutions have access to adequate legal support and independent representation before the courts and that they can effectively challenge violations of their human rights. In this respect, she stressed the need to give NGOs ample opportunity to monitor the situation of persons in institutions and facilitate their access to justice. Lastly, the Commissioner called for measures to replace guardianship with supported decision-making.
9. In a subsequent [letter](#) (2021)⁸ to the Romanian authorities, the Commissioner reiterated concerns about the existing deficiencies in the monitoring of the situation of persons with disabilities living in institutions. She notably stressed the continued difficulties faced by NGOs in accessing social care and psychiatric institutions, despite the pivotal role of such access for the protection of the rights of those concerned.
10. From 4 to 7 December 2023, members of the Commissioner's Office undertook a mission to Romania as a follow-up to the above issues, particularly the right to live in the community, rights in mental health settings, and the right to legal capacity.

⁵ Report by the Council of Europe Commissioner for Human Rights, Nils Muižnieks, following his visit to Romania, 8 July 2014, CommDH(2014)14.

⁶ See Council of Europe Commissioner for Human Rights, Nils Muižnieks, [letter](#) to the Prime Minister of Romania, 16 March 2017 and [letter](#) to the Minister of Labour and Social Justice of Romania, 14 September 2017.

⁷ Report by the Council of Europe Commissioner for Human Rights, Dunja Mijatović, following her visit to Romania, 28 February 2019, CommDH(2019)5.

⁸ Letter of 9 April 2021, addressed to the President and to the Chair of the Human Rights Committee of Romania.

II. Outstanding challenges in the implementation of the human rights of persons with intellectual and psychosocial disabilities and with mental health issues in Romania

11. The Commissioner notes positively the introduction, through Law No. 140/2022, of a mechanism of supported decision making (while also maintaining a guardianship system) and the adoption of Law No. 7/2023 on measures to accelerate deinstitutionalisation and prevent institutionalisation of adults with disabilities. She further welcomes the adoption of the national [deinstitutionalisation strategy](#) 2022-2030 and of the national [health strategy and action plan](#) 2023-2030 which outlines, among others, projected changes in the provision of mental health care. The improved collaboration of authorities and national human rights structures with NGOs, including in respect of facilitating their access to institutions for persons with disabilities, is also a positive development.
12. A further positive development is the initiative of the government to set up a working group tasked with drafting the Action Plan for the implementation of the Court's judgments concerning mental health and the inclusion in this group of a wide range of stakeholders, including national human rights structures and civil society.⁹ The Commissioner is pleased to note that the Action Plan is intended to reflect national and international evaluations including by the Council for Monitoring the Implementation of the CRPD (Monitoring Council), the Ombudsman Institution, the European Committee for the Prevention of Torture and Inhuman or degrading Treatment (CPT),¹⁰ and NGOs.
13. As regards the current situation, information provided to the Commissioner, as well as recent reports, including a special report issued by the Ombudsman Institution on 23 January following monitoring visits to psychiatric hospitals,¹¹ points to continued challenges in the implementation of the rights of persons with intellectual and psychosocial disabilities and with mental health issues. The Commissioner wishes to highlight below some of these problems, which in her view are particularly relevant in the context of the execution of the general measures in the present cases.
14. The Commissioner notes that no concrete action has been taken by the authorities to review the criminal legislation in order to remedy the insufficiency of safeguards regarding psychiatric detention under the Criminal Code¹² or the absence of minimum safeguards regarding the administration of psychiatric treatment to persons detained in such context (*N. and R.D. and I.M.D.*). Similarly, no provisions have been introduced in the Mental Health Act (Law No. 487/2002) to ensure that decisions prolonging psychiatric placements are subject to judicial review.
15. Of further concern are the *de facto* detentions caused by delays in the judicial review of decisions to commit persons to psychiatric hospitals or to discharge them, and the lack of observance of other safeguards including the omission by the courts to hear the concerned persons. Similar problems arise in relation to the transfer of persons from social care institutions to psychiatric hospitals when their situation becomes difficult for staff to manage. The Commissioner was informed that many persons continue to live in psychiatric hospitals beyond any therapeutic need, owing to the lack of adequate services in the community (so-called "social cases"). The situation of these persons is exacerbated by the persisting stigma associated with disability and mental health issues which makes local authorities reluctant to invest in community-based care.
16. Access to psychiatric health care lacks in several counties and existing hospitals struggle with underfunding and shortages of staff. The lack of resources appears to be among the factors widely recognised by interlocutors in Romania as contributing to violations of patients' rights in psychiatric settings. These include overcrowding, the excessive use of coercion and the lack of accommodation measures for patients with disabilities. In relation to this, the Commissioner notes the lack of appropriate measures aimed at improving access to justice for persons in psychiatric hospitals. Existing arrangements such as the information provided to patients regarding their right to submit complaints to

⁹ [Communication](#) from the Romanian authorities to the Committee of Ministers, 29 September 2023.

¹⁰ Information available at: <https://www.coe.int/en/web/cpt/romania>.

¹¹ Available in Romanian at: <https://avp.ro/index.php/activitatea-avp/rapoarte-speciale/>.

¹² Detention of persons who failed to comply with court orders compelling them to undergo outpatient treatment (Article 109 Criminal Code) and security detention of persons with mental health issues (Article 110). In the case of *N.* the Court found that in addition to issues raised under Article 5 of the Convention, the applicant's detention based on Article 110 of the Criminal Code was "open to question ... in the light of the provisions of Article 14 § 1 (b) CRPD, which lays down that the existence of a disability shall in no case justify a deprivation of liberty" (§ 159).

the Ombudsman Institution fall short of the requirement to ensure that they can effectively challenge measures taken in their respect or any violations of their rights. Additional steps, in particular ensuring access to lawyers and further training among the judiciary and law enforcement with a focus on the rights of persons with disabilities and with mental health issues are necessary for this purpose.

17. Another outstanding issue is the persistent lack of adequate data collection and sharing, including with respect to the situation of persons currently under guardianship, whose guardianship decisions must be reviewed by the courts as provided by Law No. 140/2022. Civil society reports also indicate deficiencies in ensuring the necessary funding and the training of professionals, including in psychiatry and among the judiciary, allowing for the appropriate implementation of this law.¹³
18. More broadly, information provided to the Commissioner's Office shows the need for better co-ordination between the health care and social care system, which currently take fragmented approaches to the provision of services to persons with intellectual and psychosocial disabilities and with mental health issues. The needs of older persons, many of whom develop disabilities and/or mental health problems, including dementia, appear not to be adequately addressed by either system.

III. The imperative of a human rights approach to mental health care

19. Mental health is increasingly recognised, both at the global and European level, as a public health priority and as a human rights imperative. Modern mental health approaches recognise the need for a fundamental shift from institution-based mental health services and the use of coercion in psychiatry to person-centred, community-based services respectful of people's rights and dignity.
20. The landmark instrument embodying this shift is the CRPD, which has been ratified by all 46 member states of the Council of Europe and by the European Union. Its purpose is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity (Article 1). This requires compliance with core principles among which feature respect for individual autonomy including the freedom of choice and independence, non-discrimination, and full and effective participation and inclusion in society.¹⁴
21. Below, the Commissioner wishes to draw attention to the growing body of guidance developed by the United Nations Committee on the Rights of Persons with Disabilities (hereinafter: "the CRPD Committee") and other international bodies, at global and Council of Europe level, with respect to the implementation of the rights of persons with disabilities, in contexts relevant to those examined in relation to the execution of the judgments in the present cases.
22. Regarding involuntary psychiatric placements, the Commissioner refers to the CRPD Committee's position according to which involuntary commitment of persons with disabilities on health care grounds "contradicts the absolute ban on deprivation of liberty on the basis of impairment" provided by Article 14 (1) (b) CRPD and the principle of free and informed consent of the person for health care (Article 25). The Committee recommended that states repeal provisions that allow for the involuntary commitment of persons in mental health institutions based on actual or perceived impairment and stressed that such commitment also carries the denial of the person's legal capacity to decide about care, treatment and admission to a hospital or institution, in violation of Article 12 CRPD (equal recognition before the law).¹⁵
23. The Committee further stated that forced treatment is a violation of the right to equal recognition before the law (Article 12) as well as the rights to personal integrity (Article 17), freedom from torture (Article 15) and freedom from violence, exploitation and abuse (Article 16). It recommended that states ensure that "decisions relating to a person's physical or mental integrity can only be taken with the free and informed consent of the person concerned" and stressed that they "must abolish policies and legislative

¹³ For a more detailed examination of this issue see the Commissioner's communication to the Committee of Ministers in the context of the supervision of the execution of the judgments of the Court in the cases of *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* and *N. (No. 2) v. Romania*, 6 March 2024, CommHR(2024)15.

¹⁴ CRPD, Article 3 – General principles. See also the Council of Europe Disability Strategy 2017-2023, available at: <https://www.coe.int/en/web/disability/strategy-2017-2023>.

¹⁵ [Report](#) of the Committee on the Rights of Persons with Disabilities - 13th through 16th sessions (2015-2016) – Annex, Guidelines on the right to liberty and security of persons with disabilities, 11 May 2017, A/72/55.

provisions that allow or perpetrate forced treatment” and “have an obligation to provide access to support for decisions regarding psychiatric and other medical treatment”.¹⁶

24. On a similar note, the Special Rapporteur on the rights of persons with disabilities and the Special Rapporteur on the rights to physical and mental health have stressed that “forced admission to medical institutions and coercive treatments in institutions will bring harmful effects such as pain, trauma, humiliation, shame, stigmatisation and fear to people with psychosocial disabilities”.¹⁷ The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has underlined that practices such as involuntary psychiatric intervention “generally involve highly discriminatory and coercive attempts at controlling or ‘correcting’ the victim’s personality, behaviour or choices and almost always inflict severe pain or suffering.”¹⁸
25. The guidance document entitled “Mental Health, human rights and legislation” published jointly by the World Health Organisation and the Office of the United Nations High Commissioner for Human Rights on 9 October 2023¹⁹ further outlines legal provisions that states should adopt to promote deinstitutionalisation and access to good quality, person-centred community mental health services. It also highlights how laws can address stigma and discrimination and provides guidance on how to eliminate coercion in mental health services in favour of practices that respect persons’ rights and dignity. The World Psychiatric Association also issued a position statement on implementing alternatives to coercion, in October 2020.²⁰
26. Recent developments within the Council of Europe follow this line. In its [Resolution 2291 \(2019\)](#), “Ending coercion in mental health: the need for a human rights-based approach” adopted unanimously, the Parliamentary Assembly stressed that mental health systems across Europe should be reformed to adopt a human rights based approach and urged member states to immediately start the necessary transition for the abolition of coercive practices in mental health settings. In [Resolution 2431 \(2022\)](#) “Deinstitutionalisation of persons with disabilities” the Assembly further called on parliaments “to take the necessary steps to progressively repeal legislation authorising the institutionalisation of persons with disabilities, as well as mental health legislation allowing for treatment without consent and detention based on impairment, with a view to ending coercion in mental health”.
27. The Commissioner, like her predecessors, has consistently advocated for mental health reform, including the urgent need to deinstitutionalise mental health services and to eliminate coercive practices in mental health settings (including involuntary admission, involuntary treatment, the use of seclusion and of physical, mechanical, or chemical restraint).²¹ She has often stressed that even well-designed safeguards could not constitute a sufficient guarantee for preventing abuse in institutions, which is rooted in broader, inbuilt inequalities, paternalism and biases, as well as in the inherently discriminatory nature of the legal systems as regards persons with disabilities.
28. Despite the existing standards and guidance, the Commissioner notes that member states often struggle to change the *status quo* in psychiatry. However, she stresses that a reform process of mental health systems is necessary to ensure that persons with psychosocial and intellectual disabilities and persons with mental health issues can voluntarily seek treatment without the fear of losing their dignity and autonomy. As she previously stated, the Commissioner considers that this is not only a legal necessity in order to bring the legislation of member states in line with CRPD standards, but also the

¹⁶ CRPD Committee, [General comment No. 1 \(2014\)](#) – Article 12 CRPD: Equal recognition before the law, 19 May 2014, CRPD/C/GC/1, § 42.

¹⁷ “UN Rights experts call on Council of Europe to stop legislation for coercive mental health measures”, [press release](#) of 28 May 2021.

¹⁸ [Report](#) of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the UN Human Rights Council, 20 March 2020, A/HRC/43/49, § 37.

¹⁹ Available at: www.ohchr.org/en/publications/policy-and-methodological-publications/mental-health-human-rights-and-legislation.

²⁰ “Implementing Alternatives to Coercion: A Key Component of Improving Mental Health Care”, position statement by the World Psychiatric Association, October 2020, available at: <https://www.wpanet.org/alternatives-to-coercion>.

²¹ See, for example, [Human Rights Comment](#), “Reform of mental health services: an urgent need and a human rights imperative”, 7 April 2021; [Comments](#) by Dunja Mijatović, Council of Europe Commissioner for Human Rights on the draft Additional Protocol to the Convention on Human Rights and Biomedicine concerning the Protection of Human Rights and Dignity of Persons with Mental Disorder with regard to Involuntary Placement and Involuntary Treatment, 8 November 2018.

only viable way of durably reducing the numerous human rights violations that the Commissioner has continued to observe around Europe, including violations of Article 3, Article 5 and Article 8 of the Convention.²²

IV. Conclusions

29. The Commissioner notes that despite the recent acceleration and increase in efforts, key issues of relevance for the execution of the judgments in the present cases have not been fully addressed. These problems require comprehensive, multi-sectoral measures at legislative, policy and operational level, along with a clear commitment by the authorities for a fundamental shift in the approach to the rights of persons with intellectual and psychosocial disabilities and to mental health care, from coercion and institutionalisation to community-based services which respect persons' autonomy. The Commissioner wishes to highlight the importance of the following measures for an effective execution of the present judgments:
- The Mental Health Act should be amended to ensure that decisions concerning psychiatric placements are subjected to automatic, periodic judicial review, at reasonable intervals. The amendments should cover decisions to prolong psychiatric placements as well as any placement decisions made in the context of transfers of persons between social care institutions or other medical institutions and psychiatric institutions.
 - The authorities should review the criminal legislation with a view to eliminating provisions allowing for the discriminatory detention of persons with intellectual or psychosocial disabilities, based on their disability or impairments.
 - Mental health and other relevant legislation, including criminal legislation, should be reviewed and adequate guidance should be issued to ensure the right of persons with mental health issues and with psychosocial and intellectual disabilities to the provision of health care, including psychiatric health care, on the basis of free and informed consent.
 - The authorities should take all necessary measures to ensure that persons are not forced to remain in psychiatric institutions because of lack of services in the community. More broadly, sustained efforts are necessary to develop integrated services addressing the social care and mental health care needs of persons in the community, including for persons with disabilities and older persons.
 - The authorities should, with the involvement of the relevant stakeholders, urgently take appropriate measures, including guidance and dissuasive sanctions in cases of violations of the applicable legislation and protocols, to drastically reduce coercion in mental health care. The authorities should ensure that those responsible are brought to justice, in accordance with the [2011 Guidelines of the Committee of Ministers on eradicating impunity for serious human rights violations](#).
 - The authorities should, as a matter of priority, take measures to facilitate effective access to justice for persons in mental health settings, including in co-operation with the National Union of Bar Associations of Romania, civil society, and other relevant actors. The authorities and human rights structures should keep close co-operation with NGOs and further support their vital work in monitoring the situation of persons in institutions, including in psychiatric establishments.
 - The authorities should initiate measures to progressively develop and ensure access to quality, human-rights compliant mental health care services across the country. An appropriate system of data collection and sharing should be put in place allowing an accurate mapping of the needs and adequate planning of necessary measures, for which sufficient and reliable funding should be ensured.

²² See the Commissioner's [written observations](#) to the European Court of Human Rights in the case of *Eugeniu Clipea and Virginia Iapara v. the Republic of Moldova*, 17 June 2021.

- Appropriate steps, including financial and capacity building measures are necessary to ensure the adequate and timely implementation of Law No. 140/2022 with respect to, in particular, the revision of past decisions of deprivation of legal capacity. In the application of this law, the CRPD requirements regarding the right of persons with disabilities to legal capacity on an equal basis with others should be respected.
- Further efforts should be made to enhance awareness of CRPD and Convention standards and of relevant international mental health guidance, across sectors.