

## 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

**Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania**  
(application no. 47848/08, Grand Chamber judgment of 17 July 2014)

**N. (No. 2) v. Romania**  
(application no. 38048/18, judgment of 16 November 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,<sup>1</sup> in the context of the supervision of the execution of the judgments of the European Court of Human Rights (hereinafter: “the Court”) in the cases of *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* and *N. (No. 2) v. Romania*. These cases concern:
  - Deficiencies in the legal protection system for adults with intellectual disabilities or with mental health conditions – substantive violation of Article 2 of the European Convention of Human Rights (hereinafter: “the Convention”) in *Centre for Legal Resources on behalf of Valentin Câmpeanu*; violations of Article 8 in *N. (No. 2)*.
  - In *Centre for Legal Resources on behalf of Valentin Câmpeanu*, other serious shortcomings in the social and medical care afforded to Mr Câmpeanu before his death in a neuropsychiatric hospital – substantive violation of Article 2; the ineffectiveness of the investigations and the court proceedings into his death – procedural violation of Article 2; and the lack of a domestic legal framework suited to the specific needs of persons with disabilities and allowing for the examination of allegations concerning violations of their Convention rights by an independent authority – violation of Article 13 taken together with Article 2.
2. 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.<sup>2</sup>
3. The present communication aims to assist the Committee of Ministers in its examination of the execution of the above-mentioned cases. The submission is based on the Commissioner’s and her predecessors’ extensive work concerning the protection of the rights of persons with intellectual and psychosocial disabilities and human rights in mental health care.<sup>3</sup> Section I contains an overview of the Commissioner’s work with respect to Romania regarding legal capacity and access to justice for persons with disabilities. Section II provides observations on outstanding challenges in the implementation of these rights in Romania. Section III outlines international standards on the rights of persons with disabilities to equal recognition before the law and access to justice. These sections are followed by the Commissioner’s conclusions.

### **I. The Commissioner’s work with respect to Romania regarding legal capacity and access to justice for persons with disabilities**

4. 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) submitted to the Court in the case of *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*<sup>4</sup> followed by an [oral intervention](#) (2013) before the Grand Chamber in the same case, and in

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<sup>1</sup> [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).

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

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

<sup>4</sup> 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.

the context of country work including a country [visit](#) and [report](#) (2014)<sup>5</sup> and continuous dialogue with the Romanian authorities.<sup>6</sup>

5. 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)<sup>7</sup> published following her [visit](#) to Romania, the Commissioner deplored, among other problems, the lack of a clear deinstitutionalisation strategy, deficiencies in data collection and sharing, poor inter-institutional co-operation and the diminished opportunities for NGOs to monitor the situation of persons living in institutions. She further noted the persistent lack of safeguards including of legal provisions for the periodic judicial review of involuntary psychiatric placements under the Mental Health Act and expressed concern about the improper living conditions and the numerous reports of abuse against persons in institutions. The Commissioner urged the authorities to ensure that those responsible for such abuse are brought to justice and to strengthen reporting obligations regarding deaths in institutions. In connection to this, 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.
6. 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. As regards the guardianship system, the Commissioner regretted that Romanian legislation continued to allow the deprivation of persons with intellectual and psychosocial disabilities of their legal capacity. Despite the serious consequences of this measure, some safeguards including provisions for the automatic periodic review of incapacitation decisions were lacking, while existing safeguards, such as the obligation for courts to hear the concerned person, were not systematically respected in practice. Planned amendments to the guardianship system were still designed to preserve deprivation of legal capacity, which was worrying in particular with respect to persons with disabilities in institutions, many of whom were under the guardianship of heads of institutions or of local authorities. The Commissioner called on the authorities to ensure that the new system would no longer allow such deprivation and would instead safeguard the right of persons with disabilities to enjoy legal capacity on an equal basis with others in all aspects of life. Lastly, the Commissioner urged the authorities to ensure that persons deprived of legal capacity were not denied access to courts on this basis.
7. In a subsequent [letter](#) (2021)<sup>8</sup> 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.
8. 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.

## **II. Outstanding challenges in the implementation, in Romania, of the right of persons with disabilities to equal recognition before the law and their right to access to justice**

9. The Commissioner notes positively the initiative of the government to set up a working group comprising a wide range of stakeholders, including national human rights structures and civil society, tasked with drafting the Action Plan for the implementation of these judgments.<sup>9</sup> She 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 United Nations Convention on the Rights of Persons with

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

<sup>6</sup> 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.

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

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

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

Disabilities (CRPD) (Monitoring Council), the Ombudsman Institution, the European Committee for the Prevention of Torture and Inhuman or degrading Treatment (CPT),<sup>10</sup> and NGOs.

10. *With respect to legal capacity:* The Commissioner is concerned that the new Law No. 140/2022 on protection measures for persons with intellectual and psychosocial disabilities maintains a system of guardianship, albeit more flexible than the previous guardianship regime.<sup>11</sup> Unfortunately, the opportunity was missed to fully replace the guardianship system with supported decision making based on the will and preferences of those concerned, in line with the requirements of the CRPD.
11. In this context, the Commissioner also regrets that no solutions were advanced by the authorities to ensure, as indicated by the Court under Article 46 of the Convention, that persons with intellectual and psychosocial disabilities “in a situation comparable to that of Mr Câmpeanu” (those without relatives able or willing to take over support or representation duties) “are afforded independent representation, enabling them to have Convention complaints relating to their health and treatment examined before a court or other independent body” (§ 161 of the judgment).
12. Law No. 140/2022 requires the courts to review all cases of persons placed under guardianship under the previous legislation and to lift the guardianship or replace it with one of the new measures available. This process must be completed within three years from the entry into force of the law, i.e., by 18 August 2025. The Commissioner shares concerns expressed by the Centre for Legal Resources that the implementation of this law is hindered by obstacles including the insufficient training provided to the judiciary and prosecution authorities and the low uptake of existing training options, the lack of co-ordinated data allowing the timely identification of persons currently under guardianship (estimated by the Ministry of Justice at about 90 000 persons) and the lack of a clear framework regarding the funding of costs incurred with the compulsory medical examinations prescribed by the law. Among other negative effects, this delay causes numerous persons to remain under the guardianship of mayors or heads of institutions, which also affects their access to justice.<sup>12</sup>
13. Another issue of concern is the continued reliance, in the new law, on a medical and coercive approach to the rights of persons with disabilities. The law requires compulsory medical and psychological examinations of the concerned persons, with the possibility for the courts to order their involuntary placement in view of their medical assessment, for up to 20 days. Moreover, the law allows courts to extend the measure of “special guardianship” (the most restrictive measure provided by the law), exceptionally, without hearing the concerned person if a medical report attests that a hearing may be detrimental to their health or if the person is deemed unable to express their will.
14. *As regards access to justice:* As highlighted by the Ombudsman Institution and civil society, there is a persistent lack of safeguards and misapplication of the Mental Health Act. The transfers of persons between social care and psychiatric establishments are not being reviewed by the courts. It is crucial that the authorities ensure that persons have access to social care and psychiatric services provided on the basis of free and informed consent and that any involuntary placements are subject to judicial review.
15. Information published by the Monitoring Council indicates that social care facilities do not consistently report deaths of residents which means that a forensic autopsy, mandated by the legislation in such cases, is not always performed. The Commissioner notes the importance for the authorities to urgently address this issue which is essential for combating impunity and for the full execution of these judgments.
16. Regarding access to remedies, the improved collaboration of the authorities and national human rights structures with NGOs, including in respect of facilitating their access to institutions for persons with disabilities is a positive development. However, legal avenues and protocols put in place by the authorities so far, such as the possibility to submit complaints to the Ombudsman Institution or to lodge

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

<sup>11</sup> The law provides for three measures, which can be gradually applied if the person has not made advance directives. The first measure maintains the person’s legal capacity and sets out a mechanism for access to supported decision-making. The other two involve limitations on legal capacity, the scope of which can be adapted by the courts based on assessments of the person’s specific needs and degree of autonomy.

<sup>12</sup> [Communication](#) by the Centre for Legal Resources to the Committee of Ministers, 21 April 2023.

civil actions for the protection of one's health or physical integrity, among others, are insufficient and lack effectiveness in respect of persons with disabilities living in institutions.

### **III. International standards regarding the rights of persons with disabilities to equal recognition before the law and access to justice**

17. The following paragraphs highlight specific points outlined in international guidance on the rights of persons with disabilities to equal recognition before the law and to access to justice and in respect of measures to ensure their adequate implementation. Without prejudice to other applicable standards, the Commissioner wishes to stress, from the outset, the importance of the CRPD as the key human rights instrument embodying the fundamental shift to a human rights model in the approach to persons with disabilities.

#### *Equal recognition before the law*

18. The United Nations Committee on the Rights of Persons with Disabilities (hereinafter: "the CRPD Committee") has stressed that under Article 12 CRPD, persons with disabilities have full capacity and that a person's status as a person with a disability or the existence of an impairment "must never be grounds for denying legal capacity or any of the rights provided for in article 12. All practices that in purpose or effect violate article 12 must be abolished in order to ensure that full legal capacity is restored to persons with disabilities on an equal basis with others".<sup>13</sup> The Committee underlined that full legal capacity is premised on the general principles of the CPRD, including respect for the inherent dignity of persons, independence, freedom to make one's own choices and non-discrimination and referred to the lack of derogations from the right of every person to equal recognition as a person before the law under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.<sup>14</sup>
19. The Committee further stated that the human rights model of disability implies a shift from the substitute decision-making paradigm to one that is based on supported decision making and highlighted that "perceived or actual deficits in mental capacity must not be used as justification for denying legal capacity". It stressed that Article 12 does not permit the discriminatory denial of legal capacity on the basis of psychosocial disability or a diagnosis of an impairment but rather requires that support be provided in the exercise of legal capacity (Article 12 (3)).<sup>15</sup>
20. Lastly, Article 12 (4) requires states to set up appropriate and effective safeguards for the exercise of legal capacity. The primary purpose of these safeguards must be to ensure the respect of the person's rights, will and preferences. The CRPD Committee has warned against the interpretation of this rule on the basis of the "best interests" principle which is not compliant with Article 12 in relation to adults and stressed that the "will and preferences" paradigm must be applied to ensure that persons with disabilities enjoy the right to legal capacity on an equal basis with others.<sup>16</sup>
21. The Commissioner draws attention to the Issue Paper on the right to legal capacity published by her Office in 2012<sup>17</sup> which includes recommendations to member states, including to review their existing legislation on legal capacity with particular reference to Article 12 CRPD.

#### *Access to justice*

22. Article 13 (1) CRPD explicitly requires states to "ensure effective access to justice for persons with disabilities on an equal basis with others". International bodies have stressed that under this article, states are required to provide persons with disabilities with procedural accommodations such as easy

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<sup>13</sup> CRPD Committee, [General Comment No. 1 \(2014\)](#) – Article 12: Equal recognition before the law, 19 May 2014, CRPD/C/GC/1, § 9.

<sup>14</sup> *Idem*, §§ 4, 5.

<sup>15</sup> *Idem*, § 3 and §§ 14, 15.

<sup>16</sup> *Idem*, §§ 20, 21.

<sup>17</sup> Council of Europe Commissioner for Human Rights, "Who gets to decide? - Right to legal capacity for persons with intellectual and psychosocial disabilities", [Issue Paper](#), 20 February 2012, CommDH/IssuePaper(2012)2.

to read version documents or sign language interpretation.<sup>18</sup> Unlike reasonable accommodation, procedural accommodation is not subject to a proportionality test and must be provided when required by a person with disabilities. Procedural accommodations cannot be subject to any disability assessment such as a disability certification and must always be available and provided free of charge. Lack of procedural accommodations may lead to effective exclusion from proceedings.<sup>19</sup>

23. Guarantees of non-repetition of the offence (ill-treatment, torture) necessarily call for states to take measures to combat impunity for violations. This should include capacity building on the human rights of persons with disabilities<sup>20</sup> for those who work in the administration of justice, including health professionals.

*Intersection between the right to legal capacity and access to justice*

24. Deprivation of legal capacity leads to exclusion from judicial processes and has pervasive effects on the right of persons with disabilities to a fair trial. This includes situations when persons with intellectual and psychosocial impairments are deprived of their right to be heard in person.<sup>21</sup>
25. The CRPD Committee has recognised support for decision-making, as provided for under Article 12 (3) CRPD, as a means for exercising the right to access to justice. At the same time, under Article 13(2), in order to ensure effective access to justice for persons with disabilities, states are required to promote appropriate training of professionals working in the field of administration justice.<sup>22</sup>

#### IV. Conclusions

26. The Commissioner notes with interest the renewed efforts of the authorities to address the problems at the heart of the judgments in the current groups of cases. However, additional efforts are required on key issues of relevance. In this context, the Commissioner regrets that these long-standing problems have, to a large extent, still not been solved, despite repeated recommendations including by her Office, for more than a decade. She wishes to highlight the importance of the following measures for the full and effective execution by the authorities of the present judgment:

- Closely monitor the implementation of Law No. 140/2022 in particular with a view to the re-assessment of the situation of those previously placed under guardianship, with the aim of lifting guardianship and replacing it, where needed, with supported decision-making.
- Take urgent measures to ensure that persons in a situation comparable to that of Valentin Câmpeanu can benefit from independent and effective support under the new legislation.
- Identify all persons living in institutions who have been deprived of their legal capacity and ensure that adequate resources are allocated to the examination of their cases; it is particularly urgent to do so in view of the vulnerability of these persons, many of whom are under guardianships where there is a risk of conflict of interest around the guardianship agreement.
- Take all necessary measures to ensure the timely and effective application of the above-mentioned Law, notably through the provision of adequate financial resources and capacity-

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<sup>18</sup> [Report](#) of the Office of the United Nations High Commissioner for Human Rights (OHCHR), “Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities”, 27 December 2017, A/HRC/37/25, § 24; CRPD Committee General Comment No. 1 (2014), § 39.

<sup>19</sup> Report of the OHCHR, A/HRC/37/25, §§ 25, 26; [Report](#) of the Office of the United Nations High Commissioner for Human Rights, “Equality and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities”, 9 December 2016, A/HRC/34/26, § 35.

<sup>20</sup> United Nations Committee against Torture, [General Comment No. 3 \(2012\)](#), on the implementation of article 14 by States parties, 13 December 2012, CAT/C/GC/3, § 18.

<sup>21</sup> OHCHR, A/HRC/37/25, § 34.

<sup>22</sup> CRPD Committee General Comment No. 1 (2014), §§ 38, 39; OHCHR, A/HRC/37/25, §§ 37, 38.

building, including through mandatory training among professionals involved in the administration of justice.

- Initiate, with the participation of all relevant stakeholders including persons with disabilities and their representative organisations, consultations for further legislative amendments with a view to fully replacing, in law, guardianship measures with supported decision-making.
- Initiate legislative procedures to amend the Mental Health Act and other relevant legislation in order to ensure that involuntary placements of persons with disabilities, including any involuntary transfers of persons between institutions are subject to judicial review.
- Ensure ample resources allowing for close monitoring of institutions with a view to preventing ill-treatment and other violations of the rights of persons in institutions. Establish clear and accessible complaints mechanisms and improve the capacity of officials throughout the country in the justice system to handle cases involving rights of people with disabilities. Ensure that cases of abuse and death are consistently reported and that those responsible are held accountable. Continue to enable and support NGOs' access to residential social care institutions and psychiatric establishments.
- Identify, including in co-operation with professional bodies, notably the National Union of Bar Associations, solutions to ensure that persons in institutions have access to adequate legal counselling.
- Provide procedural accommodations to persons with disabilities to ensure their access to legal proceedings on an equal basis with others.