

Ref: CommHR/DM/sf 017-2021

Ms Anca Dana DRAGU

President of the Senate of Romania

Mr Constantin-Bogdan MATEI

Chairperson of the Committee for Human Rights,
Equal Opportunities, Religious Affairs and Minorities

Strasbourg, 9 April 2021

Dear President, dear Chairperson,

As Council of Europe Commissioner for Human Rights, my mandate is to foster the effective observance of human rights in all 47 member states of the Council of Europe. To this end, an important part of my work is to engage in dialogue with the governments and parliaments of member states, and to assist them in the better implementation of human rights. I pay special care in this respect to the protection of the rights of persons with disabilities, particularly through the effective implementation of the United Nations Convention on the Rights of Persons with Disabilities (CRPD). This was also one of the topics addressed during my visit to Romania in November 2018 and in the [report](#) that I published following the visit.

It is in this context that I am writing to you regarding the upcoming appointment of the new president of the Council for the Monitoring of the Implementation of the CRPD (Monitoring Council). I would like to take this opportunity to draw your attention to some key principles that in my view should be observed in this process with a view to ensuring compliance with international standards and with Law no. 8/2016 on the establishing of the mechanisms provided for by the CRPD.

As a central condition, Article 33 paragraph 2 CRPD requires that the mechanisms set up to promote and monitor the implementation of the CRPD should be independent. It therefore provides for the obligation of states to take into account, in the designation of such mechanisms, the principles relating to the status and functioning of national institutions for protection and promotion of human rights, otherwise known as the "[Paris Principles](#)" (United Nations General Assembly Resolution 48/134 of 20 December 1993). The [Recommendation CM/Rec\(2021\)1](#) of the Committee of Ministers to Council of Europe member states further emphasises the vital importance that any human rights institution be established and function in full compliance with the minimum standards set out in the Paris Principles.

The Paris Principles contain a set of internationally recognised standards regarding the credibility, independence and effectiveness of national human rights institutions (see my [Human Rights Comment](#) published on this topic in December 2018). They demand notably that such institutions should be independent both in law and in fact and should have effective co-operation with various stakeholders, including NGOs working in the field of human rights. This crucial condition is also incorporated in Article 33 paragraph 3 CRPD, which requires that civil society, in particular persons with disabilities and their representative organisations, be involved and participate fully in the monitoring process.

In my aforementioned country visit report, I identified a number of systemic barriers to the effective protection of the rights of persons with disabilities in Romania. The deficiencies in the functioning of national human rights structures, which led to important gaps in the monitoring of the implementation of the national legislation for the protection of the rights of persons with disabilities and the CRPD, posed a distinct challenge. In particular, I found that the activity and procedures of the Monitoring Council lacked transparency, including in respect of its collaboration with civil society. In that regard, I was especially worried about the shrinking, in the past years, of the space afforded to NGOs in monitoring the situation of persons with disabilities living in institutions. Although the Monitoring Council is specifically mandated by Law no. 8/2016 to facilitate NGOs' access to residential institutions for

persons with disabilities and to psychiatric hospitals and wards, I am concerned that in practice this provision is often still not respected.

As you know, persons with disabilities living in institutions are particularly exposed to grave violations of their human rights. A series of reports, including by my predecessors and other international and national institutions, as well as by NGOs, have showed the extreme vulnerability of these persons, who most often lack any recourse to remedies when they become victims of such violations. In this connection, the pivotal role of NGOs' access to institutions was recognised by the European Court of Human Rights, including in its landmark judgment of 17 July 2014 in the case of *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*. The Court found that had it not been for NGO involvement, the case of Mr Câmpeanu would have never been brought to the attention of the authorities, whether national or international. Moreover, without the representation provided by the applicant NGO before national authorities and the Court, there was a risk that the state might not have been held accountable.

As a further condition, the Paris Principles require that national human rights institutions have an inclusive and transparent appointment process for their leadership. It is my understanding that Law no. 8/2016 reflects this requirement, by stipulating that candidates for the position of president of the Monitoring Council are proposed by NGOs and that the president is appointed by the Senate, taking into account the opinion of its Human Rights Committee. Crucially, the law requires that candidates should have expertise in the field of human rights, especially in the area of the rights of persons with disabilities.

These conditions are, by their design and effects, inseparable and interdependent. This is also expressed in the General Observations (G.O.) on interpretative issues regarding the Paris Principles adopted in 2018 by the Subcommittee on Accreditation of the Global Alliance of National Human Rights Institutions (GANHRI), a partner institution of the United Nations. The Subcommittee underlined in its G.O. 1.8, as an essential requirement of the Paris Principles, that a process which promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of a national human rights institution.

It is my firm conviction that the success of the Monitoring Council, including the effective monitoring by this body of the situation of persons with disabilities living in residential care settings, is closely dependent on compliance with these principles. In particular, the leadership of the Monitoring Council should enjoy the support and trust of NGOs, with which this institution is meant to work closely.

I trust that you will do everything in your power to use this important moment to ensure that the above-mentioned principles are upheld. A scrupulous adherence thereto is indispensable, in my view, for the protection of the rights of persons with disabilities in accordance with Romania's international undertakings. I would be grateful if you could also ensure that all members of the Committee for Human Rights, Equal Opportunities, Religious Affairs and Minorities, as well as the entire Senate, receive a copy of this letter.

Your sincerely,

A handwritten signature in black ink, appearing to read 'Dunja Mijatović', with a stylized flourish at the end.

Dunja Mijatović