

**RIGHTS OF PERSONS
WITH DISABILITIES
IN ROMANIA. RECENT
DEVELOPMENTS**

ROMANIAN INSTITUTE FOR HUMAN RIGHTS

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Abbreviations

ANDCA – Autoritatea Națională pentru Protecția Drepturilor Copilului și Adopție	National Authority for Child Protection and Adoption
ASCHFR (Asociația de Sprijin a Copiilor Handicapați din România)	Association for the Assistance of Children with Handicaps in Romania
ASSOC (Asociația Profesională Neguvernamentală de Asistență Socială)	Professional Non-Governmental Association for Social Assistance
CDPD (Convenția privind Drepturile Persoanelor cu Dizabilități)	Convention on the Rights of Persons with Disabilities
CEDCD (Centrul European pentru drepturile copiilor cu dizabilități)	European Center for the Rights of Children with Disabilities
CEDO (Curtea Europeană a Drepturilor Omului)	European Court of Human Rights
CEJ (Curtea Europeană de Justiție)	European Court of Justice
CNCD (Consiliul Național pentru Combaterea Discriminării)	National Council for Combating Discrimination
CRJ (Centrul de Resurse Juridice)	Juridical Resources Center
DGASPC (Direcția Generală de Asistență Socială și Protecția Copilului)	General Directorate for Social Assistance and Child Protection
DPC (Direcția Protecția Copilului)	Child Protection Directorate
DPPD (Direcția Protecția Persoanelor cu Dizabilități)	Directorate for the Protection of Persons with Disabilities
FONPC (Federația Organizațiilor Neguvernamentale pentru Copil)	Federation of Non-Governmental Organizations for the Child
FRA (Agenția pentru Drepturi Fundamentale a Uniunii Europene)	European Union Agency for Fundamental Rights

HG (Hotărâre de Guvern)	Government Decision
HIV (virusul imunodeficienței umane)	Human Immunodeficiency Virus
IPP (Institutul de Politici Publice)	Public Policies Institute
IRDO (Institutul Român pentru Drepturile Omului)	Romanian Institute for Human Rights
ISPO (Societatea Internațională de Protezare și Ortezare)	International Society for Prosthetics and Orthotics
ITF (Federația Internațională de Tenis)	International Tennis Federation
MAI (Ministerul Afacerilor Interne)	Ministry of Internal Affairs
MMFPSPV (Ministerul Muncii, Familiei, Protecției Sociale și Persoanelor Vârstnice)	Ministry of Labour, Family, Social Protection and Protection of Old Persons
OG (Ordonanță de Guvern)	Government Ordinance
OMS (Organizația Mondială a Sănătății)	World Health Organization
ONG (organizație neguvernamentală)	non-governmental organization
ONPHR (Federația Organizației Naționale a Persoanelor cu Handicap din România)	Federation of the National Organization of Persons with Handicaps in Romania
ONU (Organizația Națiunilor Unite)	United Nations Organization
OUG (Ordonanța de Urgență a Guvernului)	Government Urgency Ordinance
POSDRU (Programul Operațional Sectorial Dezvoltarea Resurselor Umane)	Sectoral Operational Program Human Resources Development
SSPH (Secretariatul de Stat pentru Persoanele cu Handicap)	State Secretariat for Persons with Handicaps
UE (Uniunea Europeană)	European Union
UNESCO (Organizația Națiunilor Unite pentru Educație, Știință și Cultură)	United Nations Educational, Scientific and Cultural Organization

FORWARD

Present analysis is the outcome of the research work made in the framework of a Project started by the Romanian Institute for Human Rights in 2011. The Project is extending over several years and is going to be finalized in 2017.

As I pointed out on a previous occasion, promotion and protection of the dignity of persons with disabilities should be achieved on the basis of a holistic approach to social development, human rights and non-discrimination. Clearly, dignity and equality of opportunities are inalienable rights of the modern human being, who is entitled to enjoy all the rights and freedoms that are acknowledged and legislated without any distinction, since they are universal, indivisible and interdependent.

The United Nations Organization adopted special measures meant to protect and assist categories of vulnerable persons, based on the fact that it is with the detriment persons that most violations of human rights occur, while the victims are totally or partially unable to stand for their rights. These categories of persons also include persons with disabilities, with special needs. The Declaration on the Rights of Disabled Persons¹ was adopted by the UN General Assembly under its Resolution 3447 (XXX) of 9 December 1975, and on 13 December 2006 the General Assembly adopted the Convention on the Rights of Persons with Disabilities (CRPD). Regulations in the field are also to be found in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the

¹ See Irina Moroianu Zlătescu, Florin Sălăjeanu, *Egalitatea de șanse pentru persoanele cu handicap*, IRDO și ANPH, București, 2004, p. 3.

International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the UNESCO Convention against Discrimination in Education, etc.

At European level, it is worth mentioning the regulations adopted by the Council of Europe: Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015 and Recommendation (2011) 14 on participation of persons with disabilities in the political and public life. At the same time, special provisions are also to be found in regulations devoted to general issues: the European Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, the European Social Charter, the European Social Charter Revised, etc.

The protection of persons with disabilities is a topical issue for the European Union as well. It is worth mentioning the provisions in the Charter of Fundamental Rights of the European Union², the Community Charter of Fundamental Social Rights for Workers, Regulation (EC) No 1107/2006 of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, Regulation (EC) No 1371/2007 of 23 October 2007 on rail passengers' rights and obligations, Regulation (EU) No 1177/2010 of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004, and the European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe. High appreciation is also attached to the annual Forum on the implementation of the CDPD in the European Union, organized by the European Commission, where the most topical issues related to the implementation of the universal

² See Irina Moroianu Zlătescu, *Știința drepturilor omului și codificarea lor*, in "Știință și Codificare în România". Universul Juridic, București, 2012, p. 581.

and the regional instruments regarding persons with disabilities are debated upon while disabled persons actively participate in the Forum side by side with representatives of governments and representatives of the independent monitoring mechanisms.

At national level, the rights of persons with disabilities, beside the provisions in the Constitution of Romania³, are also regulated in Government Decision No. 1175 of 29 September 2005 on approving the national Strategy for the protection, the integration and the social inclusion of persons with handicaps for the time period 2006-2013, Law No. 448 of 6 December 2006 on the protection and the promotion of the rights of persons with disabilities, Government Decision No. 268 of 14 March 2007 on approving the Methodologic norms for the implementation of the provisions of Law No. 448/2006 on the protection and the promotion of the rights of persons with disabilities, Government Decision No. 787 of 17 July 2007 on establishing measures for ensuring the application of Regulation (EC) no. 1.107/2006 of the European Parliament and Council of 5 July 2006 regarding the rights of disabled persons and persons with reduced mobility who travel by air, Government Decision No. 430 of 16 April 2008 on approval of the Methodology regarding the organization and functioning of the evaluation commission for disabled adults, Government Decision No. 23 of 6 January 2010 on approval of cost standards for social services, Law No. 292 of 20 December 2011 on social assistance and Government Decision No. 344 of 7 May 2014 on the organization and functioning of the Ministry of Labour, Family, Social Protection and Elderly.

The juridical doctrine approaches the issue of disability from the point of view of an imperfect social model, characterized by inequities and abuses against persons with special needs. International regulations distinguish between disabilities and handicaps depending on the model referred to – the medical model or the social one – or the

³ See Irina Moroianu Zlătescu, *Constitutional Law in Romania*, Kluwer, London, 2013 .

fields of juridical regulation, the anti-discrimination legislation, the social assistance legislation, etc.

In terms of terminology, the term ‘handicap’ originally involved a social disadvantage. However, in time, the medical environment took over the term, thereby defining deficiency, invalidity, infirmity, difficulty, inability, disability, special need, malady, etc. From our standpoint, the medical interpretation of the term ‘handicap’ does not imply human rights as well.

The United Nations Declaration on the Rights of Disabled Persons (1975) lays down that “disabled person” may be “any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities.” On the other hand, the United Nations Convention on the Rights of Persons with Disabilities (2006) acknowledges that disability is an evolving concept and that it results from the interaction between persons with disabilities and the barriers of attitude and environment that prevent their full and actual participation as equal members of society.

In its turn, the Council of Europe promotes a policy of equal opportunities, to the effect that all individuals should be given the opportunity to their social, economic, cultural and political rights in their social dimension.

So, once the paradigm changed from the medical approach to disability to the social one and once the Convention on the Rights of Persons with Disabilities was adopted, the disability issue became a human rights issue.

The Romanian Institute for Human Rights (RIHR), the first national human rights institution created in Romania in the post-1989 era, is the only national institution in our country to have been acknowledged its status as a national human rights institution by the International Coordinating Committee of National Human Rights Institutions in the United Nations system⁴. RIHR complies with the

⁴ The Romanian Institute for Human Rights belongs with the European Network of National Human Rights Institutions.

Principles of Paris established in 1991 by the Conference devoted to national human rights institutions, principles that became an official document of the United Nations General Assembly in 1993, which refer to: an “as broad a mandate as possible”, which shall be based on universal standards of human rights and include the double responsibility of both promoting and protecting human rights, while also covering all the rights; independence from the Government; independence guaranteed by the Constitution or other legislation; adequate power of investigation; pluralism, also in terms of the structure of the personnel and/or actual cooperation and adequate financial resources⁵.

As a matter of fact, the Institute also complies with the requirements of the Council of Europe laid down in the Committee of Ministers Recommendation on the establishment of independent national independent institutions for the promotion of human rights.

RIHR, in its capacity as independent mechanism promoting, protecting and monitoring the implementation of the United Nations Convention on the Rights of Persons with Disabilities, in compliance with art. 33 paragraph 2 in the document, is going to offer a first picture of the way the rights of persons with disabilities are observed in Romania. Thus, an objective analysis of the way the provisions of the UN Convention are reflected in the Romanian legislation has been made; based on our own investigations and also on the investigations made by several NGOs and on data made available by a number of institutions, the analysis also refers to the way these provisions are observed.

The dimensions of the Convention as well as the wide range of issues it deals with make its monitoring and its implementation be more challenging than with most other conventions.

Acceptance of discrimination based on handicaps related criteria is deeply rooted in many societies. It is to a large extent the result of ignorance, not malevolence. Application of the Convention

⁵ See Irina Moroianu Zlătescu, *20 de ani de la adoptarea Principiilor de la Paris*, in quarterly „Drepturile Omului”, no. 3/2013, p. 92.

involves, beside financial resources and commitment, creativity and collaboration – key aspects explored in the report which need immediate attention.

At present, the Government has been preparing a new national strategy and a new plan of action. It is quite difficult a task since a national strategy in the field of disabilities has to establish a consolidated and detailed, long-term, vision, including priorities and measurable results in an attempt to improve the lives of persons with disabilities. Such a strategy should result from the involvement of persons with disabilities and the organizations representing them and also from consultations with the relevant ministries in the Government (Ministry of Labor, Family, Social Protection and Elderly, the Ministry of Health, the Ministry of National Education, the Ministry of Development, etc.).

We believe it is also necessary that methodologies for collecting data regarding persons with disabilities should be elaborated and consistently applied. This requires that the data should be standardized such as to be able to provide both monitoring of the progress of policies in the field of disabilities and putting the Convention to practice at national scale.

Clearly, there is need for increased awareness and understanding of disabilities. An inclusive society is *based* on respect and understanding. This is the reason why it is important to improve the level of the public's understanding of disability. The Government, the non-governmental organizations, while also involving the press, should consider the organization of campaigns whose main objective ought to be a change of attitudes.

Let not be forgotten how important accessibility is. All policies, programmes, standards and services should be developed while taking into account the common needs of persons with disabilities (related to health and welfare, economic and social security, development of skills and living within the community) so that the barriers preventing their participation could be removed. Thus, the application of two

fundamental concepts is ensured: “*universal design*” and “*reasonable adaptation*”.

One objective that has to be pursued is the one related to an independent life. To attain it, there is need for several assistance and support services, multidisciplinary services, integrated and accessible, well legislated, which would provide persons with disabilities with an independent life, the possibility to participate in the economic, social and cultural life of their communities. All this is not possible without deep scientific research in the field. Research is essential when it comes to increase the public’s understanding of the issues related to disability. However, it involves investments in human capacity – training of a group of scientific researchers specialized in the field of disability. Research studies should focus on: the quality of life and the welfare of persons with disabilities; programmes and standards of accessibility, universal design and reasonable adaptation, the costs of disability, etc. They should also establish the methods and means by which persons with disabilities can file complaints related to the observance of their human rights.

It should be mentioned that the viewpoints in the report are the result of a collaboration between the RIHR’s researchers and researchers, teachers and professors in the pre-university and university systems, candidates for a PhD degree or a Master’s degree, as well as representatives of institutions and NGOs who made their *pro bono* contribution to the accomplishment of this research.

Prof. Irina Moroianu Zlătescu, PhD

Historical context

The status of persons with disabilities has been a permanent concern of our society after 1989. The bases of the system for the protection of persons with handicaps were laid in 1990, once the State Secretariat for the Handicapped (SSH)⁶ was established as an institution attached to the Minister responsible for the quality of life and social protection.

The Constitution of Romania of 1991 devotes to persons with disabilities an entire chapter. According to art. 46, they “shall enjoy special protection. The State shall ensure the promotion of a national policy of preventive care, treatment, readjustment, education, instruction and social integration of the disabled, while observing the rights and duties of their parents or legal tutors”⁷.

In 1992, Parliament of Romania passed two laws, very important in our opinion, as they were the legal framework needed for the construction of the system of special protection of disabled persons in Romania, namely: Law No. 53/1992 on the special protection of disabled persons and Law No. 57/1992 on the employment of disabled persons. Thus, the process by which the rights of persons with disabilities were legislated had begun, including the right to social services, to fiscal advantages, as well as to more favourable general conditions. Also, the definition given to persons with disabilities was introduced the concept of special protection measures. The latter are

⁶ HG No. 1.100/1990 on the establishment of the State Secretariat for the Handicapped, published in Official Gazette of Romania, I, No. 295/1990 and HG No. 1.161/1990 on the powers, organization and functioning of the State Secretariat for the Handicapped, published in the Official Gazette of Romania, I, No. 119/1990. The name was changed to SSPH under HG No. 939/1997.

⁷ See Irina Moroianu Zlătescu, *Constitutional Law...* op. cit, p. 20.

applied depending on which of several disability categories a person belongs as a result of an evaluation made by commissions of medical expertise.

In 1998, the name of the State Secretariat for the Handicapped was changed to the State Secretariat for Persons with Handicaps, a specialized body of the central public administration, subordinated to the Government, which coordinates, guides and controls the protection of persons with disabilities as well as their social integration⁸.

The entry into force of OUG No. 102/1999 on the special protection and employment of persons with disabilities, on 30 June 1999, was another stage in the development of the system of measures for the special protection of persons with disabilities.

At institutional level, in January 2001, the State Secretariat for Persons with Handicaps was removed from its position of subordination to the Government and put in a position of subordination to the Ministry of Health and Family, while keeping its role as a specialized body of the central public administration that coordinates, guides and controls the protection of persons with disabilities as well as their social integration⁹.

The following year saw important elements for the construction of the system of special protection of persons with disabilities in Romania. Thus, the National Strategy for the special protection and social integration of persons with handicaps came into force¹⁰. One of the pros for the elaboration of the Strategy in 2002 was the necessity to achieve a “holistic view, interdisciplinary and inter-sectoral, capable to harmonize the ministerial strategies, to combine them and express the Romanian Government’s will to align its policy with the international

⁸ HG No. 939/1997 on the re-organization and functioning of the State Secretariat for the Handicapped, published in the Official Gazette of Romania, I, No. 16 of 10 January 1998.

⁹ HG No. 22/2001 on the organization and functioning of the Ministry of Health and Family, published in the Official Gazette of Romania, I, of 16 January 2001.

¹⁰ HG No. 1215/2002 on approval of the National Strategy for the special protection and social integration of persons with handicaps in Romania, published in the Official Gazette of Romania, I, No. 853 of 26 November 2003.

standards” in this field. Thus, the adoption of a National Strategy based on international documents was considered the primary objective for our country. The documents taken into account include the European Social Charter Revised (art. 15 – second part); Council of Europe Recommendation No. R (92) on a Coherent Policy for the Rehabilitation of People with Disabilities (1992); Resolution (97/C12/01) by the Council of Europe and the Representatives of the Member States Governments on equality of opportunity for people with disabilities; the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993).

On 1 April 2003, as a result of the re-organization of the State Secretariat for Persons with Handicaps, the National Authority for Disabled Persons was established as an institution subordinated to the Government, under the direct coordination of the Minister coordinating the Government’s Secretariat General, having the role to coordinate, at central level, the activities of special protection and promotion of the rights of persons with disabilities¹¹.

A new modification of the institutional framework took place in the summer of the same year, 2003, when the National Authority for Disabled Persons was organized and started to function in the subordination of the Ministry of Labour, Social Solidarity and Family¹².

Revision of the Constitution of Romania in 2003 entailed modification of certain texts and also re-numbering of certain articles. Thus, art. 50 in the revised Constitution, largely took over the text of art. 46 in the Constitution of 1991: “Disabled persons shall enjoy special protection. The State shall provide the accomplishment of a national policy of equal opportunities, disability prevention and

¹¹ OG No. 14/2003 on the establishment, organization and functioning of the National Authority for Persons with Disabilities, published in the Official Gazette of Romania, I, No. 63 of 1 February 2003.

¹² OUG No. 64/2003 on special measures regarding the establishment, organization, re-organization or functioning of several structures in the Government’s working apparatus, ministries, other special bodies of the central public administration and certain public institutions, published in the Official Gazette of Romania, I, No. 464 of 29 June 2003.

treatment, so that disabled persons can effectively participate in community life, while observing the rights and duties of their parents or legal guardians.”¹³

Social assistance measures in the field of the protection of children, families, lonely persons, old persons, persons with disabilities, as well as any other persons in need are achieved, at county level, and at the local level of the sectors of Bucharest by the general directorates of social assistance and child protection.¹⁴

An substantially important stage in the evolution of the system protecting persons with disabilities, with the purpose of continually improve the quality of life, was marked by two normative acts: the National Strategy for the protection, integration and social inclusion of persons with handicaps in the period 2006-2013 – Equal opportunities for persons with disabilities – towards a society without discrimination”¹⁵ and Law No. 448/2006 on the protection and the promotion of the rights of persons with disabilities¹⁶.

Law No. 448/2006 is one of the most comprehensive normative acts, with substantially improved implications in terms of the life quality of persons with disabilities. Law No. 448/2006 is based on the fundamental concept of the National Strategy: “persons with handicaps – citizens with full rights”. This is the reason why the normative act includes and consecrates the concept of “access for

¹³ See I. Muraru, Gh. Iancu, *Constituțiile Române*, 3rd edition, Regia Autonomă Monitorul Oficial, București, 1995; Irina Moroianu Zlătescu, *Constitutional Law...* op. cit.

¹⁴ HG No. 1434 on the powers and the Framework Regulations for the organization and the functioning of the general directorates of social assistance and child protection, published in the Official Gazette of Romania, I, No. 869 of 23 September 2004.

¹⁵ HG No. 1175/2005 on the approval of the National Strategy for the protection, integration and social inclusion of persons with handicaps in the period 2006-2013 – “Equal opportunities for persons with disabilities – towards a society without discrimination”, published in the Official Gazette of Romania, I, No. 919 of 14 October 2005.

¹⁶ Law No. 448/2006 on the protection and the promotion of the rights of persons with disabilities, published in the Official Gazette of Romania, I, No. 1006 of 18 December 2006.

everyone”, establishes obligations and time limits for the central and the local authorities, public and private.

At the same time, the normative act pays particular attention to terminological clarifications, introducing new terms¹⁷, such as:

accessibility – the entire set of measures and actions to adapt the physical environment as well as the informational and communicative environment, in accordance with the needs of persons with disabilities, an essential element with the exercise of the rights and the fulfilment of the duties of persons with disabilities in society;

reasonable adaptation at workplace – the entire set of modifications made by the employer to facilitate a disabled person the exercise of his/her right to work; it involves modification of the working hours, acquisition of equipment, assisting devices and technologies and other similar measures;

living assistance – includes service animals, such as, for instance, assistance dogs;

assisted employment – an employment option facilitating work in common workplaces on the competitive labour market, which involves assistance for finding a job and assistance at the workplace, transportation, aiding technologies, training, specialization;

supplemental personal budget – establishes the limits of monthly personal expenses in terms of the degree of disability, for such payments as the radio/TV monthly price plans, the telephone monthly price plans with credits, and the electric power monthly payment;

routes and means of access – elements ensuring the access of persons with disabilities in public buildings and the possibility that they could go from one place to another inside the buildings;

equalization of opportunities – a process by which the various social and environmental structures, the infrastructure, the services, the informative or documenting activities are made available to persons with disabilities;

¹⁷ Law No. 448/2006 on the protection and the promotion of the rights of persons with disabilities, republished, with its subsequent modifications and additions, art. 5.

social inclusion – a set of measures and multidimensional action in the fields of social protection, employment, housing, education, health, information and communication, mobility, security, justice, and culture, meant to combat social exclusion.

Law No. 448/2006 provides for the public authorities' obligation to take special measures, in all major aspects of life, to ensure social inclusion of persons with disabilities. The principles laid down in Law No. 448/2006 are compliant with Recommendation Rec(2006)5 of the Committee of Ministers to member states on the Council of Europe – Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015, adopted by the Committee of Minister on 5 April 2006:

- a) observance of human rights and fundamental freedoms;
- b) preventing and fighting discrimination;
- c) equal opportunities;
- d) equal treatment in employment and occupation;
- e) social solidarity;
- f) raising the community's awareness;
- g) subsidiarity;
- h) society's adaptation to persons with disabilities;
- i) the disabled person's interest;
- j) integrated approach;
- k) partnership;
- l) freedom of choice and control of or decision about one's own life, about the services and the forms of assistance they should benefit from;
- m) an approach to services that is focused on the person;
- n) protection against being neglected and abused;
- o) selection of the less restrictive alternative when establishing the necessary support and assistance;
- p) social integration and social inclusion of persons with disabilities, with equal rights and duties with all other members of society.

The Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015¹⁸ was launched in Romania in the framework of the Regional Conference on Disability – Involved, not assisted!, organized by ANPH on 14-16 May 2006, in Constanța as one of the events devoted to Romania's holding the Presidency of the Council of Europe Committee of Ministers.

In the year 2010, the National Authority for Disabled Persons was dissolved and its powers were taken over by the Ministry of Labour, Family and Social Protection.¹⁹ The same normative act dissolved the National Institute for Preventing and Combating the Social Exclusion of Persons with Handicaps²⁰, subordinated to the Authority ever since the establishment of the State Secretariat for Persons with Handicaps, which had been responsible for analyses and comparative studies, as well as researches dealing with concepts, themes and practices in the field of disability, without such specific powers being transferred to another institution. So, from this moment on, coordination at central level of the activities devoted to the special protection and the promotion of the rights of persons with disabilities, as well as the elaboration of policies, strategies and standards for the promotion of the rights of persons with disabilities became the responsibility

¹⁸ Recommendation Rec(2006)5 of the Committee of Ministers to member states on the Council of Europe, adopted by the Committee of Minister on 5 April 2006.

¹⁹ OUG No. 68 of 30 June 2010 on measures for the re-organization of the MMFPS and of the activities of the institutions subordinated to, coordinated by or under the authority of the MMFPS, published in the Official Gazette of Romania, I, No. 446/2010.

²⁰ First established as and institution subordinated to the Ministry of Education, called the Methodological Center for the Recovery of Children and Youngsters with Disabilities, under HG No. 586/1990, it had its name changed to National Institute for the Recovery and Special Education of Persons with Disabilities, then to national Institute of Studies and Strategies for Issues related to Persons with Disabilities, re-organized in 2003, under OG No. 14/2003 on the establishment, organization and functioning of the ANPH, published in the Official Gazette of Romania, I, No. 63/2003.

of the Ministry of Labour, Family and Social Protection through its Directorate General for the Protection of Persons with Handicaps.

On 11 November 2010, Romania ratified the United Nations Convention on the Rights of Persons with Disabilities²¹. In January 2012, the Social Assistance Act came into force. It is a law that regulates the general framework for the organization, the functioning and the financing of the national system of social assistance in Romania²².

The recent changes in the political picture were also reflected at the level of the institutional framework. So, the *Directorate General for the Protection of Persons with Handicaps* became, in June 2012, the *Directorate for the Protection of Persons with Handicaps*, while in August 2013 it is expected to change its name again to the *General Directorate for the Protection of Persons with Disabilities*, while keeping its role of coordinating at central level the activities devoted to the special protection and promotion of the rights of persons with disabilities.²³

Status of persons with disabilities in Romania.²⁴ The main national source of statistic information related to persons with disabilities in general, particularly to children with disabilities,

²¹ Law No. 221/2010 on ratification of the *Convention on the Rights of Persons with Disabilities*, adopted in New York by the United Nations General Assembly on 13 December 2006, opened for signature on 30 March 2007 and signed by Romania on 26 September 2007, published in the Official Gazette of Romania, I, No. 792 of 26 November 2010.

²² Law No. 292/2011 – the Social Assistance Act, published in the Official Gazette of Romania, I, No. 905 of 20 December 2011.

²³ HG No. 304 of 29 May 2013 supplementing HG No. 10/2013 on the organization and functioning of the Ministry of Labour, Family, Social Protection and Elderly, published in the Official Gazette of Romania, I, No. 320 of 3 June 2013.

²⁴ We would like to use this opportunity to express our thanks to all participants for their contributions to the conferences, seminars and roundtables organized or attended by the RIHR and devoted to these issues. We would also like to express our thanks to A.M. Neagoe, M. Mocanu, M. Stanciu, F. Simon, M. Ghighiu, I. Radu, F. Sălăjeanu, S. Ruba, D. Țepeș, G. Pascu, E. Iorga, O. Popescu, M. Jianu ș.a.

is the Ministry of Labour, Family, Social Protection and Elderly.²⁵ On 31 December 2013, there were 709216 registered persons with disabilities in Romania. Of these, 380,742 are women, 648,223 are adults and 60,981 are children. The proportion of persons with disabilities, calculated for Romania's population based on the data published by the National Institute of Statistics, was 3.52% on 31 December 2013, the dynamics after the entry into force of Law No. 448/2006 being progressively increasing.²⁶ One explanation for the increase lies in the point of novelty of the above-mentioned normative act: introduction of a set of facilities for persons classed as belonging to the medium disabilities group, which entailed the emergence of a new group of beneficiaries and, most of all, elimination of provision according to which social services were provided depending on the person's income.

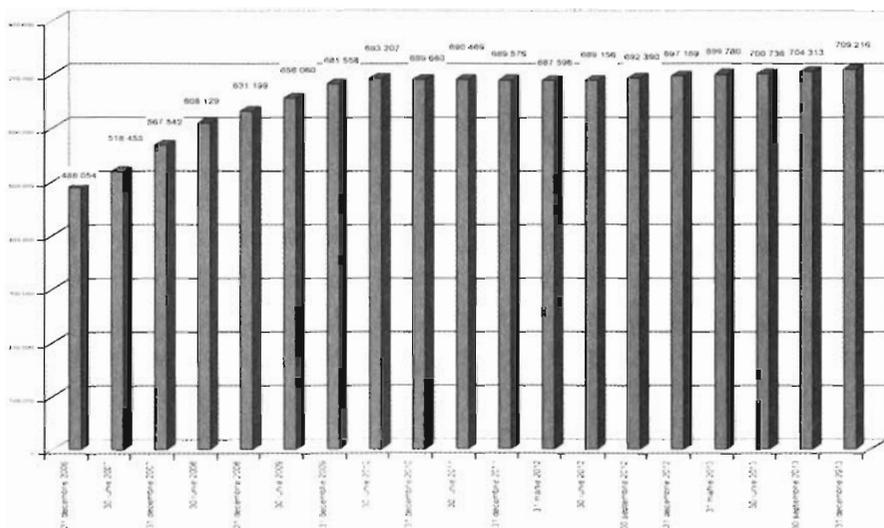


Fig. 1 Evolution of the number of persons with disabilities for December 2006 – December 2013.

²⁵ www.mmuncii.ro.

²⁶ www.mmuncii.ro/buletinstatic.

The great majority of persons with disabilities live with their own families or independently, representing the non-institutionalized persons. Their percentage of 97.6%, as compared to the 2.4% assisted persons in public residential institutions, was almost constant in time (Fig. 2); 49% of the non-institutionalized persons live in the countryside, while women amount to 53.69% of the population of persons with disabilities.

Persoane cu handicap, 2012

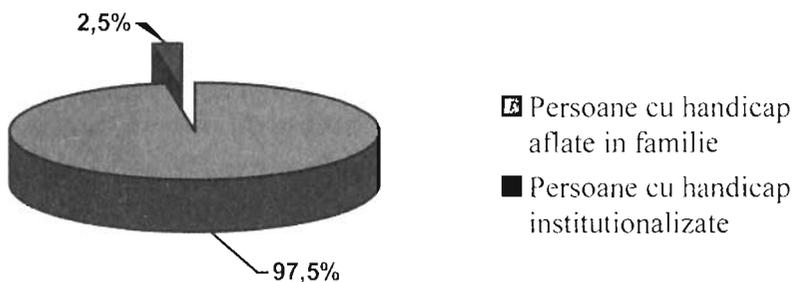


Fig. 2 Status of the institutionalized persons with disabilities

Article 1-4 on general obligations. As was previously shown, the Constitution of Romania states that disabled persons shall enjoy special protection, the State providing the accomplishment of a national policy of equal opportunities, disability prevention and treatment, so that disabled persons can effectively participate in community life, while observing the rights and duties of their parents or legal guardians.²⁷ Law No. 448/2006 regulates for the rights and the duties of persons with disabilities, the rights being granted for the social integration and inclusion of these persons.²⁸ An analysis of the facts shown above clearly reveals that the purpose of the

²⁷ Constitution of Romania, revised, art. 50.

²⁸ Law No. 448/2006 on the protection and the promotion of persons with handicaps, republished, with its subsequent modifications and supplements, art. 1.

Convention is to promote, protect and ensure full and equal exercise of the fundamental human rights and freedoms by all persons with disabilities and promote respect for their intrinsic dignity. This was not entirely taken over by our legislation and we believe that this should be done by the new Constitution, which is being elaborated at present.

As was shown, the legislation in our country made use of the term ‘handicap’. The Explicative Dictionary of the Romanian language gives the following explanations for the word ‘handicap’: “1. (Sports) Score achieved by an inferior competitor. 2. Fig. Difficulty, obstacle affecting somebody’s work. 3. Sensory, motional, mental deficiency or any other infirmity of a person. – From Eng., Fr. handicap”.²⁹ At present, Law No. 448/2006 defines persons with handicaps as “persons whose social environment, unadapted to their physical, sensory, psychic, mental and/or associated deficiencies totally deny or limit their access with equal opportunities to the life of society, and who need special protection measures to assist their social integration and inclusion”.³⁰ In Romania, the term ‘disability’ hasn’t so far been entered in the Explicative Dictionary of the Romanian Language, but was entered, in 2005, in the Orthographic, Orthoepic and Morphological Dictionary of the Romanian Language³¹, and assimilated to the word inventory and the norms of the Romanian language.

The Law on the protection and the promotion of the rights of persons with disabilities has introduced the concept of disability, defined as “general term denoting impairments/deficiencies,

²⁹ Dicționarul explicativ al limbii române, 2nd edition, Editura Univers Enciclopedic, 1996, p. 443.

³⁰ Law No. 448/2006 on the protection and the promotion of persons with handicaps, republished, with its subsequent modifications and supplements. art. 1.

³¹ Dicționarul ortografic, ortoepic și morfologic al limbii române, 2nd edition, revised and supplemented, Editura Univers Enciclopedic, 2005, p. 251.

limitations of activity and restrictions of participation”³², nevertheless without using it throughout the text of the normative act.

On the other hand, the United Nations Convention on the Rights of Persons with Disabilities, ratified by Romania under Law No. 221/2010, lays down that: “persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”³³

Later, the Social Assistance Act defined persons with disabilities as persons who have long-term physical, mental, intellectual or sensory deficiencies which, interacting with various obstacles, may restrict full and actual participation of those persons in the social life, under equal conditions with the others.³⁴

It can be noticed that, from a conceptual point of view, the approach lacks unity. On the other hand, such notions/terms as ‘types and sub-types of deficiencies’, ‘barriers’, ‘full and actual participation’, ‘reasonable adaptation’, ‘universal design’ are not defined in the social laws/policies in Romania. Moreover, at institutional level, in spite of the fact that the legislative framework was modified as far back as December 2006 to the effect that the “special protection” approach was discarded and the normative act regulates for the “rights and duties” of persons with disabilities, the name of the structure that is responsible for the elaboration and the central coordination of the policies and the strategies related to the promotion of the rights of persons with disabilities continues to include the term ‘protection’ (Protection of Persons with Disabilities Directorate). Thus, there is need for harmonization at the level of concepts, starting from the definitions given in the International Classification of Functioning,

³² Law No. 448/2006 on the protection and the promotion of persons with handicaps, republished, with its subsequent modifications and supplements, art. 5, paragraph 16.

³³ Law No. 221/2010 on ratification of the Convention on the Rights of Persons with Disabilities, published in the Official Gazette of Romania, I, No. 792 of 26 November 2010, art. 1.

³⁴ The Social Assistance Act No. 292/2011, art. 6, letter aa.

Disability and Health and taking into account the provisions of the Convention.

The principles laid down in the Convention are partly to be found in the social laws/policies in Romania: respect for people's inalienable dignity, for individual autonomy, including freedom to make one's own choices, and for the independence of persons; respect for diversity and acceptance of persons with disabilities as part of human diversity and humanity; accessibility; respect for disabled children's abilities to progress and respect for disabled children to keep their own identities.

Although the constitutional provisions³⁵ concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights³⁶, with the covenants and other treaties Romania is a party to, the laws and policies in the field do not provide for the obligation to ensure and promote the full exercise of all human rights and fundamental freedoms for all persons with disabilities, without any discrimination based on disabilities.

It should be pointed out that, as far as the State's capacity to take legislative, administrative and other measures for the implementation of the rights acknowledged by the Convention is concerned, the Law on ratification of the Convention stipulates that the central authority for the implementation of the Convention is the Ministry of Labour, Family, Social Protection and Elderly, through its Directorate for the Protection of Persons with Disabilities, although it lacks the necessary administrative and operational capacity.

We believe there is need for a normative act to be adopted which would provide actual operativeness of the coordinating mechanism, in consonance with art. 33 of the Convention. There is also need to have the data collecting and data reporting system regulated as well as the system of consultations between the coordinating mechanism and the points of contact, on the one hand, and the system of consultations, involvement and full participation in the monitoring

³⁵ Constitution of Romania, revised, art. 20.

³⁶ See Irina Moroianu Zlătescu, *Constitutional Law...*op. cit., p. 3 et seq.

process of the civil society, particularly persons with disabilities and the organizations that represent them.

Article 5 on equality and non-discrimination. According to art. 16 in the Constitution of Romania, citizens are equal before the law and public authorities, without any privilege or discrimination. The legislation devoted to the prevention of discrimination defines discrimination as any distinction, exclusion, restriction or preference based on race, nationality, ethnicity, language, religion, social category, convictions, gender, sexual orientation, age, handicap, non-contagious chronic disease, HIV infection, affiliation to a disadvantaged category, as well as any other criterion whose purpose or effect is to restrict or remove the acknowledgment, the use or the exercise of the rights acknowledged by the law, in the political, economic, social and cultural or any other field of public life. According to the same normative act, the principle of equality among citizens and elimination of privileges and discrimination are guaranteed, particularly in the exercise of the right to equal treatment before courts of law or any other jurisdictional body.³⁷

In Romania, the National Council for Combating Discrimination (CNCD) is the guarantor for the respect and the application of the principle of non-discrimination. It is a national independent institution, with specific powers, whose activity is focused to discrimination in the following directions: prevention, mediation in terms of discrimination, monitoring of discrimination cases, professional assistance for victims of discrimination.

According to the Report on the activity of CNCD for the year 2012³⁸, out of the total amount of 548 registered petitions, only 45 (8.25%) were based on handicap criteria, exceeding by 3 the figures of 2011 (9.03%) and by 17 (7.11%) those of 2010. An analysis of the

³⁷ OUG No. 137/2000 on preventing and sanctioning all forms of discrimination, republished, art. 1 paragraph (2).

³⁸ <http://www.cncd.org.ro/files/file/Raport%20de%20activitate%20CNCD%202012.pdf>.

data include in the Report shows that, in 2012, twelve petitions based on the handicap criterion were admitted, meaning that discriminatory actions had been found, while seventeen were rejected for the reason that discriminatory actions had not been found; the rest of the complaints were closed for lack of evidence, lack of data or object, withdrawal of the complaint, late submission, etc. Even though the number of petitions submitted to the CNCD has increased, it is nevertheless relatively small as compared to Romania's population, which reflects that the public in general and persons with disabilities in particular have insufficient information about the existence and the role of this institution.

Here are a few examples of discriminatory actions based on the handicap criterion found by the Steering Committee of the CNCD, all picked from the above-mentioned Report:

The accused delays issuing a document addressed to the complainer

Petitioner L.A.L. complained to the CNCD that the accused (a Mayor's Office), in spite of the fact that it had been notified about the Steering Committee's Decision in relation to the first petition, continues to refuse to issue a Decision signed by the Owners Executive Committee with regard to the approval to build a ramp for persons with disabilities. The Steering Committee, summoned to rule on the refusal to conform to a Decision issued by itself, where a discriminatory action had been found, finds that the petitioner had been created a continuous degrading and humiliating atmosphere, as she had to crawl on her arms on the stairs of her residential block of flats, dirtying her clothes, exposing to the risk of spraining her limbs to climb up or down the staircase connecting the floors. So, the Steering Committee found that the facts claimed by the petitioner were a discriminatory action in a continual form and ordered that the accused be penalized with a civil fine.

Offending allegations against persons with disabilities, presentation in a press release of the medical diagnosis of person with mental disability. Field: right to dignity. The Steering Committee

of the CNCD took a stance on its own initiative in relation to the press release issued by the Ministry of Labour, Family, Social Protection, which included allegations that could be interpreted as offending persons with disabilities; at the same time, the press release also included the medical diagnosis of a person with mental disability: “the definition of handicap has acquired new nuances”... “the new trend is the mental handicap”... “The beneficiaries moved from the category of visual handicap mainly to that of mental handicap (Alzheimer, dementia, retardation), these are files and documents much easier to fabricate”... “throughout the country the numbers of the population are decreasing while the number of persons with handicaps is increasing”. In its Decision, the Steering Committee shows that the incriminated allegations represent a distinction based on disability which entails a limitation of the right to dignity and concluded that the allegations in the press release issued by the Ministry of Labour, Family, Social Protection fall into the category of discrimination in conformity with art. 2 Paragraph 1 corroborated with art. 15 of OG No. 137/2000, republished. The Committee sanctioned the Ministry of Labour, Family, Social Protection with a civil fine amounting to 1000 lei, in conformity with art. 26 of OG No. 137/2000, republished.

Disability, type of disability and age. Right to health, right to education. The petitioner, L.S., believes that her son, a person with a severe handicap, without mental affliction, is discriminated against and demands acknowledgment of the discriminatory actions, and recommendations addressed to the institutions mentioned in the complaint to the effect that they should take all needed legislative, financial and practical measures to ensure reasonable adaptations and respect of all her son’s rights, in conformity with Law No. 221/2010 on ratification of the Convention on the Rights of Persons with Disabilities. Thus, in terms of the seventh head of claim, that is, the refuse to grant the right to balneary treatment through the unitary system of public pensions, the Steering Committee found that the House of Pensions of Bucharest committed discrimination and applied the sanction of warning.

In its Annual Report for the year 2012, the CNCD recommends harmonization of the legislative provisions by the elaboration of a Romanian Code of Non-Discrimination, which should regulate in a unitary, efficient and effective way a number of social relations that are at present managed in a non-unitary way by several normative acts, which leads to juridical confusions and conflicts of competency. Such a code should include the fields regulated by: the legislation specifically devoted to the prevention of various forms of discrimination, the legislation related to equality of opportunities for men and women, and the legislation regulating for the protection and the promotion of the rights of persons with handicaps.

As far as the term ‘reasonable adaptation’ is concerned, it should be pointed out that the legislation in our country deals with the term only from the point of view of employment, the law on the protection and the promotion of the rights of persons with handicaps defining the ‘reasonable adaptation at the workplace’. It is recommendable therefore that the concept of ‘reasonable adaptation’ should be defined not only in the specific legislation but also and all the more so in the sense that failure to provide it is a form of discrimination and imposes the application of sanctions.

Article 6 on women with disabilities. In the Strategy for persons with handicaps 2005-2006, elimination of all the forms of discrimination against persons with handicaps is, in our opinion, an imperative, particular attention being paid to groups subject to multiple discrimination, such as women with handicaps, highly dependent persons, persons with handicaps belonging to minority ethnic groups, and a few more.³⁹ Also, the document regulating for the prevention of all forms of discrimination stipulates that any distinction, exclusion, restriction or preference based on two or several criteria shall be regarded as an aggravating circumstance when the civil accountability

³⁹ HG No. 1175/2005 on approval of the National Strategy for the protection, the integration and the social inclusion of persons with handicaps for the time period 2006-2013, published in the Official Gazette of Romania, I, 919 of 14 October 2005, Preamble, letter c.

is to be established unless one or more of its constitutive elements fall within the sphere of the criminal law.⁴⁰

The law on equality of opportunities for men and women stipulates that the measures for the promotion of equality of opportunities and treatment for men and women and elimination of all forms of discrimination based on gender shall be in the private and the public sector alike, in such fields as labour, education, health, culture and information, politics, participation in the decision making process, supply of and access to assets and services, and also in relation to the establishing, equipping, or extending an enterprise or starting or extending any other form of independent activity, as well as other fields regulated by special laws.⁴¹

Although the fact that women with handicaps are subject to multiple discrimination is acknowledged, the Romanian legislation falls short of measures for women with disabilities to enjoy all human rights and fundamental freedoms and also measures to fully secure women's development, progress and involvement so that they might exercise and enjoy all human rights and fundamental freedoms laid down in the Convention.

It is also a fact that present statistics lack data related to women and girls with disabilities in all fields of activity.

Article 7 on children with disabilities. According to art. 49 in the Constitution of Romania, children and young people shall enjoy special protection and assistance in the pursuit of their rights. The State shall grant allowances for children and benefits for the care of ill or disabled children. The exploitation of minors, their employment in activities that might be harmful to their health, or morals, or might endanger their life and normal development are prohibited.

⁴⁰ OG No. 137/2000 on the prevention and sanctioning of all forms of discrimination, republished in the Official Gazette of Romania, I, No. 99 of 8 February 2007, art. 2, paragraph 6.

⁴¹ Law No. 202/2002 on equality of opportunities for men and women, republished, Official Gazette of Romania, I, No. 326 of 5 June 2013, art. 2, paragraph 1.

Also, the public authorities are bound to contribute to secure the conditions for the free participation of young people in the political, social, economic, cultural and sporting life of the country.

Law No. 272/2004 on the protection and the promotion of the rights of the child regulates for the legal framework related to the respect, the promotion and and the guaranteeing of the rights of the child. Thus, the public authorities, the authorized private bodies, as well as the natural and the legal persons responsible for child protection are bound to respect, promote and guarantee the rights of the child enshrined by the Constitution and other legislation, in consonance with the provisions of the United Nations Convention on the Rights of the Child, ratified under Law No. 18/1990, republished, and of the other international documents in the field where Romania is a party.⁴²

Also, the above-mentioned normative act stipulates that any other provisions adopted for the respect and the promotion of the rights of the child, as well as any legal act issued or, as the case may be, elaborated in this field shall be subject primarily to the principle of the child's best interest.

The law on the respect and the promotion of the rights of the child enshrines the basic principle for achieving, respecting and guaranteeing the rights of the child: listening to the child's opinion and taking it into account, while also taking into account the child's age and level of maturity.⁴³ Thus, for instance, the Methodology for the organization and the development of the national evaluation of 8th grade students⁴⁴ stipulates the obligation of the commissions in educational units to ensure conditions that provide equal opportunities for students with deficiencies, by adapting the procedures in terms of the individual peculiarities and those specific to the respective deficiency. Examples

⁴² Law No. 272/2004 on the protection and the promotion of the rights of the child, published in the Official Gazette of Romania, I, No. 557 of 23 June 2004, art. 1.

⁴³ Ibidem, art. 6.

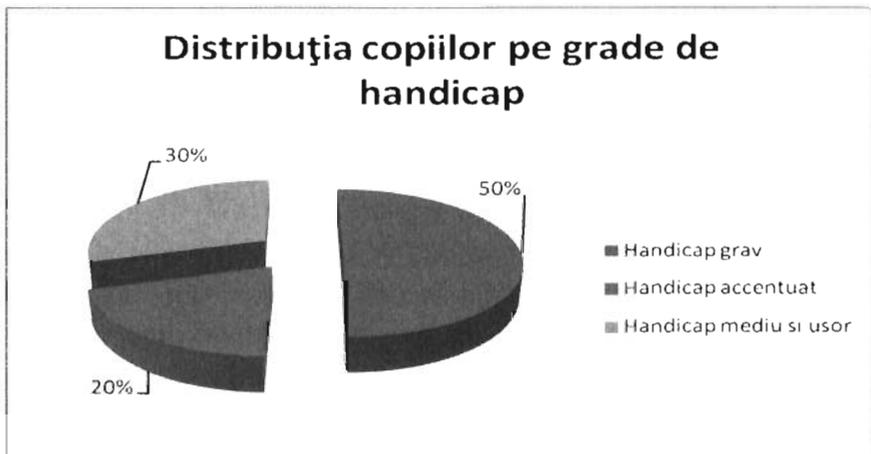
⁴⁴ Order of the Minister of Education, Youth and Sports No. 4801/2010, still in effect for the exams of 2013, art. 31.

of such adaptations are: a) provide blind students with the possibility to communicate by making use of the Braille system, and the students with hearing deficiencies with the possibility to communicate by making use of the sign language (including, as the case may be, the possibility to have an authorized interpreter); b) extend, by one hour at the most, the time provided for the written test for students with motional or neural-motion deficiencies, which prevent them to write normally, or for those with severe visual deficiencies; c) provide texts written with large sized fonts for amblyopes; d) for students with certain deficiencies, transmission via dictation of the information corresponding to the visually displayed/presented exam topics; e) achievement of the National Evaluation Written Test by a student with deficiencies by means of dictation – the student dictates his/her contribution to an assisting teacher of a different specialization than the one for which the student takes the test.

As far as the dynamic situation related to children with disabilities is concerned, information is accessible both on the web page www.anph.ro/statistici. On 31 December 2013, the Child Protection Directorate⁴⁵ at the Ministry of Labour, Family, Social Protection and Elderly, the one that had the power to coordinate at central level the child protection policies, made public the number of children with disabilities: 70,647. On the same day, the Protection of Persons with Handicaps Directorate of the same Ministry, the central structure that is responsible for the elaboration and the coordination of policies for the protection of persons with handicaps, made public a number of 60,981 children with disabilities, mentioning that these were children receiving twice the State Child Allowance (non-institutionalized children) who were to be added the children living in public institutions of social protection for adult persons with handicaps, methodologically coordinated by the Directorate through the County DGASP and the DGASPC of the sector of the Municipality of Bucharest. According to

⁴⁵ Reorganized as National Authority for Child Protection and Adoption, by OUG No. 11/2014, published in the Official Gazette of Romania, I, No. 203 of 21 march 2014.

the information available at that time, the public institutions of social protection for adult persons with handicaps sheltered 13 children with ages ranging from 10 to 14.



The dominant types of handicaps are: somatic, associated, mental or psychic (18%-22% with each of these types). According to the statistic data communicated by the ANDCA on the web page www.copii.ro, on 31 December 2013, 7,892 children with disabilities (down by 620 compared to the end of 2012) enjoyed residential services, as follows:

- 7,693 children enjoyed residential type services, of which:
 - 3371 in classical placement centers;
 - 1712 in modulated placement centers;
 - 401 in apartments;
 - 2163 in family-like cottages;
- 198 children enjoyed private residential services, of which:
 - 16 in classical placement centers;
 - 8 in modulated placement centers;
 - 17 in apartments;
 - 157 in family-like cottages.

“Most probably the number of children with disabilities is much larger but, with many families, particularly in the countryside, having a child with a handicap is regarded as something shameful, and this is the reason why the child is not declared to suffer from a handicap. Also, reduced access to assessment services (owed to the long distance between the family’s home and the headquarters of the institution providing such services or lack of information regarding the special rights and the services available for children with disabilities) is one more element to be considered” – was stated in a Report elaborated by organization *Salvați Copiii României*⁴⁶.

Presentations and points of view in relation to problems and cases of violation of the rights of children with disabilities are included in the shadow reports elaborated by non-governmental organizations. Thus, the shadow Report by the Federation of Nongovernmental Organizations to Protect Your Child (FONPC)⁴⁷ brings into relief such issues as inconsistency of the statistical data and of the concepts, lack of accessibility, limited access to recovery services, insufficiency of the staff. The recommendations refer to the requirement of having the classification into “degrees of handicaps” revised, in consonance with the principles and the norms of the WHO, improvement of the physical access to public areas and access to recovery and medical services.

“For all children with disabilities to be included, they need to be registered at birth, to go to school, to see a doctor and be taken into account in everyday life. Both children with disabilities and their communities would benefit if we focused on what these children can achieve – on their abilities and potential. Romania has made progress toward the protection of the rights of children with disabilities, but a lot more still needs to be done for them to be able to play and go to school with the other children, to receive appropriate health care and protection, to make their dreams come true. A first step in that

⁴⁶ www.salvaticopiii.ro/reurse/Situatia_copilului_in_Romania/Copilul_cu_dizabilitati.

⁴⁷ Raportul alternativ FONPC, www.fonpc.ro, pp. 57 – 60.

direction was to ratify the Convention on the Rights of Persons with Disabilities. We now need to scale up the good practice models that have proved efficient,” declared Sandie Blanchet, UNICEF Representative in Romania when the publication *The State of the World’s Children 2013 – Children with Disabilities*⁴⁸ was released. Measures are needed to provide assistance adequate to the disability and to the age so that the child’s right to freedom of opinion might be achieved.

The UNICEF Report on “Children with Disabilities. Romania 2013”⁴⁹, recommends the monitoring of the harmonization of the legislative framework governing the protection of disabled children with the one governing the protection of disabled adults and the establishment of an early preparatory mechanism to assist this transition alongside harmonization of the service standards for the two age categories. This would provide an adaptation and a continuation of the services focused on the beneficiary. Also, the document recommends the “creation of functional mechanisms of information, consultation and involvement of disabled children and their parents in the decision-making process, as well as the development of decentralized mechanisms to inform the parents and the children about the rights of children with disabilities and the way these rights can be enjoyed”.

Article 8 on awareness-raising. The Law on the protection and the promotion of the rights of persons with handicaps lays down the compulsory special measures incumbent upon the public authorities⁵⁰:

⁴⁸ <http://www.unicef.ro/media/camera-deputatilor-si-unicef-toti-copiii-au-dreptul-sa-se-joace-sa-viseze-sa-mearga-la-scoala-sa-fie-ocrotiti/>.

⁴⁹ <http://www.unicef.ro/wp-content/uploads/Brosura-Unicef-SOWC-final-BT.pdf>.

⁵⁰ Law No. 448 on the protection and the promotion of the rights of persons with handicaps, republished, with the subsequent amendments and supplements, art. 75.

- to promote a concept according to which employed persons with handicaps represent added values for society and, particularly, for their communities;
- to initiate and sustain campaigns meant to capture the attention and raise the awareness of employers about the abilities of persons with handicaps;
- to create the necessary conditions and services so that persons with handicaps might choose the form of professional conversion/reconversion and the workplace, in accordance with their functional potential;
- to develop a collaboration with the media in order to raise awareness of the communities about the abilities and the contribution of persons with handicaps on the labour market;
- to initiate special programmes that stimulate an increased participation on the labour market of the labour groups facing a major risk of social exclusion.

In Romania, as far as the approach to disability is concerned, the transition from the medical to the social model based on the respect of human rights was not achieved entirely, the society having failed to sufficiently mobilize itself to identify and to eliminate the barriers. One objective of communication and advocacy campaigns should be an education for disabilities: the members of the community (including the family) should be informed about the rights of persons with disabilities.

The legislative framework should be further developed by devoting an entire chapter to Raising Awareness about persons with disabilities and promotion of the respect of their rights and dignity. Fighting stereotypes, prejudices and harmful practices against persons with disabilities, including those based on gender and age, in all fields of life, as well as promotion of the acknowledgment of the abilities of persons with disabilities are topics that should be dealt with in such a chapter.

This involves, among other things, supplementation of the Education Act with provisions meant to cultivate at all levels of the

educational system, and at all children, starting from an early age, an attitude of respect for the rights of persons with disabilities. It is also necessary to develop information programmes meant to raise awareness about the issues related to persons with disabilities and their rights. One of the events organized in Romania every year since 2010 is the Gala of Persons with Disabilities, an event raising awareness about the social responsibilities each of us has. There are five categories, all offering prizes: Perfection people (persons with disabilities who managed to go beyond the imposed barriers and changed mentalities), Open doors (companies or institutions that took measures to provide access to their headquarters or adapted workplaces), Ability employers (employing companies or institutions), Ability promoters (communicators who make a contribution to raise awareness) and School for all abilities (regular educational units integrating persons with disabilities). The topic of 2012 edition of the Gala was “Provide Access to Freedom” and was organized in collaboration with the National Television Company.

Although still timidly, in the autumn of 2012, the first working group was established, including experts of the coordinating mechanism, MMFPSPV through DPPH, IRDO (independent mechanism), CNCD as well as experts of the civil society (ONPHR, IPP, CRJ, RENINCO, independent experts, etc.), who developed a number of indicators to make the articles of the Convention operable and assess the conformity degree of the national legislation and practices.

Also, IRDO, in its capacity as national, independent human rights institution, organized a number of conferences, seminars, workshops attended by both representatives of the Government and particularly non-governmental organizations – events that focused on information regarding the provisions of the Convention and development of a collaboration for its implementation in Romania. These meetings pointed out the need for adoption of a governmental Plan of action regarding the implementation of the United Nations Convention in Romania.

On 23 October 2012, the Conference on “Non-Discrimination, Autonomy, Inclusion”, organized by IRDO in collaboration with the Ministry of Labour, Family and Social Protection through its Protection of Persons with Handicaps Directorate, took place. The event was part of the Programme “Non-Discrimination, Autonomy, Inclusion – mechanisms for the implementation of the United Nations Convention on the Rights of Persons with Disabilities”, a continuation of a project initiated by IRDO ten years earlier. The Conference objective was to raise awareness about the role and the importance of the United Nations Convention on the Rights of Persons with Disabilities, the importance of art. 33 in the Convention and to elaborate the indicators. The debates pointed out the balance the Romanian Institute for Human Rights had managed to ensure, as it should have had too, in the relationship with the governmental institutions and the non-governmental organizations for the rights of persons with disabilities. Also, the Minister of Labour, Family and Social Protection emphasized that particular attention had to be paid to the identification of the barriers preventing persons with handicaps from participating in the life of their communities. The Conference was attended by representatives of the Commissions of human rights and minority issues of the two Romanian Parliament Chambers, as well as representatives of such institutions as the Advocate of the People, the Ministry of Foreign Affairs, the Ministry of Education, Research, Youth and Sports, the Ministry of Justice, the National Council for Combating Discrimination, the Federation of the National Organization of Persons with Handicaps in Romania, the Romanian Association of the Blind, the National Council of Disability in Romania, the Juridical Resources Center, the Institute for Public Policies.

The activity of promoting and protecting the rights of persons with disabilities was also achieved through the publication of special volumes. Of these, it is worth mentioning the volume *Nediscriminare, Autonomie, Incluziune. Instrumente privind drepturile persoanelor cu handicap și jurisprudență în materie* (Non-Discrimination, Autonomy,

Inclusion. Instruments protecting the rights of persons with handicaps and jurisprudence in the field), whose purpose was to promote both the international and the regional instruments and the related cases concerning Romania brought before the European Court of Human Rights. Also, in December 2013, the RIHR published the first edition of volume “Evoluția sistemului de protecție și promovare a persoanelor cu dizabilități în România” (Evolution of the Romanian system for the protection and the promotion of persons with disabilities).

Many projects financed by the Social European Fund through the Operational Programme “Development of Human Resources” developed awareness raising components in order to change the social attitude towards persons with disabilities. Impact at national level was also achieved by the national awareness raising campaign organized by Assoc. Baia Mare as part of the project “Integrated social and vocational training services for persons with disabilities”. The campaign, whose purpose was to promote normality as attitude towards disability, its logo being “We knock down walls to build bridges”, involved two teams each made up of two cyclists on a tandem bicycle, riding on a route including 26 cities, each city organizing an event with the participation of the press, local authorities, non-governmental organizations and friends. The event consisted in the demolition of a symbolic wall of disability. It was asserted that differences between us are much fewer than the resemblances, that people can fulfill their lives both socially and professionally, whatever their disabilities might be, that we should stop building walls that separate us and start building bridges that bring us together.⁵¹

Article 9 on accessibility. As far as accessibility is concerned, Romania has a well-defined legal framework in the field: the Law on the protection and the promotion of persons with handicaps devotes an entire chapter to Accessibility, while recently the Standard on adapting civil buildings and the urban area to the individual needs

⁵¹ <http://www.caravanacasper.eu/>.

of persons with handicaps was revised; the Standard is a reference point ensuring the safe use of the urban area and public buildings by persons with disabilities.

An entire chapter⁵² in the Law on the protection and the promotion of the rights of persons with handicaps is devoted to Accessibility, where unrestricted access of persons with handicaps is defined as ‘access without limitations or restrictions to the physical, informational and communicative environment’.

Also, the term accessibility is defined as ‘the total set of measures and work to adapt the physical as well as the informational and the communicative environment to the needs of persons with handicaps as an essential element exercise of the rights and fulfillment of the obligations of persons with handicaps within the society’. The term adaptation is defined as ‘the process of transformations applied to the physical and the informational environment, to the products or the systems, to make them available to persons with handicaps as well. The special Law imposes on the authorities to adapt the public service buildings, the access passages, the residential buildings built from public funds, the public transport vehicles and their stops, the taxis, the railway passenger cars and the platforms of the main railway stations, the parking areas, the streets and the public roads, the public telephones, the informational and the communicative environment so that unrestricted access of persons with handicaps might be possible. For persons with visual or reading deficiencies, publishing houses have the obligation to make available, free of charge, the electronic matrices used for the printing of books and magazines, so that they might be transposed into an accessible format.

In order to improve web accessibility to public services, the Ministry for the Informational Society elaborated and published a Guide on how to develop web pages to be used by the authorities and

⁵² Law No. 448/2006 on the protection and the promotion of the rights of persons with handicaps, republished, with its subsequent amendments and supplements, chapter IV.

the institutions of the central and the local public administration.⁵³ Although there is a legal framework in the field, little information is available on how the legal provisions on access to the environment are observed. Limitations against access are still numerous, are visible, and have been constantly topics for debates for non-governmental or press organizations. “Achieving the conditions for the ACCESS to education, culture, social-professional integration/social inclusion, etc., of persons with disabilities was not a major objective for our State. Romania joined the European Union without its persons with disabilities, whom it continues to condemn to isolation/marginalization. The laws for the protection of persons with disabilities, starting in 1992 and including the present Law No. 448/2006, were not and are not observed, being regarded as optional by the State’s institutions, as are, in fact, most laws in Romania” can be read on the web page of ONPHR under Accessibility.⁵⁴

A study conducted by ASCHF-R in 2010 mentioned that “a great many public areas are not provided with access facilities or, if there are any, they are of poor quality, impracticable most often...”⁵⁵

Foundation Motivation Romania, a non-governmental, non-profit organization, established to help persons with disabilities in Romania, assumed the mission to assist users of wheelchairs to attain a maximum level of independence, to integrate socially and professionally. In order to encourage and accelerate the efforts to improve accessibility to buildings of public interest, Motivation offers accessibility evaluation services and accords the Motivation Accessibility Mark to public and private institutions that meet the criteria audited by the association’s experts. Thus, Motivation developed the Accessibility Map, an instrument devoted to persons in wheelchairs, a useful source of information centralizing data about accessible areas in Romania.⁵⁶

⁵³ www.mcsi.ro.

⁵⁴ <http://www.onphr.ro/dizabilitatea/accesibilitatea>.

⁵⁵ www.aschfr.ro.

⁵⁶ <http://www.accesibil.org/>.

Making information accessible is another programme, this time developed by Foundation Light into Europe. Within the programme, the educational/informational material is adapted into formats needed by people with sensory deficiencies (Braille, Large Print and Audio, Sign Language). Light into Europe also develops a training programme for dog-guides, the first of the kind in Romania. A young student in Bucharest is the only blind person in Romania who will go to school guided by a dog: “Clinthy will take me to school and bring me home. It’s about a 15 minutes’ walk from home to school and it will be a pleasure to walk with Smiley (as the boy calls the dog to pamper him, Ed.)” Ștefan told us. He is a tenth grade student now and had an ambition to attend a normal high school, Constantin Brâncoveanu. The institution’s Director and teachers showed total openness when the boy told them he would come to school with a dog starting the following autumn.⁵⁷

With regard to the sanctions applied for failure to observe the provisions related to accessibility, in conformity with the above mentioned legal norms, the persons authorized to find the contraventions and apply sanctions are the social inspectors in the County Agencies and the Bucharest Agency of Payments and Social Inspection subordinated to the National Agency of Payments and Social Inspection.

In this respect, it should be mentioned that, at the moment this document is being elaborated, the data referring to the control campaigns in relation to accessibility to the physical, informational and communicational environment are not publicly available.

At this point, it is worth mentioning the Decision by the Steering Board of the CNCD of imposing fines on 40 mayors of municipalities, Bucharest included, and on the National Agency of Payments and Social Inspection for their failure to provide transportation conditions to persons with locomotor disabilities.⁵⁸

⁵⁷ Daily *Libertatea* of 2 July 2012.

⁵⁸ www.agerpres.ro

Even though not inexistent, the legislative framework should be further developed with quality and time norms and standards for the objectives set forth by the legislation to be achieved. The development of training programmes on accessibility issues as well as training of the personnel who come into contact with these persons is also necessary.⁵⁹

Article 10 on the right to life. According to the Constitution, the right to life, as well as the right to physical and mental integrity of person are guaranteed. No one may be subjected to torture or to any kind of inhuman or degrading punishment or treatment. The death penalty is prohibited.⁶⁰ In 1994, Romania ratified the European Convention on Human Rights, and so the protection of any person's right to life was acknowledged once more. Also, Romania abolished the death penalty as far back as 1990⁶¹, while the new Civil Code, in force since 2013, equally guarantees and protects any person's life, health and physical and mental integrity and stipulates that the human being's interest and welfare should prevail upon the unique interest of society or science. The new Civil Code prohibits any eugenic practice that might tend to organize a selection of persons.

Article 11 on situations of risk and humanitarian emergencies. Situations of risk and humanitarian emergencies are the responsibility of the Ministry of Administration and Interior (MAI). According to HG. No. 1492/2004 on principles for the organization, functioning and powers of professional emergency services, MAI shall perform, with its own forces or in cooperation, such operations and activities as information, warning, alarming, alerting, reconnaissance, inquiries, evacuation, sheltering, search, saving, desincarceration, clearing, first aid or emergency medical services, fire extinction, purging, NBC protection and decontamination, water filtering and transportation,

⁵⁹ Also see footnote 25 above.

⁶⁰ The Constitution revised, art. 22.

⁶¹ Law No. 30/1994 on ratification of the European Convention on the Defence of Human Rights and Fundamental Freedoms and the Protocols to the Convention, published in the Official Gazette of Romania, I, No. 135 of 31 May 1994.

illumination, unexploded ammunition clearing, protection of assets and values of the cultural patrimony, life support for the survival of the affected population, as well as other measures for the protection of the citizens in emergency situations.

In Romania, qualified first aid and emergency medical care are offered on a public base; it is a State's duty and a citizens' right, it may not be offered for profit and should be offered with no discrimination, no matter whether the patient has or has no medical insurance.

Article 12 and Article 13 on equal recognition before the law and access to justice. According to the Constitution, the exercise of certain rights or freedoms may only be restricted by law, and only if necessary, as the case may be, for: the defence of national security, of public order, health, or morals, of the citizens' rights and freedoms; conducting a criminal investigation; preventing the consequences of a natural calamity, disaster, or an extremely severe catastrophe. Such restriction shall only be ordered if necessary in a democratic society. The measure shall be proportional to the situation having caused it, applied without discrimination, and without infringing on the existence of such right or freedom. Therefore, the Civil Code acknowledges civil capacity to all persons, any person having legal capacity and, except for the cases provided for by the law, legal competence. Also, the Civil Code stipulates that no one may be limited in his/her legal capacity, nor can he/she be deprived, entirely or partly, by his/her legal competence, except for the cases and the conditions expressly provided for by the law. Full legal competence starts on the day a person comes of age (18 years old). Persons who have no legal competence: juveniles younger than 14 years old and persons under judicial disability. For those who have no legal competence, legal documents shall be signed, on their behalf, by their legal representatives, under the conditions provided for by the law. Nevertheless, a person without legal competence can conclude on its own those particular legal documents provided for by the law, acts of conservation as well as acts of disposition of low value, of a current nature, which are applied

as soon as they are concluded. A person who has not the required power of discernment to take care of its interests, because of mental alienation or mental debility, shall be adjudicated of legal incapacity. Free access to justice is guaranteed by the Constitution of Romania, which provides that every person is entitled to bring cases before the courts for the defence of his legitimate rights, liberties and interests. Also, the Constitution provides for the right to a fair trial and for solutions to the cases within a reasonable term. The Law on the protection and the promotion of the rights of persons with handicaps devotes an article to legal assistance according to which persons with handicaps are entitled to protection against being neglected and abused, irrespective of the place where they are. In case persons with handicaps, irrespective of age, are in a position of total or partial impossibility to administrate their personal assets, they should enjoy legal protection in the form of trusteeship or guardianship and legal assistance.

In Romania, for persons with disabilities who are incapable of expressing themselves to understand the legal procedures, the provisions of the Criminal Procedure Code are applicable: “parties who do not speak or do not understand the Romanian language or are incapable of expressing themselves shall be provided, free of charge, the possibility to get acquainted with the contents of the file, the right to speak as well as the right to put in submissions before the court through an interpreter”. When one of the parties or another person who is to be heard cannot speak Romanian or is incapable of expressing itself, the criminal prosecution body or the court shall provide, free of charge, an interpreter. The interpreter can be assigned or chosen by the parties; in the latter case, he/she must be an authorized interpreter, according to the law. The delegated judge shall proceed to hear, in an undifferentiated manner, the persons deprived of liberty, at the detention place. The measures preceding the hearing shall be taken by the administration of the detention place and, in the case of detainees with disabilities, they have to make sure that the rooms to be used are accessible and allow for the mobility and autonomy

of the disabled detainees. Also, when persons deprived of liberty are heard by the judge delegated for the execution of punishments as well as by other bodies and persons authorized, according to the law, to perform legal procedures with persons executing a detention order, the administrative authorities have to make sure that the persons deprived of liberty are able to understand the content of the communication and in a position to exercise the rights provided for by the law.

In spite of the fact that the existing legislative framework is adequate, in practice, the access to justice of persons with disabilities is made with difficulty for lack of needed information, lack of constant assistance in a legal procedure or lack the funds needed to initiate a legal procedure before the court. For instance, most often it is only access into the building that is provided, not also access inside the building (in very many cases the special device for access is available only at the first floor). Provision of means of communication adequate for the needs of persons with disabilities, irrespective of the type of disability, is achieved at the level of courts and prosecutor's offices to a very little extent. As far as we know, only some of them provide a sign language interpreter or documents in large print. Procedural adjustments adequate for the age of the disabled person in order to facilitate persons with disabilities an active role as direct and indirect participants, also as witnesses, in all legal procedures, including the investigation phase and other preliminary phases, are not provided – the legislation (the Civil and the Criminal Codes, as well as the Civil Procedure and the Criminal Procedure Codes) does not include special provisions meant to promote persons with disabilities as active parties involved in the juridical procedures and only the conditions excluding persons with disabilities are explicitly mentioned (e. g.: persons adjudicated with legal incapacity, called “forbidden”). Likewise, there is no legal obligation of special training in the field of the rights

of persons with disabilities in the judicial system, in the police or in penitentiaries.⁶²

A study on “Guardianship – protection or barrier against the integration of persons with intellectual disabilities”⁶³, elaborated by the Center for Juridical Resources in collaboration with Foundation “Pentru Voi” (For You) referring to legal protection points out that “protection measures for adults’ personal and economic interests should acknowledge the fact that there may be various degrees of incapacity and they may vary in time in the case of one person. A protection measure should not automatically involve total deprivation of legal capacity. Limitation of the juridical capacity is a measure to be taken only if it is necessary for the protection of a person. Measures protecting incapable adults should be so comprehensive and flexible as to offer an adequate legal response to each situation or degree of incapacity. To this end, in certain cases, protection measures should also include measures that do not limit the legal capacity of the person, but rather help him/her to make a decision. A protection measure should not automatically deprive a person from the right to vote, to make a will, to express his/her consent or refusal regarding any health-related intervention or to make decisions of a personal nature. At any time his/her mental capacity allows it – when a protection measure is necessary – this should be proportional with the person’s degree of capacity and adapted to the circumstances. For as much as possible, protection measures should be taken for a limited time period and there should be periodic evaluations”.

Therefore the legislative framework has to be further developed to the effect that the protection system of persons adjudicated of legal incapacity be revised.

⁶² In this respect, see the jurisprudence of European Court of Human Rights, cases related to Romania, presented in the volume „Nediscriminare Autonomie Incluziune. Instrumente privind drepturile persoanelor cu handicap și jurisprudența în materie” and in „Drepturile Omului” nos. 2/2012 și 1/2013.

⁶³ <http://www.crj.ro/Brosura-Tutela-protectie-sau-obstacol-in-calea-integrarii-persoanelor-cu-dizabilitati-intelectuale/>.

Article 14 on liberty and security of person. Since the Constitution of Romania provides in its art. 23 (1) that “individual freedom and security of a person are inviolable”, the law-maker, preoccupied by the respect for the rights of persons with disabilities, also took them into account when drafting the Law on the execution of punishments and deprivation of liberty measures.⁶⁴ It is to be noticed that the new legal document pays particular attention to persons with disabilities who are in detention. Thus, in case a person with disabilities is to execute a deprivation of liberty punishment, the administration of the penitentiary shall take all necessary measures so that the punishment be executed under such conditions that respect human dignity. Also, in case a person executing a deprivation of liberty punishment cannot speak or understand the Romanian language, cannot express himself/herself or has communicative deficiencies, the administration of the penitentiary shall take the necessary measures so that the information of public interest and the documents regarding execution of the punishment be communicated to the convicted person through a person who is able to communicate with him/her.

At the same time, by means of the specific legislation, the National Administration of Penitentiaries and the administration of the penitentiary under consideration should take special measures to protect both the physical and the mental health of the convicted persons with disabilities. Also, it should be reminded that convicted persons with disabilities are provided with conditions to participate in educative, cultural, therapeutic activities, psychological advisory and social assistance activities as well as moral-religious ones adequate for their needs and personality, depending on their options and aptitudes.

According to law no. 254/2013, the professional training of convicted persons with disabilities can be organized by the administration of the penitentiary in collaboration with the specialized personnel of the Directorate for the Protection of Persons with

⁶⁴ Law No. 254/2013 on the execution of punishments and deprivation of liberty measures ordered by judicial bodies in the course of criminal proceedings, published in the Official Gazette of Romania, I, No. 514 of 14 August 2013.

Handicaps. Also, the criminal procedures should be supplemented so as to make sure that, in case persons with disabilities are deprived of liberty, as a result of a final judicial decision, they should be treated in conformity with the principles and the provisions of the United Nations Convention on the Rights of Persons with Disabilities, including the provision of reasonable adaptations.

Article 15 on freedom from torture or cruel, inhuman or degrading treatment or punishment. The Constitution of Romania enshrines in its art. 22 the right to physical and mental integrity and the fact that no one may be subjected to torture or to any kind of inhuman or degrading punishment or treatment. The new Criminal Procedure Code⁶⁵ provides that human dignity shall be respected throughout the criminal trial. It also prohibits torture, inhuman or degrading treatments or other ill treatments during the criminal trial and the execution of punishments.

The Criminal Code defines torture as an action by which a person is intentionally induced a pain or strong sufferings, physical or mental, particularly in order to obtain information or confessions from this person or from a third person, to punish him/her for something he/she or a third person committed or is suspected to have committed, to intimidate or put him/her under pressure or to intimidate or put under pressure a third person, or for any other reason based on a form of discrimination whatever that may be. When such a pain or such sufferings are applied by a public authority agent or by any other person acting as an official authority or at the instigation or with the express consent of such persons, the punishment is imprisonment for 2-7 years. Torture resulting in the victim's death is punished with life detention or imprisonment for 15-25 years. The attempt is also punished.

The law on mental health and the protection of persons with mental disorders⁶⁶ includes a number of provisions and

⁶⁵ In effect since 2013.

⁶⁶ Law No. 487/2002, republished in 2012, on mental health and the protection of persons with mental disorders, published in the Official Gazette of Romania, I, No. 652 of 13 September 2012.

measures defending the rights of persons with mental disorders. Thus, the law refers to voluntary confinement and to involuntary confinement, the latter being allowed only in severe cases and on decision by a medical commission.

The law provides that confined persons may be restricted their freedom of movement, by means of adequate devices, in order to save from a genuine danger their own or another person's life, physical integrity or health. Confinement may not be used as a form of punishment, may not be part of the medical treatment and may not be ordered for cases of suicide or self-isolation or as a solution for the lack of personnel or treatment, nor as a sanction, nor as a form of threatening nor to force good behaviour and nor to prevent the destruction of assets. In extreme cases, this measure may be used, but only if the application of less restrictive techniques proves inadequate or insufficient to prevent any striking or injuring.

The use of confinement devices should be proportional with the danger, be applied only for the needed time period and only when there is no other way to remove the danger, and never be a sanction. The use of confinement devices should be first authorized by the Head of Section physician. The use and the cessation of the use of confinement devices has to be registered in a special Register established by each psychiatric unit.

Even though there is a legislative framework in the field, measures are needed for the prevention of torture and cruel, inhuman or degrading treatments or punishments, under equal conditions with the other detainees.

The media has recently presented the decision by the European Court of Human Rights in relation to the case of the Romanian citizen Nicolae Țicu, sentenced to 20 years imprisonment for armed robbery with the victim's death, diagnosed with oligophrenia ever since his childhood. Țicu had complained because of the detention conditions as well as the fact that he had been aggressed by other detainees. So, the EctHR decided in October 2013 that the Romanian

State had violated article 3 in the European Convention on Human Rights that prohibits torture and inhuman or degrading treatments, and ordered that the State should pay the petitioner 24000 euros for moral prejudice and 350 euros for court charges.

Another case presented by the media is that of the youngsters institutionalized in a neuro-psychic recovery and rehabilitation center. The Center of Juridical Resources launched an urgent appeal for action: youngsters with severe disabilities held in isolation and defenseless in “Gheorghe Ștefan Center in Sector 2, Bucharest; and submitted the case to the court of justice. The trial is under way.

Article 16 on freedom from exploitation, violence and abuse.

The Constitution provides in its art. 22 (1) that “the right to life, as well as the right to physical and mental integrity of person are guaranteed”. The Fundamental Act stipulates in its art. 23 (1) that “individual freedom and security of a person are inviolable”, while art. 49 (3) of the Constitution stipulates that the exploitation of minors, their employment in activities that might be harmful to their health, or morals, or might endanger their life and normal development are prohibited”. Also, according to art. 49 (4) of the Fundamental Act, “minors under the age of fifteen may not be employed for any paid labour”.

The law on preventing and fighting domestic violence⁶⁷ was adopted to fight against domestic violence, which is defined as any intentional action or inaction, with the exception of self-defence or defence actions, physical or verbal, committed by one member of the family against another member of the same family, which causes or may cause a prejudice or physical, mental, sexual, emotional or psychological sufferings, including threatening to commit such deeds, constraint or arbitrary deprivation of liberty. The special law provides that persons with handicaps are entitled to protection against negligence and abuses, irrespective of where they are. The quality standards for residential services devoted a special

⁶⁷ Law No. 217/2003 on preventing and fighting domestic violence, republished in the Official Gazette of Romania, I, No. 365 of 30 May 2012.

chapter to Protection against abuses and negligence. And yet, even in the year 2013, there were such cases, isolated cases to be true. For instance, in July 2013 the central press triggered an alarm signal about the case of the persons with handicaps in the Center for Persons with Handicaps in Hârlău, who had been subjected to violence by some of the institution's employees themselves. Such cases clearly illustrate the lack of administrative, social, educational and other adequate measures to protect persons with disabilities against all forms of exploitation, violence and abuse.⁶⁸

Article 17 on protecting the integrity of the person and Article 18 on liberty of movement and nationality. The Constitution guarantees the right to life, as well as the right to physical and mental integrity of person, in its art. 22 (1). At the same time, art. 25 (1) guarantees the right of free movement within the national territory and abroad. Every citizen is guaranteed the right to establish his domicile or residence anywhere in the country, to emigrate, and to return to his country, art. 25 (2). According to the Civil Code, any person has the right to life, health, physical and mental integrity, dignity, personal image, respect of his/her private life, as well as other similar rights acknowledged by the law. Every natural person has the right to make decisions about himself/herself, unless he/she violates the rights and freedoms of others, public order or public morals. No person may be subjected to experiments, tests, extractions, treatments or other interventions for therapeutic or scientific research purposes except for the cases and under the conditions expressly and restrictively provided for by the law.

The Civil Code⁶⁹ provides that any person has the right to have a name, a domicile, a residence, as well as a civil status, obtained as provided by the law. Any person has the right to have the established name or the acquired one. Romanian citizens have the right to freely settle or change their domicile or their residence, in Romania or

⁶⁸ Also see Footnote 25 above.

⁶⁹ Law No. 287/2009 on the Civil Code, republished in the Official Gazette of Romania, I, No. 505 of 15 July 2011, arts. 83-103.

abroad, except for the particular cases provided by the law. Law No. 21/1999⁷⁰ defines Romanian citizenship as being a natural person's bond and belonging with the Romanian State. Romanian citizens are equal before the law and enjoy the Romanian State's protection. Romanian citizenship can be acquired: a) by birth; b) by adoption; c) on request.

The civil status gives a person the possibility to individualize, within the family and the society, through the strictly personal qualities deriving from the civil status documents and facts. According to the Law on the protection and the promotion of the rights of the child⁷¹ a child shall be registered immediately after birth and, from this moment on, has the right to have a name, the right to acquire citizenship, and, if possible, to meet its parents and be cared for and raised.

Article 19 on living independently and being included in the community. The Constitution of Romania provides in its art. 26 for the person's right to "dispose of himself unless by this he infringes on the rights and freedoms of others, on public order or morals". In 1999, Romania ratified the hard core of the human rights laid down in the European Social Charter revised. Other articles are to be ratified as well, for instance art. 15 paragraph 3, which would favour full integration and participation in the social life of persons with handicaps, particularly through measures, technical aids included, which are intended to help them overcome their difficulties related to communication and mobility and provide their access to means of transportation, residence, cultural activities and spare time spending.⁷²

⁷⁰ The Romanian Citizenship Act, republished in the Official Gazette of Romania, I, No. 576 of 13 August 2010, arts. 1-10.

⁷¹ Law No. 272/2004 on the protection and the promotion of the rights of the child, published in the Official Gazette of Romania, I, No. 557 of 23 June 2004.

⁷² Law No. 74/1999 on ratification of the European Social Charter revised, adopted in Strasbourg on 3 May 1996, published in the Official Gazette of Romania, I, No. 193 of 4 May 1999.

The National Strategy for the protection, integration and social inclusion of persons with handicaps for the period 2006-2013⁷³, defines the term ‘independent life’ as the aggregate of means available to persons with handicaps which allow them to freely make their choices and decisions. The fundamental concept of the Strategy is choice: a person with a handicap has the possibility to make decisions regarding his/her life, to manage his/her personal complementary budget and to choose the services he/she needs as well as those who offer such services, on the basis of individual contracts for services. According to the Social Assistance Act⁷⁴, in consonance with the equal opportunities principle, the competent public authorities have the obligation to take all measures needed by persons with disabilities in order to facilitate their participation in the life of the communities to which they belong and of society in general.

According to the Law on the protection and the promotion of the rights of persons with handicaps, a person with a handicap is entitled, based on a social-mental-medical evaluation, to social services. The right social assistance in the form of social services shall be granted on request or *ex officio*.⁷⁵

To fulfill their obligation to provide the social services needed by persons with handicaps, public authorities have the obligation to initiate, maintain and develop social services focused on persons with handicaps, in collaboration or in partnership with legal, public or private persons; to involve the handicapped person’s family with the activities devoted to the caring, the rehabilitation and the integration of the respective person; to develop and support programmes of collaboration between parents and specialists in the field of the

⁷³ HG 1175/2005 on approving the National Strategy for the protection, integration and social inclusion of persons with handicaps for the period 2006-2013, published in the Official Gazette of Romania, I, No. 919 of 14 October 2005.

⁷⁴ Law No. 292/2011 on social assistance, published in the Official Gazette of Romania, I, No. 905 of 20 December 2011, art. 3.

⁷⁵ Law No. 448/2006 on the protection and the promotion of the rights of persons with handicaps, republished, with its subsequent amendments and supplementation, Chapter III, Section I, art. 31.

handicap, in collaboration or in partnership with legal, public or private persons; to provide assistance and social-medical care at the handicapped person's domicile.

Social services addressing persons with handicaps are designed and adapted in conformity with the person's individual needs. Such services shall be provided at the person's domicile, in daycare centers organized within the community, and in residential centers. Only in case the assistance, care, recovery or protection of persons with disabilities are not possible at their domicile it is recommended that such persons should be admitted in residential centers. The local public administration authorities have the obligation to primarily provide caring services for persons with handicaps at their domicile, and in daycare centers adapted to their needs, such as: recovery/re-adaptation centers, social insertion/re-insertion centers, socializing centers, occupational therapy and other special therapy centers, daycare centers of assistance and healthcare, protected workshops/protected units, and other similar centers, according to the powers established by special laws.

Depending on the specific nature of his/her needs, a person with a severe handicap can be assisted and cared at home by a personal assistant, employed on the basis of an individual labour contract issued by the local public administration, or may choose instead to be granted a carer's allowance. The personal assistant and the companion of a person with a serious handicap is entitled to supporting facilities and services: urban and interurban transportation free of charge.

The large majority of persons with handicaps live within their own families or independently; these are the non-institutionalized persons. Their proportion of 97.7% as compared to 2.5% persons assisted in public residential institutions, like the caring and assistance centers, remained almost unchanged in time. Daycare centers and recovery centers are of vital importance if the access of persons with handicaps to the community's life is to be increased. The number, the diversity and the availability of such services are limited and, on the other hand, providing transportation is a key element.

In Romania, the social services system is still characterized by a lot of shortcomings and incoherence, having an uneven development, particularly as far as the rural communities are concerned. Involvement of the local public authorities in the organization of the system is limited, for they are active mostly in towns, and only if a powerful presence of non-governmental organizations is felt in the landscape. The social services provided at present are fragmented and characterized by unevenness.⁷⁶

An analysis of the statistical data put on their web page by the Protection of Persons with Disabilities Directorate of the Ministry of Labour, Family, Social Protection and Elderly on 31 December 2012⁷⁷, referring to the situation of social assistance public institutions for adult persons with handicaps, reveals: a slight numeric diminution of such institutions, from 336 registered at the end of 2012 to 335 on 31 December 2013, primarily owed to the decrease by 4 of the number of protected residences and by 2 the number of occupational therapy caring centers, alongside an increase by 5 of the number of care and social assistance centers. Also, the number of persons with disabilities accommodated in residential centers decreased to 17,123, that is, 281 less than were registered at the end of 2012. Thus, the number of persons with disabilities accommodated in recovery and rehabilitation centers for persons with disabilities increased by 122 (as a result of the increase by 1 of such centers). Also, the number of persons with disabilities accommodated in protected residences increased by 10 despite the fact that the number of such residences decreased by 4 as compared to the end of last year. The number of beneficiaries of care and social assistance centers decreased by 115 (while the number of such centers increased by 5), and the number of

⁷⁶ *Stadiul dezvoltării serviciilor sociale în 2011*, Institutul IRECSON, a study achieved in the framework of Project “Creșterea gradului de implementare a legislației privind serviciile sociale la nivel local în contextul procesului de descentralizare”, run by the Ministry of Labour, Family and Social Protection.

⁷⁷ www.anph.ro/statistici/Buletin_statistic_trim_IV_2012.

beneficiaries of occupational therapy caring centers decreased by 210, given that the number of such centers decreased by 2.

As far as the non-residential centers are concerned (daycare centers), the situation on 31 December 2013 is not quite encouraging either: from the total of 692,093 adult persons with disabilities living independently/within their families, only 1,669 benefited from social services organized in the daycare public system, that is with 395 less than at the end of 2012. The number of beneficiaries of social services provided by daycare centers mainly decreased because the number of such centers decreased: by 2 – daycare centers; by 1 – ambulatory neuromotor recovery services centers, home services and the psycho-social advisory centers for persons with disabilities.

The development of community services is still in its infancy. Even though the programmes and the services for persons with handicaps were developed and diversified, little is known about them by the possible beneficiaries, by family physicians and even by the specialists who work with these children whose institutionalization could be avoided. Foundation “Motivation Romania” is, to our knowledge, the only organization in Romania that conducts an evaluation and prescribes a personalized wheelchair and offers training for an independent life using trainers who are wheelchair users themselves. During the training stage, the beneficiaries learn correct techniques for using a wheelchair and basic techniques for self-help, personal hygiene, sexuality, medical complications, social and school integration. A typical training stage will include recovery activities, courses and discussions on previously established topics, and spare-time activities as well, all encouraging the trainees’ contact with society, which is an important psychological barrier.⁷⁸

According to our data, Foundation “Light into Europe” runs a programme that develops independent life skills to students with sensory deficiencies, hearing and sight.⁷⁹ The programme involves arranging studios for the development of independent life abilities

⁷⁸ www.motivation.ro/instruire_pentru_o_viata_independenta.

⁷⁹ <http://www.lightintoeurope.org/service/independent.html>

in partner schools, equipping these schools with adapted equipment, facilitating university education and job opportunities for persons with sensory disabilities.

Article 20 on personal mobility. The law on the protection and the promotion of the rights of persons with handicaps stipulates the obligation of public authorities to provide protection of the physical and mental health of persons with handicaps by creating conditions for the assisting and the access technologies.

The special law imposes provision of free medical devices in polyclinics, in conformity with the list and the conditions laid down in the Framework Contract for the provision of medical assistance within the system of social health insurances and the norms for its implementation.

The list of standard medical devices for the correction and recovery of organic or functional deficiencies, or the correction of physical deficiencies, their replacement deadlines and the medical devices to be repaired includes ENT prostheses, ostomy prosthetics devices, urinary incontinence devices, upper and lower limb prosthetics, various orthoses, orthopedic shoes, walking means and devices, visual deficiency devices which, in conformity with the methodological norms for the application of the Framework Contract, are prescribed for a determined or an undetermined time period, while their costs calculated at the level of the reference costs are covered by the health insurance fund.⁸⁰

One of the most active suppliers of mobility devices and equipment is Foundation “Motivation Romania”. The Foundation’s Programme of evaluation and prescription of mobility equipment is based on the principle according to which a wheelchair should be so prescribed that it might respond to the physical and functional needs of each and every user. Lack of special adaptations and of professional

⁸⁰ Common Order No. 423/191 of the Ministry of Health and the President of the National Health Insurance Agency on approval of the Methodological Norms for the application in 2013 of the Framework Contract for the provision of medical assistance within the system of social health insurances for 2013-2014.

evaluation services means that the users may encounter secondary effects, including permanent postural deformities and serious medical complications. Thus, “Motivation” supplies: active wheelchairs (helps the user become independent as it can be adjusted by adding such adaptations as: arm rests, detachable handles, rigid or folding foot rests, pelvis or trunk girdles), special seating equipment for children with cerebral palsy (offers a stable prop that helps the child to develop a certain level of independence and mobility), orthopedic wheelchairs (offers the possibility of easily getting on and off the wheelchair), sport wheelchairs (special wheelchairs for practicing certain sports such as tennis and basketball).⁸¹

Foundation “Motivation Romania” translated into Romanian the “Guidelines on the provision of manual wheelchairs in less-resourced settings”, elaborated by the World Health Organization in partnership with USAID and the International Society for Prosthetics and Orthotics (ISPO). The Guidelines is meant for specialists, equipment and service suppliers, local and central authorities and experts in developing public policies in the field of wheelchair supplying as well as for wheelchair users.⁸²

Article 21 freedom of expression and opinion, and access to information. The Constitution guarantees in its art. 30 (1) Freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, by words, in writing, in pictures, by sounds or other means of communication in public, while art. 31 (1) stipulates that a person’s right of access to any information of public interest shall not be restricted.

The Law on the protection and the promotion of persons with handicaps defines the unrestricted access of persons with handicaps as access without limitations or restrictions to the physical, informational and communicational environment, while assistance and access technology is defined as the technology that provides persons

⁸¹ <http://www.motivation.ro/ro/programe-proiecte/echipamente-de-mobilitate>.

⁸² Ibidem.

with handicaps access with equal opportunities to the physical, informational and communicational environment.⁸³

In the educational process, no matter its level, persons with handicaps are entitled to: textbooks and courses in a format accessible to students with visual deficiencies, as well as the use assisting equipment and software for standing examinations of any type and level.

Also, public authorities are bound to take measures to: make their own web pages accessible to the effect that they are more easily accessed by persons with visual and mental handicaps; use pictograms with all public services.

According to the special law, for persons with sight or reading deficiencies, publishing houses have the obligation to make available, free of charge, the electronic versions of the books and magazines so that the latter might be transposed into accessible formats. Public libraries have the obligation to establish sections with books in formats that are accessible to persons with sight and reading deficiencies.

In Romania, freedom of expression and opinion as well as access to information are ensured rather formally, given the fact that there are few institutions that offer information in formats accessible to persons with disabilities. We believe that the competent authorities should develop policies and identify measures that might entail the possibility that sign language, Braille writing, augmentative and alternative communication and all the other accessible means methods and formats of communication, be also used in official relations, depending on the disabled person's choice. We also believe measures are necessary to make private organizations that supply services to the large public, including the Internet, also supply the information

⁸³ Law No. 448/2006 on the protection and the promotion of the rights of persons with handicaps, republished, with its subsequent amendments and supplementations, art. 6.

and the services in accessible and easy to use formats by persons with disabilities.⁸⁴

Article 22 on respect for privacy. The Constitution of Romania guarantees the respect and the protection of privacy by the public authorities. Also, according to art. 27 (1), the domicile and the residence are inviolable. No one shall enter or remain in the domicile or residence of a person without his consent, with the exceptions provided by the law. The Constitution also guarantees the secrecy of correspondence (letters, telegrams, other mail sendings), of telephone conversations and other legal means of communication. The right to respect for privacy and family life is also guaranteed by the European Convention on the Defence of Human Rights and Fundamental Freedoms where Romania is a party. The Civil Code prohibits the use, in any way, of the correspondence, manuscripts or other personal documents, as well as information pertaining to a person's privacy without the person's consent or without respecting certain limitations provided by the law, while the Code sanctions the unauthorized entry in a dwelling against the will of the owner and violation of the secrecy of correspondence.

The Law on the protection of persons regarding the processing of personal data and the free circulation of such data⁸⁵ is meant to guarantee and protect the fundamental rights and freedoms of natural persons, particularly the right to intimate, family and private life, in relation to the processing of personal data. The Law on the processing of personal data and the protection of privacy in the field of electronic communications establishes the specific conditions for guaranteeing these rights.

⁸⁴ Examples of involvement of a group of young people as self-representatives of persons with disabilities can be seen on the web page www.cevadespus.ro.

⁸⁵ Law No. 506/2004 on the processing of personal data and the protection of privacy in the field of electronic communications, published in the Official Gazette of Romania, I, No. 1101 of 25 November 2004.

The Law on the patient's rights⁸⁶ provides that all information regarding the patient's condition, the results of the medical investigations, the diagnosis, the prognosis, the treatment, the personal data shall be confidential even after the patient's death. Information of a confidential nature may only be disclosed on explicit consent by the patient or if the law expressly demands it.

Even though from a formal point of view, the right to privacy is respected in Romania, an analysis of the forms in use might reveal a different picture. For instance, the Certificate for assignment to a degree of handicap, an administrative document generating rights, also includes, beside information pertaining to personal data, such information as the type of handicap and the disease code.

Article 23 on respect for home and the family. The Constitution regulates the family institution in its art. 48: the family is founded on the freely consented marriage of the spouses, their full equality, as well as the right and duty of the parents to ensure the upbringing, education and instruction of their children, while according to art. 26 (1) the public authorities shall respect and protect the intimate, family and private life, as was shown above. According to the Civil Code⁸⁷, the family is founded on the freely consented marriage of the spouses, their full equality, as well as the right and duty of the parents to ensure the upbringing and education of their children; the family is entitled to the protection of society and of the State, the latter being bound to support, through economic and social measures, the marriage as well as the development and the consolidation of the family.

The law on the civil status documents provides for the possibility to use a sign language interpreter at the conclusion of a marriage in case one or both spouses are deaf-mutes. And yet, the Civil Code prohibits the marriage of mentally alienated and mentally defective people.⁸⁸ The latter may not get married whether they are under interdiction or

⁸⁶ Law No. 46/2003, the Patient's Rights Act, published in the Official Gazette of Romania, I, No. 70 of 3 February 2003.

⁸⁷ The Civil Code, art. 258.

⁸⁸ Ibidem. art. 274.

not. A mentally alienated person or a mentally defective person may not get married even in his/her moments of temporary lucidity.

Article 24 on education. The National Education Act provides the State's obligation to ensure the Romanian citizens equal rights of access to all levels and forms of pre-university and higher education, as well as the right to lifelong education, without any form of discrimination.⁸⁹

It is stipulated in the above mentioned law that the educational ideal of the Romanian school lies in the free, full and harmonious development of human individuality, the shaping of autonomous personality and the acquirement of system of values that are required for personal fulfilment and development, the development of the enterprising spirit, active civic participation in society, social inclusion and employment on the labour market.⁹⁰

According to the National Education Act, the State guarantees the right to education of all persons with special educational needs. Special education and special integrated education are constitutive elements of the national pre-university educational system representing a differentiated, adapted form of education as well as complex form of educational, social and medical assistance, devoted to persons with special educational needs.⁹¹ Special education is organized, as the case may be, in special educational units or regular educational units. Integrated special education may be organized in special classes and individually or in groups integrated in regular classes.⁹²

Children, students and youngsters with special educational needs integrated in regular educational units, are entitled to educational support through assisting or itinerant teaching personnel, as the case may be.⁹³

⁸⁹ Law No. 1/2011, the National Education Act, art. 1, paragraph (4).

⁹⁰ Ibidem, art. 2 paragraph (3).

⁹¹ National Education Act, art. 12 paragraphs (6)-(7).

⁹² Ibidem, art. 49.

⁹³ Ibidem, art. 51.

Children, students and youngsters with chronic diseases or diseases that require hospitalization for more than four weeks, are entitled, as the case may be, to groups or classes organized within the medical unit where they are hospitalized, while those who, for medical reasons or because of a disability, are not movable are entitled to classes at home, for a limited period of time.

Depending on the evolution of the child, proposals can be made for re-orientation from a special school to a regular school and the other way round.

The law on the protection and the promotion of the rights of persons with handicaps devotes an entire chapter to education and stipulates that persons with handicaps shall have free and equal access to any form of education, irrespective of age, in conformity with the type and the degree of handicap and the corresponding educational needs, while the person with a handicap or, as the case may be, the family or the legal representative shall be the main decision-maker regarding the form and the type of school enrolment, as well as the educational unit to be attended.

According to the law, education of persons with handicaps can be achieved through⁹⁴

- a) special educational units;
- b) individual integration in regular educational units, including units teaching in the mother tongues of national minorities as well;
- c) compact special groups or classes, integrated in regular pre-school and school units;
- d) educational services through itinerant/assisting teaching personnel;
- e) home schooling up to graduation of high school studies, but not longer than the age of 26, by care of the Ministry of National Education;
- f) education at “hospital bed”, for the duration of hospitalization;

⁹⁴ Law No. 448/2006 on the protection and the promotion of the rights of persons with handicaps, republished, with its subsequent amendments and supplementations, art. 16.

g) educational alternatives.

In the educational process, irrespective its level, persons with handicaps are entitled to⁹⁵:

a) supporting educational services;

b) technical equipment adapted to the type and the degree of handicap and the use thereof;

c) adaptation of the classroom furniture;

d) textbooks and courses in a format accessible to pupils and students with sight deficiencies;

e) the use of assisting equipment and software when standing for examinations of any type and level.

Thus, to provide the access of persons with handicaps in educational units and institutions, the public authorities have the obligation to take the following specific measures⁹⁶:

a) to promote and guarantee the access to education and professional training of persons with handicaps;

b) to ensure home schooling for immovable persons with handicaps for the duration of compulsory studies as well as preparation of homework, no matter the place where the person with handicap is, including such measures as supporting/itinerant teaching personnel;

c) to ensure access to all forms of continuing education, adapting them to the educational needs of persons with handicaps;

d) to assist cooperation between special or regular educational units and the family and the community, with a view to provide an educational offer corresponding to the individual needs of persons with handicaps;

e) to assist the training of teachers with a view to adapt their educational practices for the students with handicaps in regular groups or classes;

f) to ensure the possibility that any persons with a handicap should practice a sport, and also to ensure the training of the teachers

⁹⁵ Ibidem, art. 17.

⁹⁶ Ibidem, art. 18.

so that they should become acquainted with specific medical and technical notions;

g) to ensure assisting educational services for persons with handicaps and their families, through specialists in the field of special psychopedagogy;

h) to ensure access to educational units and institutions.

In Romania, according to the legislation on the prevention and combating of all forms of discrimination, denial of access of a person or group of persons to the public or private educational system, whatever the form, grade and level, on the grounds of race, nationality, ethnicity, religion, social or disadvantaged category, or the beliefs, age, gender or sexual orientation of the persons under consideration is regarded as contravention.⁹⁷

While monitoring the situation of children with special educational needs in special schools should not be a problem (even though these data are not accessible), the situation of children with special educational needs integrated in regular schools is something different.

According to the statistic data⁹⁸ provided by the ANDCA, the situation of the forms of education attended by children with disabilities is as follows: children attending regular educational units – 23,773; children attending special educational units – 11,904; children attending special integrated educational units – 2,955, of which: in compact class – 144; in group – 365; individually – 2,446; other forms of education – 1,083.

Involved ever since it was established in the issues of inclusive education the education of children with special educational needs, Association RENINCO – Romania considers that “the lack of data aggregation mechanisms regarding children with disabilities and children with special educational needs is a serious problem, an

⁹⁷ OUG No. 137/2000 on preventing and combating all forms of discrimination, art. 11.

⁹⁸ www.copii.ro/statistici

obstacle against making any decision”, as the UNICEF Report on “Children with Disabilities – Romania, 2013” shows.

It should also be mentioned that there are several governmental institutions having powers in the field of children’s rights. For instance, the Ministry of Health is responsible for policies in the field of health, the Ministry of Education for those in the field of education, the Ministry of Labour, Family, Social Protection and Elderly for those in the field of the protection of children and persons with handicaps. All these tend to primarily take into account the multiple needs of the child and do not always communicate with each other. Still we believe that cooperation or interinstitutional coordination are particularly important.

This is also noticeable in the terminological variety applied according to the specific activity of the institutions involved with issues related to vulnerable persons. The Ministry of Education uses such concepts as “deficiency” and “special educational needs” in its documents. The Child Protection Directorate (which coordinates at central level the child protection policies)⁹⁹ within the Ministry of Labour, Family, Social Protection and Elderly uses the concept of “disability”, while the Protection of Persons with Disabilities Directorate (which coordinates at central level policies in the field of the protection of the rights of persons with handicaps)¹⁰⁰ within the same Ministry uses the concept of “handicap”.

There is need for a partnership among all these institutions that would allow a correct and complete monitoring of the situation of children with disabilities to prevent violation of children’s rights.

The development of inclusive schools is one of the educational policies objectives – according to the National Education Act, annual competitions (financed by the Ministry of Education) are organized among schools; they are based on an institutional evaluation of each educational unit focusing on two major directions: inclusion and performance. Both schools that excel in inclusion and those

⁹⁹ <http://www.copii.ro/misiune.html>

¹⁰⁰ <http://www.anph.ro>

that excel in performance are awarded prizes, while those obtaining the qualification “sufficient” or “insufficient” are monitored for improvement of their qualifications.¹⁰¹

Even though, in general, the right to education of all children is promoted, in practice, inclusion of children with special educational needs in regular schools generates reluctance: either some teachers believe these children don’t have a real chance of school success, or some parents protest against the inclusion of children with special educational needs in the class where their own children are enrolled, regarding this as a quality diminution in the education of their children.

A study conducted by the Institute of Education Sciences¹⁰² shows that one of the barriers against the inclusion of children with special educational needs is the insufficient development of a culture of inclusion both inside and outside schools; the reason why this is so is that their integration in regular schools in Romania was a measure of educational policy implemented suddenly, without a sufficient preparation of the educational system both in terms of resources (human, material, financial) and in terms of awareness about the importance of inclusion.

Sometimes attitudes difficult to understand towards children with special educational needs can be noticed; they are manifest, first of all, at social level, being often accompanied by the parents’ shame. The social labelling of their children sometimes make the parents not get involved to find solutions for the children’s school situation (meaning they don’t try to obtain a certificate of school and professional orientation for their children with special educational needs, which would entitle them to various forms of school assistance, such as an assisting teacher).

Recent years’ policies promoted a number of specific measures to sustain the integration of children with special educational needs in the regular educational system. These measures addressed various

¹⁰¹ Law No. 1/2011, the National Education Act, art. 109.

¹⁰² Institutul de Științe ale Educației, *Toți copiii la școală până în 2015. Inițiativă globală privind copiii în afara sistemului de educație*, București, 2012.

domains, such as: organization and assisting services, human resources, etc. However, the organizational and administrative steps forward for those children's integration in the regular educational system were not accompanied by an efficient campaign to raise awareness about the rights of the child and promote an inclusive climate – neither by the educational units, nor by the civil society, nor by the decision makers.

Inclusive education is a permanent challenge for the regular school. The inclusive school puts a value on and integrates all children, including children with disabilities, the pedagogy focused on the child being benefic to all: children will learn to respect both the differences and human dignity. In this context, we would like to mention the existence of a working group for the promotion and the implementation of inclusive education in Romania, called GREI – Grupul Român pentru Educație Inclusivă (The Romanian Group for Inclusive Education). It is also worth mentioning the Manifesto for “encouraging joint effort to sustain all those who believe in a modern and democratic school of European Romania, in every child's right to education, irrespective of the peculiar way he/she develops and learns, in the prevention and/or elimination of marginalization, exclusion and school segregation of children and youngsters with special educational needs, as well as in the possibility of real change of the relationship family-school-community”, promoted by Association RENINCO – Romania.¹⁰³

In recent years, members of Association RENINCO, with the assistance of UNICEF Romania and in collaboration with the Ministry of National Education, elaborated and achieved several works on inclusive education whose purpose was to promote the concept and the good practices in changing attitudes as follows: Steps toward inclusive education in Romania, 2008; Premises of inclusive education in kindergartens, 2010; School inclusion of children with special educational needs, 2010; Inclusive education in kindergartens: dimensions, challenges and solutions, 2012.

¹⁰³ www.reninco.ro.

Association RENINCO¹⁰⁴ conducted several programmes whose objective was the continual training of teachers so that they might deepen and consolidate their knowledge about inclusive education and develop a pro-inclusive education attitude, for instance: in the framework of the programme “Steps towards inclusive education in kindergartens”, run in partnership with the Ministry of National Education and financed by UNICEF Romania, 2009-2011, they organized training-for-trainers stages in kindergartens for all the counties of Romania, this way also organizing a network of inclusive kindergartens. In this respect, every county has in its kindergartens two inclusive education trainers. The programme “A start for inclusive schooling”, implemented in 2012 in partnership with the Ministry of National Education, with financial assistance from UNICEF Romania had as general objective to contribute to the training of school inspectors for primary education units in every county and every sector of Bucharest, so that the inclusion principle be taken into account in schools, focusing on children with special educational needs.

An annual Report of the European Centre for the Rights of Children with Disabilities (CEDCD) shows that “intervention services for children with disabilities supplied by the public institutions are scarce and unadapted to the special needs of children with disabilities, being based on obsolete methods and founded on a segregationist understanding of disability. Children with disabilities are not welcome in schools and kindergartens, there is no adapted curriculum for them, even though the legislation guarantees free access to education of children with disabilities”.

Special schools for children with handicaps “are still in use, despite the fact that they are an expression of segregationism and fail to offer educational services adapted to the special needs various types of disability. Children with disabilities, particularly those with intellectual disabilities, do not benefit from an adapted environment and intervention services necessary for their normal development.

¹⁰⁴ Ibidem.

These services are sporadic, incoherent, and most often parents have to find solutions on their own, through extreme efforts, which are more or less viable for their children. The fundamental conclusion drawn from the activity, the case studies and the research made by the CEDCD in the year 2012 is that access to education of children with disabilities is one of the most violated rights”.¹⁰⁵

We believe that, in order to benefit from an effective education, persons with disabilities should receive the necessary assistance in the framework of the educational system. This involves efficient measures of individualized assistance in the adjustment of the environment meant to maximize school results progress and socialization in compliance with the full integration objective, including the reasonable adaptation of the conditions to the personal needs. Persons with disabilities should be perhaps more encouraged to develop competencies that would facilitate full and equal participation in the educational process and as members of the community as well. There is need to identify measures that would facilitate learning of the Braille writing system, of alternative writing systems, of augmentative and alternative means, of means and forms of communication and orientation of mobility aptitudes, learning of the sign language and promotion the linguistic identity of persons with hearing deficiencies. Educational policies should consider adequate measures such as to employ teachers, including teachers with disabilities, qualified in the sign and/or Braille language, and also to train the professionals and the personnel working at all educational levels. Such a training would involve familiarization with disability issues and the use of adequate augmentative and alternative methods, means and formats of communication, as well as the use of adequate educational techniques and materials to sustain persons with disabilities.¹⁰⁶

Article 25 on health. Article 34 in the Constitution provides that “the right to the protection of health is guaranteed”. Thus, the

¹⁰⁵ <http://www.ceded.ro/despre-noi/rapoarte/150,raportul-anual-de-activitate-al-celed-2012>.

¹⁰⁶ Also see Footnote 25 above.

State is bound to take measures to ensure public hygiene and health. According to the normative act on preventing and combating all forms of discrimination, discriminating a natural person or a group of persons on grounds of their affiliation or the affiliation of the persons administrating a legal person to a certain race, nationality, ethnicity, religion, social category or a disadvantaged category, or on grounds their convictions, age, gender or sexual orientation by denying a person or a group of persons their access to public healthcare services – selection of a family physician, medical assistance, health insurances, emergency services or other healthcare services – is a contravention.

Organization of medical assistance and of the system of social insurances for diseases, accidents, maternity and recovery, as well as the control upon the exercise of the medical professions and paramedical activities, and other measures for the protection of the physical and mental health of persons are established according to the law.

The purpose of the Health Act is promotion of health, prevention of sickness and improvement of life quality. Public health is defined as the population's health condition as compared to the determiners of the health status: socio-economic, biological, environmental, lifestyle, the supply of healthcare services, the quality and the accessibility of healthcare services. Also, the State is always concerned with the continual improvement of the population's health condition and the equitable access to healthcare services for all categories of population, including the rural one.

The insured persons include all Romanian citizens having the domicile in Romania, as well as the foreign citizens and the stateless persons who applied for and obtained an extension of the right to temporary residence or have the domicile in Romania and produce evidence that they have paid the quota to the health insurance fund. The objectives of the health insurance system are protection of the insured persons against the costs of medical services in the case of a disease or an accident and equitable and non-discriminatory provision of a set of basic medical services for any insured person. Persons with

handicaps are entitled to medical insurances without having to pay the quota.

The law on the protection and the promotion of the rights of persons with handicaps devotes a special chapter to health, according to which public authorities have the obligation to include the needs of persons with handicaps and their families in all policies, strategies and programmes of regional, county or local development, as well as in the health protecting governmental programmes, to create such conditions as availability, transportation, infrastructure, communication networks, medical and socio-medical services, and to develop programmes preventing the emergence of handicaps.

The mentioned normative act also provides that persons with handicaps, their families or their legal representatives are entitled to all information related to the medical and the recovery/rehabilitation diagnosis, the available services and programmes, in all their stages, while at the same time enjoying the rights and having the obligations in the field. In Romania, persons with handicaps are entitled to free medical assistance, including free medicines, both for the treatment in polyclinics and during hospitalization, in the framework of the social health insurance system, under the conditions stipulated in the Framework Contract.

Policies in the field of health will have to be also oriented to supply those special healthcare services needed by persons with disabilities, including adequate services for early diagnosis and intervention as well as services meant to prevent the emergence of other disabilities, including amongst children and old persons. Also, healthcare services will have to be developed in such a way that they be available as close as possible to the communities in which the persons with disabilities live, including the rural ones. The quality of healthcare services for persons with disabilities largely depend on the level of awareness about human rights, the dignity, the autonomy and the needs of persons with disabilities, which can be raised to higher values through education and promotion of ethical standards in the field of public and private healthcare services.

Article 26 on habilitation and rehabilitation. The National Strategy for the protection, the integration and the social inclusion of persons with handicaps for the time period 2006-2013¹⁰⁷ defines rehabilitation as the process by which persons with handicaps reach/maintain optimal physical, sensory, intellectual, mental and/or social functional levels, while providing the instruments with which these persons can change their lives to the effect of obtaining a higher degree of independence. Rehabilitation includes measures to recover and/or compensate the loss/absence or limitation of certain functions. Rehabilitation includes recovery which is prevalingly medical in nature. According to the Law on the protection and the promotion of the rights of persons with handicaps¹⁰⁸, public authorities have the obligation to establish and support rehabilitation centers specialized in types of handicap, and to support access to balneological and recovery treatment.

For recovery/rehabilitation assistance to be ensured, persons with handicaps are entitled to:

a) free medical devices in polyclinics, according to the list and under the conditions provided in the Framework Contract for the provision of medical assistance within the system of social health insurances and the norms for its implementation;

b) free services of accommodation and meals also for the companion of a child with serious or severe handicap or of an adult with serious or severe handicap, in sanitary units with beds, sanatoria and health spas, on recommendation by the family physician or the specialized physician, covered by the National Unique Fund of Social Health Insurances, in conformity with the Framework Contract for

¹⁰⁷ HG No. 1175/2005 on approval of the National Strategy for the protection, the integration and the social inclusion of persons with handicaps for the time period 2006-2013, published in the Official Gazette of Romania, I, No. 919 of 14 October 2005.

¹⁰⁸ Law No. 448/2006 on the protection and the promotion of the rights of persons with handicaps, republished, with its subsequent amendments and supplementations, arts. 9-11.

the provision of medical assistance within the system of social health insurances;

c) a free ticket for balneological treatment per year, on the basis of the individual programme of rehabilitation and social integration and on recommendation by the family physician or the specialized physician.

According to the Romanian legislation¹⁰⁹, the evaluation of adult persons with handicaps is a complex and continuous process by which their development, integration and social inclusion peculiarities are estimated and acknowledged. The process involves collection of as complete as possible information and interpretation thereof for orientation of the decision and intervention.

Evaluation is subordinated to the principle of the disabled person's interest, according to which any decision or measure is made or taken only to the interest of the person, while approaches based on mercy and the perception of persons with handicaps as helpless are unacceptable.

Evaluation has the following characteristic features:

- is focused on the adult's potential of development, integration and social inclusion, pointing out what the adult with a handicap knows and is able to do, what abilities and skills he/she has or can develop;

- is based on the social model of approaching disability, involving an integrating approach of relevant elements: health condition, degree of mental-social adaptation, level of education, degree of professional abilities development;

- is unitary, meaning that it operates with the same objectives, criteria, and methodologies;

- is performed by a team, all members of the team being actively involved, each one working complementarily with the others;

¹⁰⁹ HG No. 268/2007 on approval of the Methodological Norms for the application of law on the protection and the promotion of the rights of persons with handicaps, Chapter V, arts. 46-48.

– respects the rights and dignity of persons with handicaps, as well as the principle “Nothing for us, without us!”, which is the basis of any decision made in relation to a person with a handicap.

The compulsory domains in which evaluation is made are:

- social evaluation, made by social workers;
- medical evaluation, made by specialized physicians;
- psychological evaluation, made by psychologists;
- vocational or professional abilities evaluation, made by psycho-pedagogues, education instructors or recovery pedagogues;
- evaluation of the abilities and the level of social integration, made by psychologists, psycho-pedagogues, recovery pedagogues or social workers.

Establishment of the degree of handicap for children and adults is made by the child protection commission, and the commission for the evaluation of adult persons with handicaps, respectively, both being decision-making commissions. The degree of handicap certificate is accompanied by the individual programme of rehabilitation and social integration, a document issued by the evaluation commissions, specifying the activities and the services an adult with a handicap needs in the process of social integration.

ASSOC Baia Mare developed, in the framework of Project CASPER, a system for evaluating the work potential profile of persons with disabilities¹¹⁰, the first complex instrument for the evaluation of persons with disabilities in Romania with ages from 12 to 67 which, beside generating the report of individual psychological evaluation, the candidate’s profile, the report on the suitability for the job and the report on the hierarchy of candidates for the job, also lays emphasis on the work potential profile of persons with disabilities.

A great many of services were established and/or developed by non-governmental organizations in the area of early intervention primarily for the importance that should be attached to it, yet, at the same time, they have a limited power of action. One type of

¹¹⁰ <http://www.ziarmm.ro/casper-ineditul-apatat-care-evalueaza-per-soanele-cu-dizabilitati-video/>.

early intervention, for instance, is to be found in Tg. Mureș, in the Center of prevention and early intervention for neuro-psycho-motion disabilities, organized by Foundation Alpha Transilvană, which develops programmes of close collaboration with the Neonatal Clinic and the Premature Infants Clinic in the Mureș County Clinic Hospital, and also with neuro-psychiatrists and family physicians in Tg. Mureș for maximum optimization of the intervention packages developed for the beneficiaries of this programme.¹¹¹

The early intervention programme of Foundation Sense International provides newborns and infants with the opportunity to benefit from a diagnosis, rehabilitation and early intervention, with the assistance of multidisciplinary teams made up of physicians, psycho-pedagogues, psychologists as well as parents. Thus, newborns are tested hearing and sight at birth, and in case there are signs of problems, they start an individualized recovery programme in the framework of centers for assistance in early intervention.¹¹²

On the organization's initiative, the importance of early intervention was acknowledged at national level, being included in the national educational system as a result of the approval of Order No. 3071/2013 on approval of the educative content for prior pre-school early intervention devoted to children with multiple sensory deficiencies/deafblindness.

Motivation Clinic of Medical Recovery, developed by Foundation Motivation, offers specialized medical consultations, kinetotherapy, electrotherapy and thermotherapy at its headquarters. Individualized programmes for medical recovery are achieved by professional kinetherapists, under the guidance of specialized physicians, for a very large range of children's and adults' diseases of all kinds: orthopedics (scoliosis, pre- and post-operation disk hernias, prostheses – hip, shoulder, knees, post-traumatic recovery: fractures, contusions, soft tissue injuries, etc.); rheumatology (osteoporosis, arthrosis,

¹¹¹ <http://www.alphatransilvana.ro/perseverenta-complex-de-servicii-pentru-copii-cu-dizabilitati/preventie-si-interventie-timpurie.html>.

¹¹² <http://www.surdoceccitate.ro/ro/programc>.

gonarthrosis, coxarthrosis, spondylosis, rheumatoid polyarthritis, ankylosing spondylitis, tendinitis, periartthritis, etc.; neurology (vertebro-medullary injury, peripheral nerve paralysis, Parkinson, cerebrovascular accident, cerebral palsy, multiple sclerosis, etc.).

It is also Foundation Motivation Romania that initiated, in partnership with Swiss Paraplegic Research, a Swiss research institute, a project called “Abilities do count – Implementation of the International Classification of Functioning Disability and Health in social inclusion services for persons using wheelchairs in Romania” with a view to improve the quality of rehabilitation and employment services for wheelchair users in Romania. In the framework of the project, the campaign on “Abilities do count” will promote an ability-oriented approach to the services addressing wheelchair users in Romania, while at the same time it is a unique programme for awareness raising and instruction meant to assist the Romanian professionals working in the field to adopt principles focused on the abilities of persons with disabilities thus changing the current approach – predominantly medical – to disability.

The legislative framework in the field of disability will have to be further developed to allow persons with disabilities to acquire and maintain maximum autonomy, to fully develop their physical, mental, social and professional potential, and to achieve full integration and participation in all aspects of life. To this end services and complex habilitation and rehabilitation programmes should be organized, consolidated and extended, particularly in such fields as healthcare, employment, education and social services. It is important that such services and programmes should start as early as possible, be based on a multidisciplinary evaluation of individual needs and abilities, assist participation and integration in the community and all aspects of life on the basis of the persons’ freely expressed consent, and be available as close as possible to the community they live in, including the rural environment.

Also, particular attention should be paid to the development of programmes devoted to the initial and continual training of the

professionals and the personnel working in the framework of habilitation and rehabilitation services.

Article 27 on work and employment. According to the Constitution, “the right to work shall not be restricted. Everyone has a free choice of his/her profession, trade or occupation, as well as work place. All employees have the right to measures of social protection. These concern employees’ safety and health, working conditions for women and young people, the setting up of a minimum gross salary per economy, weekends, paid rest leave, work performed under difficult and special conditions, as well as other specific conditions, as stipulated by the law. The normal duration of a working day is of maximum eight hours, on the average... On equal work with men, women shall get equal wages”.¹¹³

According to the normative act on the prevention and sanctioning of all forms of discrimination¹¹⁴, which transcribes the provisions of Directive 78¹¹⁵, the principle of equality among citizens and exclusion of privileges and discrimination are guaranteed in terms of exercise of the right to work, free choice of occupation, fair and satisfactory work conditions, protection against unemployment, equal wages for equal work and fair and satisfactory remuneration.

The provisions of the Labour Code¹¹⁶ stipulate that a natural person shall acquire legal capacity to work at the age of sixteen; however, a natural person may also conclude an employment contract as an employee at the age of 15, with the agreement of his/her parents or legal representatives, related to activities corresponding to his/her physical development, skills and knowledge, unless his/her health, development and vocational training are harmed. The Labour Code prohibits the employment of persons placed under guardianship.

¹¹³ Constitution of Romania revised, art. 41 paragraphs (1)-(4).

¹¹⁴ OUG 137/2000, art. 1 paragraph (2).

¹¹⁵ Directive 2000/78/CE establishing a general framework for equal treatment in employment and occupation.

¹¹⁶ Labour Code, art. 13.

The Law on the protection and the promotion of the rights of persons with handicaps¹¹⁷ acknowledges the right of persons with handicaps to work and earn income in conformity with the provisions of the labour legislation. Also, the normative act stipulates that persons with handicaps are entitled to be ensured all necessary conditions so that they might choose and exercise their profession, job or occupation, obtain and keep an employment, as well as be professionally promoted; persons with handicaps may be employed in accordance with their professional training and work capacity, attested by the Certificate for assignment to a degree of handicap.

Public authorities have the obligation to take the following special measures:

- promote the concept according to which an employed person with a handicap is an additional value for society and, particularly so, for the community to which he/she belongs;

- promote a work environment that is open, inclusive and accessible to persons with handicaps;

- create the necessary conditions and services for persons with handicaps to be able to choose the form of professional conversion/reconversion and the workplace, according to his/her functional potential;

- establish and sustain complexes of services, made up of authorized protected units and protected residential dwellings;

- initiate and develop forms of stimulation for employers, so that they should employ persons with handicaps and keep them employed;

- assist management of a market selling the work products of persons with handicaps;

- diversify and maintain various social services, including advisory services for persons with handicaps and their families, information for employers, assisted employment and others of the kind;

¹¹⁷ Law No. 448/2006, art. 77.

- promote services of mediation on the labour market for persons with handicaps;
- achieve / permanently update the database with a view to point out the work availability of persons with handicaps;
- develop collaborations with the media with a view to increase the community’s awareness/sensitiveness about the potential, the abilities and the contribution of persons with handicaps on the labour market;
- achieve, in collaboration or in partnership with legal persons, public or private, programmes and projects meant to increase the employment rate;
- initiate and sustain campaigns to increase the employers’ sensitiveness and awareness about the abilities of persons with handicaps;
- initiate specific programmes that stimulate increased participation on the labour market of groups of persons facing the major risk of social exclusion.

The Labour Code provides for an additional leave of at least three workdays. The Wages Act provides that blind persons with a serious and severe handicap shall be additionally paid for the activity performed during the normal work hours an increase of 15% of the basic pay.

According to the Work Health and Safety Act¹¹⁸, vulnerable groups facing specific risks, such as pregnant women, childwives or nursing mothers, youngsters and persons with disabilities, shall be protected against dangers that affect them specifically. Thus, employers are bound to adjust the workplaces taking into account the presence of vulnerable groups exposed to specific risks.

The Law on the protection and the promotion of the rights of persons with handicaps provides the obligation of public authorities and institutions, legal persons, public or private, having at least 50 employees, to employ persons with handicaps at a rate of at least

¹¹⁸ Law No. 319/2006 on work health and security, arts. 35-36.

4% the total number of employees. Alternatively, they may choose to monthly deposit to the State Budget an amount equal to 50% the minimum gross basic wages multiplied by the number of positions for which they didn't employ persons with handicaps or they may buy products or services achieved as a result of the activity of persons with handicaps in authorized protected units.

According to the statistic data made available by the Ministry of Labour, Family, Social Protection and Elderly, on 31 December 2013, there were 648,223 registered adult persons with handicaps (of which 236,781 are persons with handicaps over 65 years old), 29,042 being employed. The situation of employed persons with handicaps, in terms of types of handicap, is as follows: physical – 7,623; somatic – 11,950; auditory – 3,388; visual – 2,881; mental – 762; psychic – 1,245; associated – 1,421; HIV/AIDS – 315; rare diseases – 236; deaf-blind – 26.

Even though the legislation provides for the obligation of making the data available, at the time when this Report was elaborated the data referring to the employment of persons with handicaps in the public sector were not accessible.

In recent years, many efforts of non-governmental organizations were focused on facilitating the access of persons with handicaps to the labour market; this was mainly done with support from the structural funds – POSDRU. Thus, in spite of the fact that the Romanian legislative framework did not develop normative acts/policies in the field of social economy, social economic structures employing persons with handicaps were nevertheless established. Also with support from the structural funds, programmes of professional re-integration, technical and vocational orientation, as well as services for employment and continual professional training for persons with handicaps were initiated.¹¹⁹ So, models of social economy in Romania not only are at work, but also offer competitive services on the market. For instance: the three protected units Util Deco in Iași, Constanța

¹¹⁹ Data referring to the POSDRU results were not available at the time this Report was elaborated.

and Mureș, developed and sustained by Foundation “Alături de voi” Romania, where 35 youngsters with disabilities were integrated on the labour market. This way, persons who not long ago used to be socially assisted have become independent.¹²⁰

Another project devoted to the employment of persons with handicaps is the one called “Counselling, Employment, Change of Mentalities, Elimination of Barriers, Accessibility, Training” run by the Ministry of Labour, Family, Social Protection and Elderly in partnership with the National Association of Social Workers, which pursued specific objectives: develop instruments for the adaptation of the workplace from the point of view of persons with disabilities, employers and the workplaces themselves; develop a counselling and assisting center for the creation of new adapted workplaces and the achievement of an information and awareness raising campaign on the access of persons with disabilities on the labour market.

As far as respect of the right to work of persons with disabilities is concerned, the Romanian legislative framework has to be further developed – this should start by amending the article in the Labour Code that prohibits employment of persons placed under guardianship. It is also necessary to elaborate policies and identify adequate measures in order to: promote employment of persons with disabilities in the private sector; promote opportunities for independent activities; develop the enterprising spirit; develop cooperatives and start self-managed businesses; promote vocational and professional rehabilitation; maintain the jobs and the status of employees; promote programmes of professional re-integration for persons with disabilities.

It is also necessary to analyze and possibly revise the terms and concepts specific to the field of pensions¹²¹ – invalidity, invalidity pension, loss of working capacity – so that persons with handicaps who also have the status of invalidity pensioner might exercise their right to work.

¹²⁰ <http://adevarul.ro/economie/stiri-economice/>.

¹²¹ Law No. 263/2010 on the unitary system of public pensions.

Article 28 on adequate standard of living and social protection.

According to art. 47 in the Constitution, “the State shall be bound to take measures of economic development and social protection, of a nature to ensure a decent living standard for its citizens. Citizens have the right to pensions, paid maternity leave, medical care in public health centres, unemployment benefits, and other forms of public or private social securities, as stipulated by the law. Citizens have the right to social assistance, according to the law”.¹²² Also, according to art. 41 (2) in the Constitution, “all employees have the right to measures of social protection. These concern employees’ safety and health, working conditions for women and young people, the setting up of a minimum gross salary per economy, weekends, paid rest leave, work performed under difficult and special conditions, as well as other specific conditions, as stipulated by the law”.

According to the Housing Act¹²³, the following categories of persons may be granted social housing, distributed by local councils based on criteria set by them annually: persons and families evacuated or who are to be evacuated from the residential buildings retroceded to the former owners, young people till the age of 35, young people coming from social care institutions who have reached the age of 18, invalids with I and II degree of disability, persons with handicaps, pensioners, veterans and war widows, etc.

Also, the Law on the protection and the promotion of the rights of persons with handicaps¹²⁴ stipulates that public authorities have the obligation to take measures to introduce a new priority criterion for the renting, at lower floors, the residential dwellings belonging to the State’s public domain or its administrative-territorial units.

Persons with serious handicaps are entitled to:

¹²² Constitution of Romania revised, art. 47.

¹²³ Housing Act, Law No. 114/1996, art. 43.

¹²⁴ Law No. 448/2006 on the protection and the promotion of the rights of persons with handicaps, republished, with its subsequent amendments and supplementation, art. 20.

– an additional inhabiting room as compared to the legal inhabiting minimal norms, on the basis of residential tenancy agreements for dwellings belonging to the State’s public or private domain or to its administrative-territorial units;

– exemption from payment of the rent for residential dwellings owned by the State or its administrative-territorial units and used by these persons.

According to the Pensions Act, persons who paid retirement contributions under the circumstances of a handicap preceding their capacity as insured persons are entitled to a reduction of the standard pensioning age depending on the degree of handicap, under certain conditions.

The Law on the minimum guaranteed income¹²⁵ provides the right of families and single persons who are Romanian citizens to a minimum guaranteed income as a form of social assistance, granted under certain conditions.

Policies have to be developed including adequate measures that provide persons with disabilities and their families who live in poverty access to financial assistance from the State, for disability-related expenditures, including training, counselling, financial assistance and adequate temporary medical care. In this respect, the legislation of our country has to be amended/supplemented to the effect that it should acknowledge the compensatory role played by the services persons with handicaps benefit from so that such services (the indemnity and the complementary budget) be no longer regarded as income when other social aids, minimum pension, etc., are established.

Article 29 on participation in political and public life. The Constitution of Romania guarantees, according to its art. 36, equality in rights of all Romanian citizens, without privileges and discrimination, and provides that all Romanian citizens having turned 18 shall have the right to vote, except for the mentally deficient or alienated persons, laid under interdiction, as well as the persons disenfranchised by a

¹²⁵ Law No. 416/2001 on the minimum guaranteed income.

final decision of the court. The Constitution also provides eligibility is granted to all citizens having the right to vote having their domicile in Romania, and unless they are forbidden to join a political party.

According to the Electoral Act¹²⁶, in Romania the State shall ensure equal conditions for the exercise of the right to vote. In the terms of the electoral legislation in our country, only the direct or the assisted exercise of the right to vote is allowed, while voting through representatives, a solution adopted by other countries, is not allowed. Thus, voters have the right to go in person to the polling station they are ascribed to, while a number of requirements established to ensure adequate conditions for the exercise of the right to vote:

- when establishing the polling stations, areas on the ground floors of buildings shall be primarily considered;

- to provide access to persons with locomotor handicaps who intend to exercise their right to vote, special ramps shall be built;

- beside the norm of polling booths calculated for a polling station, a polling booth for persons with locomotor handicaps should be built and placed, adequately sized and marked.

Inside the polling station, a voter who, for solid reasons, acknowledged by the President of the Electoral Bureau of the polling station, is unable to vote unattended, he/she is entitled to have a companion of his/her choice in the polling booth to help him/her vote. The companion may not be chosen from among the observers or the members of the Electoral Bureau of the polling station. For voters who are immovable for reasons of disease or invalidity, the President of the Electoral Bureau of the polling station can approve, on written request by the respective persons, accompanied by copies after medical documents or other official documents showing that the respective persons are immovable, that a team made up of at least two members of the Electoral Bureau betake themselves, with a special

¹²⁶ Law No. 35/2008 on organizing and running the elections for the local public administration authorities and the elections for the Chamber of Deputies and the Senate in the year 2012 as well as on amending the Local Public Administration Act, Law No. 215/2001, art. 6.

ballot box and the documents needed for voting, to the location of the voter so that the latter may vote. Throughout the area assigned to a polling station one single special ballot box may be used. The special ballot box may be transported only by the members of the Electoral Bureau of the polling station and can be taken only within the territorial area assigned to the respective polling station.

As far as the active participation of persons with disabilities in the activities and the management of political parties, both the Constitution and Law No. 14/2003 on political parties, with its subsequent amendments and supplementation, provide a non-discriminatory legal framework for all Romanian citizens.

The Permanent Electoral Authority, an autonomous administrative institution that monitors the organization and the running of the electoral operations, includes in its preoccupations the one referring to the elaboration and running of programmes for persons with disabilities (physical, somatic, auditory, and visual) to be able to exercise their rights to vote. To this end, the institution initiated the project called “Your vote is equal with that of others!”, which is intended to analyze and propose solutions for the problems encountered by persons with disabilities in the elections organized so far both in terms of accessibility for the exercise of the right to vote and access to information during the electoral campaign. The accessibility issue was discussed in terms of two aspects: on the one hand, accessibility to the building in which the polling station is organized (existence of access ramps, handrails, inside special access routes), and on the other hand, accessibility within the polling station. The debates that took place in the framework of the project entailed a number of conclusions:

- the need for adequate training of the members of electoral bureaus on the electoral rights and the way persons with disabilities exercise their right to vote;

- the need to provide accessibility into the buildings where polling stations are organized for persons with disabilities, by means of access ramps;

– the need to have a separate polling booth installed in the polling station, adapted to the needs of persons with disabilities so that they might exercise their right to vote;

– the need to improve communication between the institutions involved with the electoral process and voters with disabilities/their representative organizations. For instance: translation of electoral broadcasts into sign language, popularization – through NGOs, the written and the audiovisual press – of informative materials about the rights of voters with disabilities and the way they can vote;

– the need to assist NGOs to implement awareness raising programmes amongst their members to make them realize the importance of the exercise of the right to vote.

Exercise of the right to vote by persons with handicaps can be achieved only with the assistance of all actors involved with the electoral process. States have the obligation to find legal remedies to facilitate the access of persons with handicaps to the electoral process. In this respect, various States developed a number of alternative voting methods that allow voters with handicaps to publicly, preferably without assistance, which ensures vote secrecy. These vary from adaptation of the vote expressing machines or the special form of the vote bulletins (Braille) to remote voting procedures.¹²⁷ Therefore, Romania too has to develop actual measures to provide effective and full participation in the political and public life, under equal conditions with the others.

Article 30 on participation in cultural life, recreation, leisure and sport. According to art. 33 in the Constitution of Romania, Romanian citizens are guaranteed their access to culture, while the person's freedom to develop his/her spirituality and to get access to the values of national and universal culture shall not be limited. The State must make sure that spiritual identity is preserved, national culture is supported, arts are stimulated, cultural legacy is protected and preserved, contemporary creativity is developed, and Romania's

¹²⁷ Exercise of the right to vote by persons with handicaps, Permanent Electoral Authority.

cultural and artistic values are promoted throughout the world. According to the legislation against discrimination¹²⁸, such principles as citizens' equality and elimination of privileges and discrimination are guaranteed insofar as the exercise of the right to participate, on equal conditions, in cultural and sportive activities is concerned.

The law on the protection and the promotion of the rights of persons with handicaps devotes an entire chapter to this field, entitled "Culture, sports, tourism".¹²⁹ Thus, the competent public administration authorities have the obligation to facilitate the access of persons with handicaps to the cultural values and the patrimonial, touristic, sportive and spare time objectives. To ensure the access of persons with handicaps to culture, sports and tourism, public administration authorities have the obligation to take the following measures:

- sustain participation of persons with handicaps and their families in cultural, sportive and touristic events;
- organize, in collaboration or in partnership with legal persons, public or private, such events and activities as cultural, sportive or spare time related;
- ensure conditions for persons with handicaps to practice sports;
- sustain the activity of the sports organizations of persons with handicaps.

According to the special law, a child with a handicap, as well as the accompanying person, is entitled to free-of-charge entrance tickets to shows, museums, artistic and sportive events. The same normative act provides the public authorities' obligation to include and acknowledge sports as a means for recovery, and develop specific programmes.

¹²⁸. JOUG No. 137/2000 on preventing and sanctioning all forms of discrimination, art. 1, paragraph (2).

¹²⁹ Law on the protection and the promotion of the rights of persons with handicaps, with its subsequent amendments and supplementations, Section IV, art. 21.

The Physical Education and Sports Act, Law No. 69/2000, imposes the public administration authorities' obligation to provide conditions for the practicing of physical education and sports by persons with physical, mental or mixed handicaps, so that they might develop their personality and integrate in the society, and also provide the means that enable sports people with handicaps to participate in the national and the international competitions organized for them.

In Romania, sport for persons with disabilities is developing well. The National Paralympic Committee¹³⁰, the offspring of the Romanian Federation of Sports for Persons with Handicaps, is a sportive structure of national interest, the only one authorized to organize and control sportive activities for types of disability in Romania, playing an important role in:

- promoting paralympic sports in Romania without any discrimination;
- increasing awareness about the paralympic movement in Romania;
- encouraging youngsters with disabilities to practice sports as well as popularizing paralympic sports as a challenge, a motivation and a method of social integration;
- improving the disabled persons' health condition by training their reflexes, the force of their bodies and their power of concentration.

Special Olympics Romania started its activity in 2003, as an integral part of the international sportive movement Special Olympics. The organization makes a contribution to the social integration of persons with intellectual disabilities, giving them the opportunity to discover and develop their sportive potential and qualities by means of training programmes and competitive events organized throughout the year. This way our sports people have the opportunity to become active members of the family and of the community to which they belong. Special Olympics is an experience that generates energy, health, self-confidence and joy of life.

¹³⁰ <http://www.npc.org.ro>

There are many examples of sportive events organized by non-governmental organizations in Romania, but people are insufficiently aware about them. For the sake of illustration, let us remind a few competitions organized by Foundation “Motivation”: the Motivation Swimming Competition and “Let’s participate in the Swimming Marathon”, the wheelchair basketball competitions (Motivation has been a member of the Romanian Basketball Federation since 2002), international wheelchair tennis tournament, with ITF points.¹³¹

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Of course, we are still in the phase of investigations.

Obviously, we are at the beginning of the research we initiated for the accomplishment of our tasks as independent mechanism for promoting and monitoring the implementation of the UN Convention on the Rights of Persons with Disabilities (according to art. 33 paragraph 2 in the Convention).

¹³¹ <http://www.motivation.ro/ro/programe-proiecte/sport-adaptat/baschet-in-scaun-rulant>

CONTENTS

Abbreviations.....	3
Forword.....	5
Historical context.....	13
Article 1-4 on general obligations.....	22
Article 5 on equality and non-discrimination.....	26
Article 6 on women with disabilities.....	29
Article 7 on children with disabilities.....	30
Article 8 on awareness-raising.....	35
Article 9 on accessibility.....	39
Article 10 on the right to life.....	43
Article 11 on situations of risk and humanitarian emergencies.....	43
Article 12 and Article 13 on equal recognition before the law and access to justice.....	44
Article 14 on liberty and security of person.....	48
Article 15 on freedom from torture or cruel, inhuman or degrading treatment or punishment.....	49
Article 16 on freedom from exploitation, violence and abuse.....	51
Article 17 on protecting the integrity of the person and Article 18 on liberty of movement and nationality.....	52
Article 19 on living independently and being included in the community.....	53
Article 20 on personal mobility.....	58
Article 21 freedom of expression and opinion, and access to information.....	59

Article 22 on respect for privacy 61
Article 23 on respect for home and the family 62
Article 24 on education 63
Article 25 on health 71
Article 26 on habilitation and rehabilitation 74
Article 27 on work and employment 79
Article 28 on adequate standard of living and social protection 84
Article 29 on participation in political and public life 85
Article 30 on participation in cultural life, recreation, leisure
and sport 88

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