

Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and the Special Rapporteur on the rights of persons with disabilities

REFERENCE: UA
MDA 2/2015:

31 March 2015

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and Special Rapporteur on the rights of persons with disabilities pursuant to Human Rights Council resolutions 25/17 and 26/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the discontinuation of a programme of protected housing for persons with intellectual and psychosocial disabilities in the city of Balti which had, until now been considered among the most advanced ones in the country, and which leaves them at risk of institutionalization.

According to the information received:

The Balti Community Mental Health Centre (Balti CMHC) was founded in September 2000, and subsequently registered as a public institution through Decision No. 8/17 of 23 December 2004 by the Balti Municipal Council. The Balti CMHC is operating in conformity with Governmental Decision No. 55 on the rules and minimum quality standards for the Community Mental Health Centers (30 January 2012). In compliance with this regulatory framework, Balti CMHC is providing three basic services funded by the National Health Insurance Company under the administration of the Ministry of Health:

- Day-time care for persons with intellectual and psychosocial disabilities, including medical treatment and rehabilitation programs;

- Temporary residential placement for a period of up to 6 months to help persons with intellectual and psychosocial disabilities transition from institutions into community housing and prevent new cases of institutionalization; and
- Home intervention for the mitigation of crisis situations, provided by a mobile team of specialists in conformity with the “Assertive community treatment” principles to prevent unnecessary long-term hospitalization.

In addition, as a result of successful advocacy efforts by organizations advancing the rights of persons with disabilities, we understand that the Balti CMHC concluded an agreement with the Balti municipality on providing a fourth type of services, namely protected housing arrangement (hereafter the “protected housing arrangements service”).

This service was developed between 2008 and 2011 through the project “Developing and piloting protected housing service for people with mental disabilities from the north part of Moldova”, financed by the European Commission, Mental Health Initiative, and implemented by Global Initiative on Psychiatry – Hilversum and NGO Somato (Moldova) with a total amount of 294 629,08 Euro. For the development of this service, the local mayoralty of Balti would have offered two flats and two halves of houses, which were reconstructed and equipped for the purpose of supported housing through said project. In contrast with the services covered from the central budget controlled by the Ministry of Health, the funding responsibilities for the establishment and maintenance of the protected housing arrangements are devolved to the local level. In this case the service requires budget allocation and the use of buildings under the administration of the Balti municipality.

According to the information received, the goal of the protected housing arrangements service has been to ensure social housing for persons with intellectual and psychosocial disabilities and create conditions for their development of skills necessary for living independently in the community, and social and professional integration into the community. We understand that the objectives of the service have included: deinstitutionalization, prevention of further institutionalization, and ensuring minimum living conditions for persons with intellectual and psychosocial disabilities.

We understand that the Balti Community Mental Health Center in the context of the protected housing arrangements service manages four sheltered apartments for sixteen adults. Currently, these supported living arrangements host five beneficiaries on a permanent basis – two were deinstitutionalized from a psycho-neurological boarding house in Balti in 2009 and three more persons as a measure

to prevent institutionalization. In addition, three more beneficiaries are in temporary placement ready to move to the protected houses – two of them were deinstitutionalized from a residential institution and one from a psychiatric hospital, after six years of being there. An additional six persons are waiting in residential institutions to be deinstitutionalized and placed in protected houses within the protected housing arrangements service.

On 26 February 2015, the Municipal Council of Balti decided to discontinue the protected housing arrangements (decision no. 1/94) and possibly take back the dwellings from the use of recipients of this service for the benefit of private use of the dwellings. As a result, the eight persons who already lived in the dwellings are at risk of eviction, and the six persons who waited to move from residential institutions to the dwellings, would remain living in the institutional setting. To our knowledge no alternative supportive housing has been offered to those currently living in protected housing nor has an alternative been provided for those waiting to move into protected housing.

Serious concerns are raised that this represents a retrogressive measure for the enjoyment of the affected persons with disabilities, of their right to live freely and be included in the community, and of their right to adequate housing as a component of the right to an adequate standard of living. It appears that the discontinuation of the Community Mental Health Center supported living services endangers the right of its beneficiaries to live freely in the community as they risk placement in residential institutions without concomitant implementation of international human rights standards and principles with regard to the right to live freely in the community. We express our concern also at the allegation that existing programmes related to deinstitutionalization, prevention of institutionalization, and solutions related to community-based living for persons with disabilities appear to be undermined by this sudden decision, without alternative programmes put in place.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government articles 12 and 19 of the Convention on the Rights of Persons with Disabilities, ratified by the Republic of Moldova on 21 September 2010. These articles recognize that persons with disabilities shall enjoy legal capacity on an equal basis with others in all aspects of life, with the support they may require in exercising their legal capacity, and the equal right of all persons with disabilities to live in the community, including by ensuring them the opportunity to choose their place of residence and not obliging them to live in a particular living arrangement, and by ensuring their access to a range of in-home, residential and other community support services. In its General Comment 1, paragraphs 44-46, the Committee on the Rights of Persons with Disabilities elaborates that persons with disabilities must have the opportunity to live independently in the community and to make choices and to have control over their everyday lives, on an equal basis with others,

and that support in the exercise of legal capacity should be provided through a community-based approach. The Committee further clarifies that in order to comply with the Convention, deinstitutionalization must be achieved and legal capacity must be restored to all persons with disabilities, who must be able to choose where and with whom to live.

A recent report (A/HRC/28/37) by the Office of the United Nations High Commissioner for Human Rights stresses, in paragraph 9, that article 19 of the CRPD creates an obligation on States parties to ensure for persons with disabilities access to public housing programmes and support services that facilitate independence in their daily lives. The report also underlines, in paragraph 53, that deinstitutionalization plans should envisage a systemic transformation and the progressive increase of support and alternative services available in the community, and provide for a realistic time frame, which requires the reallocation of resources from institutions to community support services.

We also recall articles 2 and 11.1, of the International Covenant on Economic, Social and Cultural Rights, to which the Republic of Moldova acceded in 26 January 1993. These articles guarantee non-discrimination in the exercise of the rights in the Covenant, and the right to an adequate standard of living, including housing, respectively. The Committee on Economic, Social and Cultural Rights has stressed, in its General Comment No. 4, that the right to adequate housing should be seen as the right to live somewhere in security, peace and dignity, including various aspects such as accessibility and legal security of tenure. General Comment No. 7 has noted that States must ensure, prior to carrying out any evictions, that all feasible alternatives are explored in consultation with the affected persons; legal remedies or procedures and procedural protections should be provided to those who are affected by eviction orders; and no one should be rendered homeless as a result of eviction, and appropriate measures must ensure alternative housing or resettlement to the maximum of available resources. We also recall General Comment No. 20 on non-discrimination in economic, social and cultural rights, in particular where it refers to persons with disabilities.

We also call you attention to the report of the Special Rapporteur on adequate housing on the roles and obligations of local and subnational levels of government with respect to the right to adequate housing, presented to the Human Rights Council at its 28th session (A/HRC/28/62).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to my attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned allegations.

2. Please provide details on the implications of Decision no. 1/94 by the Balti Municipal Council, which decides to discontinue the city's supported housing programme, for the fourteen persons with intellectual and psychosocial disabilities who have been beneficiaries of the programme, and what measures have been taken to ensure that alternative living arrangements offered or provided for its beneficiaries will comply with international human rights law, especially with regard to their enjoyment of legal capacity and the right to choose where and with whom to live.

3. Please share with us any further information on the progress achieved in amending legislative provisions to secure respect for the right to legal capacity for adult women and men with intellectual and psychosocial disabilities, including the number of court rulings on legal capacity and clarification on living arrangements available for persons who have been deprived of their legal capacity.

4. Please elaborate on the available procedures to ensure legal recognition of the support person(s) chosen by a person with intellectual or psychosocial impairments to assist them in decision-making about where to live and how to gain meaningful access to the community.

5. Please provide details on the implementation of the Government's deinstitutionalization strategy, including corruption mitigation, financial transparency, accountability and availability of redress mechanisms, at national and local levels of government and coordination between those two. In relation to this point, please explain existing monitoring mechanisms.

6. Please provide further information on the established models of financing for the services developed in conformity with the standards and rules adopted by Ministry of Labor Social Protection and Family, strategies to mitigate risks envisaged in relation to cooperation on the part of the local municipalities to support financially the development of community-based social services and mechanisms to redirect resources from residential care institutions to communities.

7. Given resource and capacity constraints, please elaborate on the immediate measures taken to prevent regulations or policies that imply a retrogression in the enjoyment and exercise of the right to adequate housing, and of related rights of

persons deinstitutionalized from institutional care facilities to live independently and be included in the community, and the particularly negative impact on the further discharge of the people from institutions.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Leilani Farha

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Catalina Devandas Aguilar

Special Rapporteur on the rights of persons with disabilities