

Mandates of the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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; the Independent Expert on the enjoyment of all human rights by older persons; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA ROU 1/2020

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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; Independent Expert on the enjoyment of all human rights by older persons; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 35/6, 35/15, 42/16, 34/9, 42/12 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning the physical integrity of persons with disabilities and older persons in Sasca Mică and other residential institutions in Romania, who have tested positive for COVID-19.**

According to the information received:

On 21 April 2020, the Government of Romania reported a major COVID-19 outbreak at the Neuropsychiatric Recovery and Rehabilitation Centre in Sasca Mică (Suceava county), where 242 of the 369 residents and 59 of the 86 members of staff tested positive. This facility is the largest residential institution in Romania for persons with intellectual or psychosocial disabilities, many of whom are older persons and/or have underlying health conditions.

On 24 April, the authorities informed the public about the first fatality at the institution in Sasca Mică, an 80-year-old man who was exposed at the origin of the outbreak. The authorities adopted urgent measures that involved separating infected residents from staff. While those residents who tested positive for COVID-19 were reportedly quarantined in a separate building within the Sasca Mică complex, the staff were admitted to nearby hospitals. No explanation has

been offered for this difference in treatment. Reportedly, existing national rules and practices in Romania require the hospitalisation of all symptomatic carriers of the COVID-19 virus.

In-country medical protocols to manage the pandemic set out a clear procedure for tracing, testing, admitting and discharging COVID-19 patients that involves frontline and backup hospitals. All symptomatic cases are subject to compulsory hospitalization, based on their severity and availability of beds, with frontline hospitals filled first and backup hospitals second, and isolation at home for asymptomatic cases. So far, there is reportedly plenty of spare capacity in hospitals in the Suceava county, which raise questions about the reasons why residents of the Neuropsychiatric Recovery and Rehabilitation Centre in Sasca Mică affected by COVID-19 have not been transferred to hospitals.

A Ministry of Health official declared that the remaining staff in Sasca Mică would receive personal protective equipment and training on how to use it, record-keeping would be tightened, and staff would be supplied with protocols on symptomatology, regular medical care and intensive care. At the same time, a call for volunteer psychologists was issued to provide staff with remote counselling. However, there is reportedly no information about the COVID-19 specific treatment that the residents are actually being provided with during their quarantine inside institutions. These social care homes are completely insulated from any external scrutiny. Many residents do not have any contacts in the outside world and family members have reported being extremely worried about the fate of the residents with social care home not providing any information.

The living conditions at the Neuropsychiatric Recovery and Rehabilitation Centre in Sasca Mică, even before the pandemic, were reportedly sub-standard, with overcrowded and unhygienic facilities and a shortage of staff. The 290-bed building where the 242 COVID-19 infected residents are now quarantined has large dormitories, bunk beds, and its upper floor is inaccessible for wheelchair users, as the elevator is out of work since many years and has never been repaired.

Additional COVID-19 outbreaks are reported in residential care homes for older persons and social care homes for persons with disabilities across Romania, where residents are reportedly also subject to a strict quarantine regime, with very limited support and with insufficient to no access to appropriate health care. For example:

- Since March 2020, 40 out of 130 residents of the “Sf. Ilie” nursing home in Galați (Galati county) have died due to COVID-19.

- On 22 April 2020, 10 persons with psychosocial disabilities and six staff of the Pâclișa Centre for Care and Assistance (Hunedoara county) were admitted to the Deva County Hospital, in central Romania, after testing positive for COVID-19. On 23 April 2020, the hospital allegedly discharged the 10 persons with disabilities, but not the staff, under the pretext that they were difficult to manage. As a result, they were returned to the institution where they live and placed in a separate building under quarantine.
- On 26 April 2020, the Costâna Centre for Neuropsychiatric Recovery and Rehabilitation (Suceava county), reported that 88 of its 154 residents and 35 out of 103 staff had been infected with COVID-19. While the residents were reportedly isolated on site, the staff were admitted to nearby hospitals.
- On 5 May 2020, the Zvoriștea Centre for Neuropsychiatric Recovery and Rehabilitation (Suceava county), reported that 13 of its 68 residents and two members of staff had tested positive for COVID-19. While persons with disabilities were isolated on site, the staff were admitted to nearby hospitals.

Reportedly, there is no clarity about whether there are consistent protocols and sufficient and appropriate resources, equipment and protection in place for the exceptional treatment of COVID-19 individuals in institutions, or for licensing nursing homes as care providers for individuals who have tested positive to COVID-19.

As of 6 May, 864 people have died of COVID-19 in Romania and almost 15.000 had tested positive. According to official data, fatalities include 83 older persons residing in nursing homes and four persons with disabilities in institutions. However, it is reported that real numbers could be much higher.

While we do not wish to prejudge the accuracy of the information received, serious concern is expressed about the above-mentioned alleged violations, in particular as they pertain the physical integrity and access to appropriate health care, amid the pandemic of persons with disabilities and older persons in residential care institutions in Romania, which in some cases have had a direct impact on their right to life.

We are extremely concerned that these allegations appear to be violating the rights of persons with disabilities and older persons to life and to health, protected by article 6 of the International Covenant on Civil and Political Rights (ICCPR) and article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), respectively; both treaties were ratified by Romania on 9 December 1974. These rights

are also covered by articles 10 and 25 of the Convention on the Rights of Persons with Disabilities, ratified by Romania on 15 April 2008. The right to physical and mental health in particular includes access to timely, acceptable, and affordable health care of appropriate quality, on an equal basis with others. We are gravely concerned that even short delays in access to health care and treatment may lead to severe complications or deaths, and may constitute cruel, inhuman or degrading treatment and, in cases of intentional discrimination, may even amount to torture. This would be in contravention of article 7 of the ICCPR and articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Romania acceded to on 18 December 1990.

We wish to further stress that worldwide, institutional settings have become COVID-19 hotspots, highlighting systemic challenges in these settings. Emerging evidence indicates that persons with disabilities in institutional settings and older persons in care homes are experiencing the highest rates of infection and mortality from COVID-19. Furthermore, people deprived of their liberty, especially those in vulnerable or high-risk situation, such as older persons and persons with disabilities, are likely to be more vulnerable to COVID-19 outbreak than the general population because of the confined conditions in which they live together for prolonged periods of time. As such, the Subcommittee on Prevention of Torture (SPT) issued a public advice relating to the pandemic, calling on States to take full account of all the rights of persons deprived of liberty and their families and detention and health care staff, taking cognizance of the principles of ‘do no harm’ and ‘equivalence of care’ when implementing measures to combat the pandemic.¹

We also express grave concern about the placement of person with disabilities in segregated institutions like the Neuropsychiatric Recovery and Rehabilitation Centre in Sasca Mică, which cannot be considered homes. Such facilities, both large and small, fail to meet international standards on the rights of persons with disabilities, including the right to full and effective participation and inclusion in society, respect for individual choice and control over decisions affecting their lives, as well as non-segregation from the community.

We urge your Excellency’s Government not to invest public funds for the renovation or building of new institutions, regardless of their size, but to support the initiation, acceleration and completion of deinstitutionalization strategies and transition to community-based solutions in Romania. This includes investing and developing support services and implementing inclusive services at local level, such as education and

¹ Subcommittee on Prevention of Torture (2020), “*Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic*”, available at <https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>

primary health care, including rehabilitation, as cornerstones for achieving the SDG targets for persons with disabilities.

We would like to further refer your Excellency's Government attention to article 10 of the CRPD. Under this article, Romania must protect the inherent right to life of persons with disabilities and take all necessary measures to ensure its effective enjoyment, including by ending preventable deaths. This obligation is complemented by article 3 of the Universal Declaration of Human Rights and article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Romania on 9 December 1974.

The Human Rights Committee has noted that the "right to life has been too often narrowly interpreted. The expression "inherent right to life" cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures." Violations of the right to life can result not only from criminal intent but also from acts of omission or commission; in other words, from a situation where the State "knew or should have known" that such deaths would occur but, in the context of diverse and intersecting discriminations inhibiting exercise of economic, social and cultural rights, it failed to take action that could have prevented such deaths.

International human rights law places particular and explicit emphasis on the obligation of States to guarantee a number of lifesaving health-related services. The right to physical and mental health is protected not only by ICESCR article 12, but by article 25 of the CRPD. In this connection, States should take steps to achieve the full realization of the right to health to prevent discriminatory denial of health care and ensure that persons with disabilities and older persons enjoy the highest attainable standard of health by ensuring access to health services and health-related rehabilitation (CRPD, article 26). Furthermore, the respect by States of the right to health means that they must not discriminate with regard to the access of individuals to health care services and should refrain from compelling health practitioners to deny health care to certain individuals. This obligation also includes eschewing the formulation of policies or practices that directly or indirectly impede access to health care of groups that may be unpopular (see A/73/314).

With regard to the realization of the right to health of older persons, the Committee on Economic, Social and Cultural Rights, in its General Comment No. 14 (2000), reaffirmed the importance of an integrated approach, combining elements of preventive, curative and rehabilitative health treatment. In this regard, it is essential that States establish quality monitoring and effective and transparent accountability mechanisms for public and private care settings and that they provide remedies in case violations are detected, for instance through a dedicated complaint mechanism (see A/HRC/33/44, para. 44). As forced institutionalization violates the rights of older persons, States should revise their legislation and regulations, in particular with regard to

mental health-care settings. A clear set of standards should be established on free informed consent in care settings, in particular in mental health-care settings (see A/HRC/30/43, para. 123).

The institutionalization of individuals, whether due to impairment, age or other factors, stands in contravention with the right to live in dignity and autonomy, and further perpetuates the social exclusion and segregation of persons with disabilities. Article 19 of the CRPD guarantees the right of persons with disabilities to choose their place of residence, and where and with whom they live on an equal basis with others, without being obliged to live in a particular living arrangements, and requires State Parties to ensure “access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation and segregation from the community”.

We would like to specifically recall that in previous communication to Romania (ROU 1/2017, ROU 2/2019), the Special Rapporteur on the rights of persons with disabilities expressed grave concern about the large numbers of children with disabilities in institutions, and recommended that the State move towards deinstitutionalization.

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 person(s) 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 our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and comments you may have on the above-mentioned concerns.
2. Please provide information on the measures taken to ensure residents of the Neuropsychiatric Recovery and Rehabilitation Centre in Sasca Mică their right to access appropriate health care, including emergency health care in hospitals as needed, on an equal basis with others.
3. Please provide information on the number of persons with disabilities and older persons who have died of COVID-19 in residential institutions in Romania.

4. Please provide information on any protocols in place for older persons and persons with disabilities who contract the COVID-19 in residential institutions and whether these protocols differ from those applied to staff working in those institutions. If applicable, please explain the reasons behind the difference in treatments.
5. Please provide information on measures taken to: a) reduce the potential exposure to COVID-19 in residential institutions; b) prepare for COVID-19 infections in institutions; and c) guarantee the right to access to appropriate healthcare of residents during the COVID-19 pandemic.
6. Please provide information on any plans to move towards a deinstitutionalization process aimed at replacing institutions for persons with disabilities with community-based services that support their right to live independently and to be included in the community.

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.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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