

# Rights of People with Intellectual Disabilities

Access to Education and Employment

Romania

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## List of Acronyms

NAPH: the National Authority for Persons with Handicap

SSCP: Specialised Services for Child Protection

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## Foreword

This report, one of a series prepared by the Open Society Institute's EU Monitoring and Advocacy Program and the Mental Health Initiative, provides an important contribution to research on people with intellectual disabilities. The report presents an overview of the situation of people with intellectual disabilities in Romania with respect to their access to education and employment.

The initiative of producing this report fulfils important objectives. There is a clear need for comprehensive studies based on reliable data about the situation of people with intellectual disabilities in Europe. Without reliable information, the strategies and policies targeting this particular group of people are often inadequate in terms of meeting their real needs, especially in countries of Central and Eastern Europe. The present report goes far beyond previous reports that have brought this issue to the attention of European and national decision-makers.

Presenting a broader picture, this series of reports provides a thorough analysis of the situation of people with intellectual disabilities in their access to education and employment in eight new EU Member States (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia), two accession countries (Bulgaria and Romania) and one candidate country (Croatia). To give a broader view of practice across Europe, Greece, the Netherlands and the United Kingdom have also been studied. The conclusions of the series of reports indicate that people with intellectual disabilities in Europe continue to face significant barriers as far as real access to education and employment is concerned. Discrimination also remains a major issue, despite measures taken at the national level and within a larger European context.

The reports also stand for the importance of civil society monitoring and the overall involvement of different stakeholders in dialogue regarding the human rights of people with intellectual disabilities. The monitoring underlying the reports also aimed to provide a comparative overview on the countries analysed.

The report on Romania reveals significant discrepancies between law and practice, for example in access to education. Romanian law prescribes that people with intellectual disabilities must have access to various forms of education according to their level of disability, and that the educational system should provide for all necessary forms of education. In practice, however, the necessary mechanisms and resources that would allow for the implementation of this legislation are not in place. Before 2000, almost no Romanian children with intellectual disabilities were integrated in mainstream schools, as the Commission for Child Protection generally recommended placing them in special schools — if education was recommended at all. The small number of children placed in mainstream schools experience harassment and discrimination. Educational options outside the school system are extremely limited.

Moreover, there is little support available for people with intellectual disabilities in their transition from education to employment. In practice, few people with intellectual disabilities acquire the necessary skills that would facilitate their access to the open labour market. The lack of specialised services, the discouraging employment legislation and the weak incentives for employers add to the lack of opportunities. A limited number of NGO-operated sheltered workplaces cater for people with intellectual disabilities, but they can only offer a segregated working environment.

Having highlighted numerous obstacles that people with intellectual disabilities face in accessing either education or employment in various countries across Europe, domestic and European decision-makers must develop effective policies to ensure the inclusion of people with intellectual disabilities into society. Improved legislation still needs to be adopted and implemented nationally as well as at the EU level. The existing models of good practice in inclusive education and supported employment should be replicated on a more extensive scale.

From the perspective of Inclusion Europe, the European Association of People with Intellectual Disabilities and their Families, this report makes a very important contribution to the present discussion on access to education and employment for people with intellectual disabilities in Romania. We only can encourage local, national and European-level decision-makers, service providers and disability and social NGOs to consider and follow the recommendations developed in this report.

*Geert Freyhoff*

Director

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## Preface

The **EU Monitoring and Advocacy Program (EUMAP)** of the Open Society Institute monitors human rights and rule of law issues throughout Europe, jointly with local NGOs and civil society organisations. EUMAP reports emphasise the importance of civil society monitoring and encourage a direct dialogue between governmental and non-governmental actors on issues related to human rights and the rule of law. In addition to its reports on the Rights of People with Intellectual Disabilities, EUMAP has released monitoring reports focusing on Minority Protection, Judicial Independence and Capacity, Corruption and Anti-corruption Policy, and Equal Opportunities for Women and Men. Reports on the Regulation and Independence of the Broadcast Media are also forthcoming in 2005. EUMAP is currently preparing reports on Equal Access to Quality Education for Roma; publication is expected in 2006.

EUMAP reports are elaborated by independent experts from the countries being monitored. They are intended to highlight the significance of human rights issues and the key role of civil society in promoting governmental compliance with human rights standards throughout an expanding Europe. All EUMAP reports include detailed recommendations targeted at the national and international levels. Directed at Governments, international organizations and other stakeholders, the recommendations aim to ensure that the report findings directly impact on policy in the areas being monitored.

The present reports have been prepared in collaboration with the **Open Society Mental Health Initiative (MHI)**, part of OSI's Public Health Programs. MHI seeks to ensure that people with mental disabilities (mental health problems and/or intellectual disabilities) are able to live as equal citizens in the community and to participate in society with full respect for their human rights. MHI promotes the social inclusion of people with mental disabilities by supporting the development of community-based alternatives to institutionalisation and by actively engaging in policy-based advocacy.

Throughout Europe people with intellectual disabilities still face serious stigma, prejudice and significant barriers to realising their fundamental human rights. Discrimination against people with intellectual disabilities is deeply rooted and widespread, standing in the way of positive change. Providing real access to education and employment for people with intellectual disabilities is key to ensuring their social inclusion, and enabling them to live and work in the community as equal citizens. The EUMAP reports focus specifically on these two areas because of their importance to people with intellectual disabilities and because of the existence of international standards, and national law and policy, relating to these areas.

Monitoring of the rights of people with intellectual disabilities was based on a detailed methodology (available at [www.eumap.org](http://www.eumap.org)), intended to ensure a comparative approach

across the countries monitored. The reports cover the eight Central and Eastern European (CEE) countries that joined the EU in May 2004 (the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia), Bulgaria and Romania, expected to join in 2007, one candidate country (Croatia), and three older EU member States (Greece, the Netherlands, and the United Kingdom).

The preparation of reports on both member and non-member States highlights the fact that international human rights standards apply equally, and provides an opportunity to comment on general trends in the development and the policy application of these standards. The States selected represent a geographical spread and illustrate a spectrum of policy, practice and implementation.

Reports on each of the 14 countries monitored, plus an overview report resuming the main findings across all the countries, will be published separately. First drafts of each of the country reports were reviewed at national roundtable meetings. These were organised in order to invite comments on the draft from Government officials, civil society organisations, self-advocates, parents, and international organisations. The final report reproduced in this volume underwent significant revision based on the comments and critique received during this process. EUMAP assumes full responsibility for its final content.

# I. Executive Summary and Recommendations

## 1. EXECUTIVE SUMMARY

Throughout Europe, people with intellectual disabilities<sup>1</sup> face major stigma and prejudice and are confronted with significant barriers to realising their fundamental human rights. Discrimination against people with intellectual disabilities is deeply rooted and widespread, standing in the way of positive change. Providing real access to education and employment for people with intellectual disabilities is critical to ensuring that they can live and work in the community as equal citizens. There is a strong link between education and employment: without access to adequate education, people with intellectual disabilities cannot secure meaningful employment. This denial of access leads to lifelong dependency, poverty and social exclusion, adding to the stigma of intellectual disability. This monitoring report focuses specifically on the areas of education and employment, because of their importance to people with intellectual disabilities and because of the existence of both international standards and national legislation that specifically address them.

Access to education and employment for people with intellectual disabilities in Romania remains severely limited. Despite the establishment of specialised bodies and the existence of legislation addressing the situation of people with disabilities, the specific needs of people with intellectual disabilities are often not recognised. With support from the European Union (EU), a promising action plan for reforming education towards a more inclusive approach has been elaborated; its implementation could achieve real improvement for people with intellectual disabilities. However, no such plan has been developed for employment. This is a serious shortcoming, as those people who would benefit from increased educational options might nevertheless find themselves without work or the means to support themselves. Increased coordination among the institutions addressing the situation of people with intellectual disabilities will be needed, to ensure that ambitious plans meet expectations and that real gains are made, to the benefit of all society.

### *Background*

Romania has ratified most major international conventions with provisions relating to the rights of people with disabilities, and the Romanian Constitution gives international law precedence over national legislation. In addition to Constitutional recognition of the right to special protection for people with disabilities, in the past

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<sup>1</sup> The term “intellectual disability” (also described as “learning disability” or “mental retardation”) here refers to a lifelong condition, usually present from birth or which develops before the age of 18. It is a permanent condition that is characterised by significantly lower than average intellectual ability and results in significant functional limitations in intellectual functioning and in adaptive behaviour as expressed in conceptual, social and practical adaptive skills.

several years, Romania has adopted comprehensive anti-discrimination legislation, which has recently been amended to cover discrimination on the grounds of disability. Nevertheless, the legislation falls short of the requirements of the EU anti-discrimination *acquis*. A specialised body, the National Council for Fighting Discrimination, was established in 2002 to hear discrimination cases, but to date no cases related to people with intellectual disabilities have been brought before the council. The National Authority for Persons with Handicap (NAPH), a governmental body, is the highest administrative authority dealing specifically with issues related to people with disabilities; it has eight regional offices responsible for overseeing the implementation of disability policy.

The Romanian Constitution refers to the protection of “handicapped people”, and the word “handicap” is used in official law and policy, though experts agree that such terminology is outdated and stigmatising. There is no specific definition of intellectual disabilities used in legislation, nor are there discrete statistical data on the number and situation of people with intellectual disabilities. Consequently, various institutions collect statistical information on the basis of different criteria, and policy has been formulated without reliable, comprehensive data on the situation of people with intellectual disabilities. Of the more than 14,000 people living in institutions, the proportion with intellectual disabilities is not known. Importantly, however, available data does reveal that only a minority (28 per cent) of the approximately 52,000 children with disabilities “attend a type of education”. There is no official data on the number of children with intellectual disabilities who receive no education at all.

Diagnosis procedures for both children and adults use four-level classification systems in line with the international standards set in the World Health Organization’s International Classification of Diseases, Tenth Revision (ICD-10), but the use of several different reference works in the assessment process may lead to confusion and a lack of standardisation. Recent instructions from the Ministry of Health have helped to improve the consistency of diagnosis and classification. Despite these legal protections, many people with intellectual disabilities cannot exercise their basic rights. The only type of guardianship available in Romania is *plenary* guardianship, an overly restrictive system that does not allow for flexibility in addressing individual capacities and denies the enjoyment of civil rights to the fullest extent possible. Guardianship is not in itself a barrier to employment, as people under guardianship do not lose the right to work.

### *Access to education*

The Constitution guarantees the right to education to all Romanian citizens, and specific education legislation establishes that all children, regardless of the type or level of disability, have the right to education either in school or at home. While the legal framework sets out theoretical conditions for equal education for all, there is very little connection between the legally guaranteed right to education for people with intellectual disabilities and their actual access to education in practice. Thousands of children with intellectual disabilities are simply unaccounted for in terms of education.

Concerns have been raised that the assessment procedure, although conducted by an interdisciplinary team, may be superficial and result in children's inappropriate placement in special schools, or even in alternative, informal educational services, rather than in mainstream schools. In particular, the disproportionately high number of Roma children in special schools indicates that assessment process should be carefully monitored to ensure that individual capacity and potential are evaluated fully and without discrimination. Early intervention services are available only to the few families in Romania who are fortunate enough to live near the single NGO providing such support. Recent changes to relevant legislation may further hamper the development of similar community-based services, which are already too few to meet needs across the country.

The Romanian Government has adopted a National Strategy for people with disabilities that calls for inclusive educational policy and aims for allocation of resources based on the principle that "the funds follow the child". The Ministry of Education has further elaborated an Action Plan of measures that, if implemented, hold the promise of real improvement for the education of children with intellectual disabilities. In particular, the recognition that children with *severe* and *profound* disabilities are also entitled to education and services is an important step forward in educational policy. The EU, through its Phare funds, and particularly the "Twinning Light" programmes, has supported the development of these national policies. However, while the European Commission has urged Romania to maintain its focus on the deinstitutionalisation process, the EU should also take into account the need to provide education for people in institutions who were previously denied education.

Although, in theory, Romanian law and policy support mainstream education for children with disabilities, and all children have the legal right to some form of schooling, in practice, mainstreaming of children with even *mild* intellectual disabilities is very limited, though there are no official figures. The majority of children with intellectual disabilities who attend school attend special schools, but even special schools exclude children with anything more than *mild* intellectual disabilities. Teachers receive little support, training and resources to promote an inclusive environment. The highly inflexible, curriculum-focused approach to education in Romania has been cited as a problem for children with intellectual disabilities. These children also require training in basic independent living skills, in addition to academic skills, to pave the way for social integration and self-sufficiency. An attempt to mainstream thousands of children from special schools in 1999 was not a success, as there was little preparation or support for inclusion in the long-term; many of the children have since returned to special schools. Special schools in Romania offer substandard education in the form of basic reading and counting skills, and thus fail to equip their students with genuine, marketable skills that would allow them to access employment after graduation.

Children found to lack the capacity to attend even a special school are legally entitled to home schooling, but in practice this rarely occurs as no Government funding is

allocated to provide it. NGOs offer educational services to such children in some parts of the country, but these organisations can only operate on a very small scale. For many children with *moderate* to *profound* intellectual disabilities, and for all adults in institutions, there are no educational options at all.

### *Transition from education to employment*

The outlook for people with intellectual disabilities after finishing school is generally bleak: there is little support for making the transition from education to employment. Vocational training is provided for in the law, but in fact, few people with intellectual disabilities acquire marketable skills that would lead to employment on the open market. Civil society initiatives offer training in some fields, but educational requirements for many professions are too high for most people with intellectual disabilities to meet. Opportunities for lifelong education are limited, even though basic “refresher” courses would be an important factor in helping people with intellectual disabilities to retain their skills and increase their chances of finding and maintaining employment.

### *Access to employment*

Romanian law guarantees the right to work and to choose a profession. While anti-discrimination legislation requires employers to adapt facilities to the needs of people with disabilities, in practice such accommodation is not enforced. The same multi-disciplinary committee determines both the capacity to work and eligibility for benefits; although there are frequent appeals regarding the level of disability, and the corresponding level of benefits, only a small fraction of these appeals are successful. The capacity to work is re-evaluated each year. Both the minimum wage and disability benefits are very low, giving little incentive for people with disabilities to seek employment, and, although some people with disabilities are eligible for unemployment benefits, it is not possible to receive both unemployment and disability benefits. Recently amended legislation may offer people with more severe disabilities the opportunity to retain some portion of their benefits while receiving a salary, but it is as yet unclear how effective this measure will be in encouraging employment.

The main mechanism the Government has put in place for improving the employment situation of people with disabilities is a quota system that requires companies and state agencies of a certain size to hire people with disabilities. Larger companies are required to make sure that four per cent of their employees are people with disabilities, but, in practice, employers evade compliance with quota requirements and avoid penalties by advertising positions with qualifications that no person with disabilities could meet. Companies that have a 30 per cent or higher level of employees with disabilities are eligible for various benefits, including tax exemptions. Legislation provides for the Government to pay the salary of employees with disabilities, but only for 18 months, after which the employer is under no obligation to retain the employee.

Romania has a high overall unemployment rate, making it even more difficult for people with intellectual disabilities to compete for jobs on the open market. Supported

employment, in which people with intellectual disabilities work closely with a coach or colleague on the job, has been an effective model for improving employment opportunities for people with intellectual disabilities.<sup>2</sup> A local NGO in Romania has helped a limited number of people to find work by offering this type of support, and the Government should look to the experience and practical knowledge developed by civil society in the development of national employment policy. There are no Government-operated sheltered workshops specifically for people with intellectual disabilities. A very limited number of NGO-operated workplaces do cater specifically to people with intellectual disabilities, but these function primarily as training and occupational facilities, and offer only a segregated working environment for people with disabilities.

## 2. RECOMMENDATIONS

### General recommendations

#### *International standards*

1. Romania should ratify Protocol 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); International Labour Organization (ILO) Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons); and the ILO Convention Concerning Vocational Guidance and Vocational Training in the Development of Human Resources 1975 (No. 142).

#### *Legislation*

2. The Government should ensure that anti-discrimination and other legislation in the disability area conforms to the European Union's Council Directive 2000/78/EC, the "Employment Directive".

#### *Data collection*

3. The Government, in cooperation with relevant institutions, should establish and maintain comprehensive centralised statistical data on people with intellectual disabilities. This data should be collated across all relevant sectors and should be used as a more accurate basis for policymaking in the areas of education and social and professional integration. In particular, data on the type and level of education of people with intellectual disabilities, and their employment situation, should be collected and analysed.

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<sup>2</sup> Supported employment is an employment option that facilitates competitive work in integrated work settings for people with disabilities. It provides assistance such as job coaches, transportation, assistive technology, specialised job training and individually tailored supervision.

*Guardianship*

4. The Government should consider introducing a wider range of alternatives to *plenary* (full) guardianship, such as partial guardianship. People with intellectual disabilities should be able to exercise their civil rights to the maximum extent possible.

*Funding*

5. The Government should provide financial resources and support to encourage public–private partnerships at both the national and local levels, as an important means of incorporating the training and experience developed by NGOs into official policy and practice.
6. The Government should provide adequate resources for the timely implementation of the “National Strategy for the Special Protection and Social Integration of Persons with Handicap in Romania”<sup>3</sup> and follow up with regular monitoring and evaluation of the implementation process.

*Advocacy and cooperation*

7. Civil society should seek support to establish self-advocacy groups and work through the newly created National Disability Forum to improve advocacy at the national and international levels.
8. The Government should elaborate mechanisms for better cooperation among the actors involved in rehabilitation and social integration programs for people with intellectual disabilities, to ensure a holistic approach that includes appropriate measures to enhance and ensure coherent action and implementation of law and policy. These actors include: the NAPH; the Ministry of Health; the Ministry of Labour and Social Protection; the Ministry of Education, Research and Youth; the Ministry of Public Finance; and the relevant mental disability and human rights NGOs.

**Recommendations on education***Diagnosis and assessment*

9. The Government should assess the criteria and procedures for diagnosing intellectual disability for educational purposes, to evaluate whether language or cultural barriers may impede accurate assessment. The Government should also ensure that there is adequate monitoring of the diagnostic bodies’ operation.

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<sup>3</sup> Government Decision HG 1215/2002 on the Approval of a “National Strategy for the Protection and Reintegration of Persons with Handicap in Romania”.

10. The Ministry of Health should take steps to establish a national programme for the early diagnosis of intellectual disabilities, using definitions and methodologies corresponding to international standards.
11. The Government should take steps to put in place a national network of early intervention services to provide multi-disciplinary support to families, infants and young children with intellectual disabilities, to lessen the effects of the child's condition and to maximise the child's development and inclusion.

#### *Teacher training*

12. The Ministry of Education, Research and Youth must improve the quality of teacher training for teachers working in special schools and institutions and increase availability of teacher training for those educating persons with intellectual disabilities in the mainstream schools; all teachers should be included in these training programmes.

#### *Inclusive education*

13. The Ministry of Education, Research and Youth should develop detailed and consistent procedures for mainstreaming children with intellectual disabilities in regular schools, applying the principle that children with intellectual disabilities in mainstream schools must have access to all the support and resources that would be available to them in special schools. More individually appropriate and flexible curricula for students with intellectual disabilities should be introduced.
14. The Ministry of Education, Research, and Youth should ensure that all the children with intellectual disabilities are educated in an institution that is under the ministry's coordination. The Ministry has the obligation to organise education for people with intellectual disabilities in schools that are adapted in all possible ways to the educational needs of these people.
15. The Ministry of Education, Research and Youth should conduct monitoring to assess how many children with intellectual disabilities remain without access to education of any kind. Based on the findings of this monitoring, the ministry should immediately take steps to ensure that no child is denied an education.
16. The Government should organise public awareness campaigns, in collaboration with NGOs active in the field, to build public support for a more inclusive educational system and to highlight the importance of providing access to quality education for all children, regardless of any disability.

#### *Education in institutions*

17. The Government should ensure that while de-institutionalisation remains the main focus of the "National Strategy for the Special Protection and Social

Integration of Persons with Handicap in Romania”, institutions must offer educational options for those people who must remain in residential care.

#### *Specialised support services*

18. The Ministry of Education, Research and Youth should ensure that specialized support services for children with severe intellectual and multiple disabilities are available in kindergartens and schools throughout the country, as these children currently have no access to education.

#### *Financing*

19. The Ministry of Education, Research and Youth should adopt a portable financing system for children with intellectual disabilities, allocating a personal budget to each child with special needs, to pay for the purchase of the appropriate services.

### **Recommendations on the transition from education to employment**

#### *Vocational education*

20. The Ministry of Education, Research and Youth should provide curricular opportunities for people with intellectual disabilities to learn marketable skills, and also to be trained in social skills, so that they can make the transition from education to employment in the open market.

#### *Lifelong learning*

21. The Ministry of Education, Research and Youth should introduce legislation that supports lifelong education for people with intellectual disabilities, and in particular, offers educational services to people who were or are institutionalised.

### **Recommendations on employment**

#### *Legislation*

22. The Government should support the introduction of improved legislation that would create greater employment opportunities for people with intellectual disabilities, and it should take steps to ensure existing hiring quotas for hiring people with disabilities actually result in the employment of people with intellectual disabilities.
23. The Ministry of Education, Research and Youth should introduce legislation for a more flexible system of job training for people with intellectual disabilities, in order to open certain jobs to people who are without a primary school diploma but who have completed appropriate vocational training.

*Employment services*

24. The Social Assistance Departments under the local authorities should establish services for adults with intellectual disabilities, to enhance their opportunities for employment on the open market. These services should include counselling services for families, workshops and employment centres, job searching and job coaching, supported employment services and community based residential services.
25. The Ministry of Public Finances should provide a solution for the payment of people with intellectual disabilities that work in day centres so that they do not have to pay taxes on their wages. The amount they receive are very low and taxation reduces the payment still further, to the point that they are insignificant.

*Supported employment*

26. The Ministry of Labour, Social Solidarity and Family, through its specialised agency dealing with people with disabilities, the NAPH, should look to existing models of best practice in supported employment in Romania and seek to replicate those models in other parts of the country

## II. Country Overview and Background

### 1. LEGAL AND ADMINISTRATIVE FRAMEWORK

Romania has ratified most major international conventions with provisions relating to the rights of people with disabilities, and the Romanian Constitution gives international law precedence over national legislation. In addition to Constitutional recognition of the right to special protection for people with disabilities, Romania has adopted comprehensive anti-discrimination legislation, which has recently been amended to cover discrimination on the grounds of disability. Nevertheless, the legislation falls short of the requirements of the European Union (EU) anti-discrimination acquis.<sup>4</sup> A specialised body, the National Council for Fighting Discrimination, was established in 2002 to hear discrimination cases, but to date no cases related to people with intellectual disabilities have been brought before the Council. The National Authority for Persons with Handicap (hereafter, NAPH), a governmental body, is the highest administrative authority dealing specifically with issues related to people with disabilities; it has eight regional offices responsible for overseeing the implementation of disability policy.

#### 1.1 International standards and obligations

Romania has ratified most major human rights instruments, including those with provisions relating specifically to the rights of people with disabilities.

Romania ratified both the International Covenant on Civil and Political Rights (CCPR)<sup>5</sup> and the International Covenant on Economic, Social and Cultural Rights (CESCR)<sup>6</sup> in 1976, and the Convention on the Rights of the Child (CRC)<sup>7</sup> in 1990. A Romanian representative took part in the Salamanca Conference on Special Needs Education in 1994, representing one of more than 92 governments debating the concept of “Education for All” and the promotion of inclusive education.<sup>8</sup>

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<sup>4</sup> The law does not provide for the reversal of the burden of proof in cases of *prima facie* discrimination and does not allow the introduction of statistics as evidence of discrimination. See European Commission, *Regular Report on Romania's Progress Towards Accession 2004*, Brussels, October 2004, p. 23.

<sup>5</sup> International Covenant on Civil and Political Rights, 23 March 1976, 999 U.N.T.S. 171.

<sup>6</sup> International Covenant on Economic, Social and Cultural Rights, 3 January 1976, 993 U.N.T.S. 3.

<sup>7</sup> International Convention on the Rights of the Child, 2 September 1990, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989).

<sup>8</sup> UNESCO, Salamanca Statement and Framework for Action on Special Needs Education, adopted by the World Conference on Special Needs Education: Access and Quality, Salamanca, Spain, 7-10 June 1994, available at [www.unesco.org/education/pdf/SALAMA\\_E.PDF](http://www.unesco.org/education/pdf/SALAMA_E.PDF) (accessed 22 October 2004) (hereafter, Salamanca Statement).

Romania ratified the European Convention on Human Rights and Fundamental Freedoms (ECHR)<sup>9</sup> in 1994 and has signed, but not yet ratified, the ECHR's Protocol 12, which establishes an independent general prohibition on discrimination.<sup>10</sup> Romania ratified the revised European Social Charter (ESC)<sup>11</sup> in 1999, and it is therefore bound by the first two paragraphs of Article 15 on the right of physically or mentally disabled persons to vocational training and rehabilitation.

Romania has ratified the eight fundamental Conventions of the International Labour Organization (ILO),<sup>12</sup> but has not ratified ILO Convention C159 on Vocational Rehabilitation and Employment (Disabled Persons) or the ILO Convention Concerning Vocational Guidance and Vocational Training in the Development of Human Resources 1975 (No. 142).

## 1.2 Domestic legislation

The Constitution of Romania that was adopted in October 2003 stipulates that "Constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to."<sup>13</sup> International human rights instruments have precedence over domestic laws in the case of conflict.

<sup>9</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, 3 September 1953, E.T.S. 005, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm> (accessed 22 October 2004).

<sup>10</sup> Protocol 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), to enter into force on 1 April 2005, available on the COE website at <http://conventions.coe.int/Treaty/en/Treaties/Html/177.htm> (accessed 20 January 2005).

<sup>11</sup> European Social Charter (Revised), 1 July 1999, C.E.T.S. 163, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm> (accessed 22 October 2004).

<sup>12</sup> The International Labour Organisation (ILO) has identified eight fundamental ILO Conventions. These are Convention No. 29 on the abolition of forced labour, or the Forced Labour Convention, 1930; Convention No. 87 on Freedom of Association and Protection of the Right to Organize, 1948; Convention No. 98, the Right to Organize and Collective Bargaining Convention, 1949; Convention No. 100, the Equal Remuneration Convention, 1951; Convention No. 105, the Abolition of Forced Labour Convention, 1957; Convention No. 111 on Discrimination (Employment and Occupation) 1958; Convention No. 138 on the elimination of child labour, the Minimum Age Convention, 1973; Convention No. 182, the Worst Forms of Child Labour Convention, 1999.

<sup>13</sup> The Constitution of Romania of 1991, amended and completed by Law No. 429/2003 on the revision of the Constitution of Romania, Official Gazette No. 758, 29 October 2003, republished by the Legislative Council on the grounds of article 152 of the Constitution, with the updated denominations and the renumbered texts (Article 152 became, in the republished form, Article 156), art. 20, available at <http://www.cdep.ro/pls/dic/site.page?id=371> (accessed 22 October 2004) (hereafter, Constitution).

The Constitution guarantees all Romanian citizens the right to education.<sup>14</sup> Romanian legislation also acknowledges the principle of equal opportunities in employment.<sup>15</sup> The Constitution additionally provides that “The right to work cannot be limited. The choice of profession and job are free.”<sup>16</sup>

Article 46 of the Constitution directly addresses the protection of people with disabilities, providing that “Disabled persons shall enjoy special protection. The State shall provide 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.”

Law 27/2004, which approves Ordinance 77/2003, amended national anti-discrimination legislation to include a specific prohibition of discrimination on the grounds of disability.<sup>17</sup> Anti-discrimination legislation was adopted to comply with the EU’s anti-discrimination *acquis*, but to date has not fully complied with the terms of the two main directives in this area, the Race Equality Directive (Council Directive 2000/43/EC)<sup>18</sup> and Council Directive 2000/78/EC<sup>19</sup> (hereafter, the Employment Directive).<sup>20</sup>

The National Council for Fighting Discrimination, established in 2002, is competent to address cases of discrimination in all areas, including education and employment.<sup>21</sup> The National Council was established in line with the EU’s Race Equality Directive, which requires the designation of an independent body for the promotion of equal treatment.<sup>22</sup> By the end of 2004, the Council had not addressed any cases of

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<sup>14</sup> Constitution, art. 32.

<sup>15</sup> Law No. 53/2003 (Labour Code), Official Gazette No. 72, 5 February 2003, art. 5.

<sup>16</sup> Constitution, art. 41.

<sup>17</sup> Statement of Corina Macoveanu, member of the Council for the Prevention of Discrimination, OSI Roundtable, Bucharest, May 2004. *Explanatory Note: OSI held a roundtable meeting in Romania in May 2004 to invite critique of the present report in draft form. Experts present included representatives of the government and civil society, parents, and self-advocates. Where noted, roundtable participants have agreed to the inclusion of their statements in this report.* (hereafter, OSI Roundtable, Bucharest, May 2004).

<sup>18</sup> Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (hereafter, Race Equality Directive).

<sup>19</sup> Council Directive 2000/78/EC of 27 November 2000, a general framework for equal treatment in employment and occupation (hereafter the Employment Directive). Available at [http://europa.eu.int/comm/employment\\_social/news/2001/jul/directive78ec\\_en.pdf](http://europa.eu.int/comm/employment_social/news/2001/jul/directive78ec_en.pdf) (accessed 3 September 2004).

<sup>20</sup> See European Commission, *Regular Report on Romania’s Progress Towards Accession 2004*, Brussels, October 2004, p. 23.

<sup>21</sup> Law 48/2002 on Preventing and Sanctioning All Forms of Discrimination, Official Gazette No. 69, 31 January 2002, art. 2 (1).

<sup>22</sup> Race Equality Directive, art. 13.

discrimination in education or employment against people with intellectual disabilities.<sup>23</sup> The National Council for Fighting Discrimination also has the legal obligation to issue affirmative policies; under this requirement, the Council should offer additional support to people with intellectual disabilities by taking steps such as issuing guidelines on improving access to education and employment for people with intellectual disabilities.<sup>24</sup>

Another important role of the National Council for Fighting Discrimination is to “mediate for the amiable resolution of conflicts that appeared as a result of acts of discrimination”.<sup>25</sup> In 2003 the National Council for the Prevention of Discrimination initiated the “National Alliance for Fighting against Discrimination”, a discussion forum organised together with NGO representatives from various sectors.

Law 343, modifying and completing Emergency Government Ordinance 102/1999 on the Special Protection and Employment of People with Handicap, was adopted recently.<sup>26</sup> The law sets out measures aimed at giving children with disabilities equal opportunities to participate in social life, including education and employment. This law amends earlier legislation on the same subject. The primary changes to the legislation involve additional benefits, such as an allowance in addition to pensions<sup>27</sup> and free public transportation for people with more severe forms of disabilities.<sup>28</sup> The new law also provides for the establishment of commissions for social and professional integration for people with disabilities – at the NAPH, district and county levels – to coordinate the training, orientation and employment of people with disabilities.<sup>29</sup> To date, there has been no evidence of the impact of the work of these commissions. According to an expert, the main shortcoming of the new law is that local councils are no longer responsible for establishing social services and institutions because this

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<sup>23</sup> Interviews with: Manuela Leampăr, member of the Council for the Prevention of Discrimination and President of the Romanian Federation of the Organizations for Persons with Intellectual Disabilities; Corina Macoveanu, Bucharest, 8 January 2004.

<sup>24</sup> Renate Weber, President of the Open Society Foundation Bucharest, OSI Roundtable, Bucharest, May 2004.

<sup>25</sup> Law 27/2004, which approves Ordinance 77/2003 on prevention and punishment of all forms of discrimination, Official Gazette 216, 11.03.2004 art. 8, cited by Corina Macoveanu, OSI Roundtable, Bucharest, May 2004.

<sup>26</sup> Law 343, modifying and completing Emergency Government Ordinance 102/1999 on the Special Protection and Employment of People with Handicap, Official Gazette No. 641, 15 July 2004 (hereafter, Law on Special Protection).

<sup>27</sup> Law on Special Protection, art. 19a.

<sup>28</sup> Law on Special Protection, art. 19g.

<sup>29</sup> Law on Special Protection, art. II 1-4.

responsibility is transferred to county councils, an arrangement that may limit the extent to which such services are made available.<sup>30</sup>

A number of different bodies have been established in Romania to address the situation of people with disabilities. These bodies represent an important step forward in recognising the specific needs of people with disabilities, but the frequent reorganisation of these structures has limited their potential for effective coordination and policy implementation.

These bodies include the State Secretariat for Persons with Handicap, which was established under the Prime Minister's office in 1991 and later was placed under the authority of the Ministry of Health and Family, and the National Authority for Children's Rights Protection and Adoption.<sup>31</sup> In April 2003, the secretariat was reorganised and renamed the NAPH,<sup>32</sup> and in July 2003 it was transferred to the Ministry of Labour, Social Protection and Family.<sup>33</sup> The NAPH is the highest-level administrative body addressing disability issues, including diagnosis, drafting budgets, collection of statistics and other information on people with disabilities. It also is responsible for policy development and coordination.<sup>34</sup>

Under the NAPH, eight regional inspectorates have been established at the regional administrative district level, and they have both an administrative and policy-related role. The regional inspectorates oversee the implementation of existing legislation in the disability area, take appropriate punitive measures when the legislation is not respected and monitor the way in which national disability policy is implemented.<sup>35</sup> The Social Assistance Departments under the local authorities oversee the budget proposals from institutions for people with disabilities, provide statistics and administer social assistance payments at the county level.<sup>36</sup> The Social Assistance Departments are

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<sup>30</sup> Telephone interview with Laila Onu, Vice President of the Romanian Federation of the Organizations for Persons with Intellectual Disabilities and Director of the Pentru Voi Foundation, 14 December 2004.

<sup>31</sup> Inclusion Europe, *Human Rights of Persons with Intellectual Disability: Country Report Romania*, Brussels, 2002, p. 8 (hereafter, Inclusion Europe, *Romania Country Report*).

<sup>32</sup> National Authority for Persons with Handicap, *Final Report and National Action Plan: From Isolation to Participation*, Utrecht/Bucharest, 28 February 2003, Section 2.3.1, available at [http://www.anph.ro/Raport2/Raport\\_ENGL/First\\_Page.htm](http://www.anph.ro/Raport2/Raport_ENGL/First_Page.htm) (accessed 3 September 2004) (hereafter, NAPH, *From Isolation to Participation*).

<sup>33</sup> See National Authority for Persons with Handicap, "Romania's Progress in Implementing the United Nations Action Program Concerning Persons with Disability", point 5.2, available at <http://www.anph.ro/DocumenteSSPH/ANPH/raport/content/capitol5.html>. (accessed 3 September 2004).

<sup>34</sup> NAPH, *From Isolation to Participation*, chapter 1.2.1.

<sup>35</sup> Government Ordinance 14/30.01.2003, on the establishment, organisation and function of the National Authority for People with Handicap, art. 11.

<sup>36</sup> NAPH, *From Isolation to Participation*, chapter 1.2.1.

also expected to provide information and counselling to people with disabilities and their families.<sup>37</sup>

The “National Institute for the Prevention of Exclusion of Persons with Handicap” has been functioning as a research institute focusing on protecting the rights of people with disabilities since 2003. Currently, the institute is developing several activities, including:

- national minimum quality standards for “protected accommodation”, which are supported-living facilities established and operated by NGOs;
- national minimum quality standards for “day centres”;
- national minimum quality standards for “crisis centres”;
- an analysis of the employment market for people with disabilities and proposals regarding the creation of a national programme for orientation, training and professional integration of people with disabilities;
- a study regarding the role and activities of personal assistants for people with disabilities;
- a study regarding the harmonisation of current evaluation criteria for people with disabilities, in accordance with the criteria and principles promoted by the International Classification of Functioning, Disability and Health, a classification made by the World Health Organization (WHO);
- an analysis of the process of integrating children with disabilities in mainstream schools.

In 2003, the Institute also elaborated a “Guide for the Education and Recovery of Children with Mental Handicaps in the Family”, aimed at the families of children with mental disabilities.

## 2. GENERAL SITUATION OF PEOPLE WITH INTELLECTUAL DISABILITIES

*The Romanian Constitution refers to the protection of handicapped people, and the word “handicap” is used in official law and policy, though experts agree that such terminology is outdated and stigmatising. There is no specific definition of intellectual disabilities used in legislation, nor are there discrete statistical data on the number and situation of people with intellectual disabilities. Consequently, various institutions collect statistical information on the basis of different criteria, and policy has been formulated without reliable, comprehensive data on the situation of people with intellectual disabilities. Diagnosis procedures for both children and adults use four-level classification systems in line with international standards, but the use of several different reference works in the*

<sup>37</sup> NAPH, *From Isolation to Participation*, chapter 1.2.1.

*assessment process may lead to confusion and a lack of standardisation. Recent instructions from the Ministry of Health have helped to improve the consistency of diagnosis and classification. Despite these legal protections, many people with intellectual disabilities cannot exercise their basic rights. The only type of guardianship available in Romania is plenary guardianship, an overly restrictive system that does not allow for flexibility in addressing individual capacities and denies the enjoyment of civil rights to the fullest extent possible. Guardianship is not in itself a barrier to employment, as people under guardianship do not lose the right to work.*

## 2.1 Definitions

In Romania, the term intellectual disability is not defined in legislation. The most frequently used term is “mental handicap”, and in some cases, “mental deficiencies”. The first definition of persons with handicaps appeared in Law 53/1992 on the Special Protection of People with Handicap, which has been modified three times, most recently by Law 343/2004.<sup>38</sup> The definition remains outdated, however, as it is based on terminology elaborated by the WHO in 1990. Experts in the field have called for the definition of people with handicaps to be reworked in the Romanian legislation, to bring it in line with definitions accepted at the international level, primarily the WHO’s International Classification of Diseases Tenth Revision (hereafter, ICD-10).<sup>39</sup> According to Law 343/2004, which modifies and completes Ordinance 102/1999 on the Special Protection and Employment of People with Handicap (hereafter Law on Special Protection), people with handicaps:

are those persons whose social environment is not adapted to their physical, sensorial, psychical or mental deficiency, limits or totally hinders the persons’ equal access to social life in conformity with their age, gender, social, material and cultural factors; the persons also require special protection measures for their social and professional integration.<sup>40</sup>

Government Decision HG 1215/2002 on the Approval of a “National Strategy for the Protection and Social Integration of Persons with Handicap in Romania” (hereafter, National Strategy) defines a series of terms, distinguishing between deficiency, incapacity and handicap, while setting out the concepts of rehabilitation and

<sup>38</sup> By Ordinance 102/1999 and Law 519/2002 on the Special Protection and Employment of People with Handicap, Official Gazette No. 555, 29 July 2002, and by Law 343, modifying and completing Emergency Government Ordinance 102/1999 on the Special Protection and Employment of People with Handicap.

<sup>39</sup> World Health Organization, *International Statistical Classification of Diseases and Related Health Problems*, Tenth Revision, (ICD-10), Geneva, 1992. The WHO does not use the term “intellectual disability”; see also C. Stoenescu, L. Teodorescu and O. Mihaescu, *Special Protection System of Handicapped People from Romania*, ALL BECK Publishing House, 2003, p. 6.

<sup>40</sup> Ordinance 102/1999, as modified by Law 343/2004, on the Special Protection and Employment of People with Handicaps, Official Gazette No. 641, 15 July 2004, art. 1 (hereafter, Law on Special Protection).

recovery.<sup>41</sup> Experts in the field agree that it would be preferable, and in line with European standards, to use the term “disability” instead of “handicap” in government documents, as the latter is seen as negative and stigmatising. According to an official with the NAPH, because the term “handicap” was retained in the recent revision of the Romanian Constitution, all official documents must conform to this usage.<sup>42</sup>

Order 725/01.10.2002, jointly elaborated by the Ministry of Health and the National Authority for Child Protection and Adoption, establishes three structural and functional categories that are used to in determining the level of disability in children: *mild* intellectual disability, “intellectual disability without another association”, *moderate*, and *severe* and *profound* intellectual disability.<sup>43</sup> This classification is drawn from ICD-10 standards and relies mainly upon IQ levels. A second order, promulgated at the same time, sets out similar classifications for the diagnosis of adults with intellectual disabilities.<sup>44</sup>

## 2.2 Diagnosis and assessment of disability

There are separate procedures for the diagnosis of disability in children and in adults. The procedure for diagnosing children involves two bodies: the local Service for the Complex Evaluation of the Child, which initially assesses the child, and the Child Protection Commission, which issues a certificate on the level of disability based on the Service’s recommendation. This certificate determines eligibility for social welfare benefits, but in theory the level of disability does not have a direct link to the forms of education that are available to a given child.

For adults, the Medical Expert Commissions for People with Handicap, based in each county or district, make an assessment on the level of disability. These assessments are conducted annually, and they both determine continued eligibility for social welfare benefits and establish the capacity to work, which is determined as a percentage, based on age, and level and type of disability. The Medical Expert Commissions also issue certificates for benefits purposes.

Disability levels are classified according to the IQ levels specified in ICD-10: *mild*, *moderate*, *severe* and *profound*.

<sup>41</sup> Government Decision HG 1215/2002 on the Approval of a National Strategy for the Protection and Reintegration of Persons with Handicap in Romania, 13 October 2002, Annex, Section II, Terminology.

<sup>42</sup> Liviu Teodorescu, Chief of the Juridical Office of the National Authority for Persons with Handicap, OSI Roundtable, Bucharest, May 2004.

<sup>43</sup> Order 725/01.10.2002 on the criteria upon which the grade of handicap for children is established and the measures for their special protection applied, Official Gazette No. 781, 28 October 2002 (hereafter, Order on Criteria for Children).

<sup>44</sup> Order 726/01.10.2002 on the criteria upon which the grade of handicap for adults is established and the measures for their special protection applied, Official Gazette No. 775, 24 October 2002 (hereafter, Order on Criteria for Adults).

**Table 1. Intellectual disability levels correlated to IQ level**

Intellectual disability level	IQ level	
	Children	Adults
Mild	50-65	50-70
Moderate	35-49	35-49
Severe	< 35	20-34
Profound		< 25

**Source:** Order on Criteria for Children; Order on Criteria for Adults.

While officially, the manual used by the Service for the Complex Evaluation for assessing intellectual disability is the ICD-10, the majority of psychiatrists in Romania use the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (hereafter, DSM-IV)<sup>45</sup> in judging and formulating a diagnosis. The ICD-10 terminology is then used for coding the diagnosis,<sup>46</sup> because ICD-10 is the classification system recognised in Order 725/01.10.2002 on the criteria upon which the grade of handicap for children is established and the measures for their special protection applied.

Using the DSM system for diagnosis and the ICD system for reporting disability levels could lead to inconsistencies resulting in inaccurate disability labels, which may have serious consequences for access to education, social benefits and services.

In an effort to improve the consistency of diagnosis, the Minister of Health elaborated and issued Orders 725 and 726/01.10.2002, which stipulate the medical and social criteria for the evaluation process very clearly, and set out measures for special protection that correlate with the assessment. It appears that these orders have made it easier for diagnostic bodies to classify a person at a specific disability level.<sup>47</sup>

The age at which intellectual disability is diagnosed depends upon several factors. Down's syndrome is generally diagnosed at birth, while *mild* intellectual disability may be diagnosed only when a child begins to perform poorly in school. A child's social and economic environment is also a factor: a child from a poor rural area with very limited access to medical care may be diagnosed very late or may never be properly assessed, while a child living in a city where better health care is readily available can benefit from early detection.<sup>48</sup>

<sup>45</sup> American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders – Fourth Edition (DSM-IV), Washington D.C., 1994.

<sup>46</sup> Telephone interview with Dr. Dan Ghenea, psychiatrist, 15 April 2004.

<sup>47</sup> Dr. Paulian Sima, Chief of the Office for Professional Integration and Relations with Nongovernmental Organizations of the National Authority for Persons with Handicap, OSI Roundtable, Bucharest, May 2004.

<sup>48</sup> Interviews with: Laila Onu, 30 December 2003; Vanda Florea, Director of It is a Must, Organisation for Children and Adults with Mental Handicap, 9 January 2004.

There is a major problem regarding the diagnosis of autism. The Medical Expert Commissions for People with Handicap do not use the diagnosis of autism for adults. Many psychiatrists believe that autism can be used as a diagnosis only for children. In the UK and USA, autism is considered a developmental disability and a diagnosis of autism can be made at any point. In Romania, the Medical Expert Commissions for People with Handicap do not use this diagnosis but instead use psychosis or “autistic psychosis” or even schizophrenia.<sup>49</sup>

### 2.3 Guardianship

Only *plenary* guardianship exists in Romania. There is no statistical data regarding the number of people with intellectual disabilities who are under guardianship, nor any statistics on guardianship at all. Children under 18 are under parental guardianship according to Romanian law. After the age of 18, if they are found not to have judgement abilities due to a disability, they will be put under interdiction.<sup>50</sup> Interdiction requires that a person has a guardian, who is named by the State Guardian Authority, part of the Ministry of Administration and Internal Affairs and under the direct supervision of the town or district hall.<sup>51</sup> People under interdiction lose their civil rights, which may be exercised by their guardians, with the exception of individual rights, such as the right to vote, the right to be elected, and significantly, the right to work.

The State Guardian Authority is the main body responsible for overseeing guardianship, and it is responsible for naming the guardian once the courts have determined that interdiction should be imposed. Article 142 of the Family Code provides that people who do not have the capacity to take care of their own interests due to mental disability will be placed under interdiction.<sup>52</sup> Minors without parents, or those whose parents' rights have been terminated, can also be placed under interdiction at the request of the State Guardian Authority. According to article 147 of the Family Code, the regulations that are applied to minors under the age of 14 regarding guardianship are also applied to people under interdiction, in cases where the law does not give any other dispositions. Usually the guardian is a family member; the Family Code stipulates that guardians should generally live with their wards.

All acts that affect the interests of people under guardianship must be approved by the State Guardian Authority, and guardians must present an annual report to the State Guardian Authority regarding the care and the administration of the income and property of their ward. In cases where a person under guardianship has a conflict of

<sup>49</sup> Interview with Laila Onu, July 2005.

<sup>50</sup> Interdiction refers to a legal or judicial measure resulting in the limitation of the exercise of civil rights. Law 4/1953 on the Family Code, as amended by Law 23/26.01.1999, Official Gazette No. 35, 28 January 1999, art. 142 (hereafter, Family Code).

<sup>51</sup> Family Code, art.150.

<sup>52</sup> Family Code, art. 142.

interest with the guardian, it is possible to make a complaint to the State Guardian Authority.<sup>53</sup> Although there is no centralised data on complaints at the national level, in practice the State Guardian Authority does follow up on complaints, and where the complaint is found to be valid, the Guardian Authority can decide that the guardian should be changed.

## 2.4 Statistical data

Statistical data presents a serious problem in assessing the situation of people with intellectual disabilities. Institutions – including the NAPH, the National Authority for Child Protection and Adoption, and the Ministry of Education, Research and Youth (hereafter, Ministry of Education) – maintain different data, as they have different criteria for data collection. The national population census contains no questions regarding disability. None of these institutions has discrete statistics on type of disability, so there are no accurate data on the number of children or adults with intellectual disabilities as opposed to other forms of disability. This lack of disaggregated data impedes the development of focused, targeted policy for people with intellectual disabilities, as fundamental questions about the size and composition of this group of people remain unanswered.

According to the NAPH, as of 30 June 2003, there were 166,594 people, including 28,895 children, with various forms of mental disabilities registered in Romania (see Annex 1). Of this total, 14,237 (8.6 per cent) were living in institutions. There are no discrete statistics for people with intellectual disabilities; people with schizophrenia or other types of mental health problems are included in the “mental handicap” category together with people with intellectual disabilities.

Many children with disabilities are simply unaccounted for in terms of education: statistics from the Specialised Services for Child Protection (hereafter, SSCP)<sup>54</sup> indicated that, of the 51,779 school-age children with disabilities monitored by the SSCP, only 14,439 “attend a type of education”.<sup>55</sup> The situation of the remaining 37,340 is unclear. The actual number of children with intellectual disabilities who receive no education at all cannot be determined from the statistical information available, and indeed the true scope of this problem is unknown.

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<sup>53</sup> Family Code, art. 138.

<sup>54</sup> The Specialised Public Services for Child Protection is part of the National Authority for Child Protection and Adoption; about 2.2 per cent of the children in Romania are monitored by the Services.

<sup>55</sup> Statistics reported by the Specialised Public Service for Child Protection, table A.9, available at <http://www.copii.ro/mai2004en.xls> (accessed 2 September 2004).

### III. Access to Education

#### 1. LEGAL AND ADMINISTRATIVE FRAMEWORK

*The Constitution guarantees the right to education to all Romanian citizens, and specific education legislation establishes that all children, regardless of the type or level of disability, have the right to education either in school or at home. While the legal framework sets out theoretical conditions for equal education for all, there is very little connection between the legally guaranteed right to education for people with intellectual disabilities and their actual access to education in practice. Thousands of children with intellectual disabilities are simply unaccounted for in terms of education.*

*Concerns have been raised that the assessment procedure, although conducted by an interdisciplinary team, may be superficial and result in children's inappropriate placement in special schools, or even in alternative, informal educational services, rather than in mainstream schools. In particular, the disproportionately high number of Roma children in special schools indicates that assessment process should be carefully monitored to ensure that individual capacity and potential are evaluated fully and without discrimination. Early intervention services are available only to the few families in Romania who are fortunate enough to live near the single NGO providing such support. Recent changes to relevant legislation may further hamper the development of similar community-based services, which are already too few to meet needs across the country.*

##### 1.1 The right to education

Law 84/1995 on Education (hereafter, Law on Education), updated in December 1999, provides that citizens of Romania have equal access to all levels and forms of education, “no matter the social and material condition, gender, race, nationality, political or religious convictions”.<sup>56</sup> Disability is not mentioned in this provision.

The Law on Education does include a chapter on special education that sets out measures for the education of persons with disabilities “according to their needs”.<sup>57</sup> Special education programmes are differentiated from mainstream education programmes according to the students’ needs and level of disability.<sup>58</sup> Furthermore, the Law on Special Protection sets out measures aimed at giving children with disabilities equal opportunities to participate in social life, including in education. The law guarantees free and equal access to any ordinary educational institution, according to the child’s abilities, and authorises home schooling for those children who cannot attend classes.<sup>59</sup> Article 19 of the Law on Education further stipulates measures to ensure education for adults with disabilities, including the right to home schooling.<sup>60</sup>

<sup>56</sup> Law on Education, art. 5.

<sup>57</sup> Law on Education, art. 41-46.

<sup>58</sup> Law on Education, art. 44.

<sup>59</sup> Law on Special Protection, art. 18 (a)-(b).

<sup>60</sup> Law on Education, art. 19.

Ten years of education are compulsory from the age of six, without distinction between special education and mainstream schools. Moreover, article 41 of the Law on Education stipulates that special primary and secondary education are compulsory for a term of ten years. Pre-school education is free of charge but is not part of the formal educational system.

## 1.2 Structure and administration of schools

The Law on Education stipulates that special education programmes are adapted from mainstream education programmes, according to the children's needs and degree of disability.<sup>61</sup> Formally, the special education system is one part of the national education system, and is comprised of special schools, from kindergarten to vocational schools.

The education system is administered at the central level by the Ministry of Education and represented locally by the County School Inspectorates and schools. Funding for education is allocated by the local and District Councils. Children with intellectual disabilities have several options for education, all of which are funded by the State. In practice, however, very few options are available, and those that are available are for children with *mild* intellectual disabilities. Transfer between the special education system and the mainstream system is not addressed in education legislation; the law does not offer the possibility that a child may transfer to a mainstream secondary school from a special primary school.<sup>62</sup>

Civil society advocates have called for the reform of the educational financing system, suggesting that the Government should adopt a model that allocates a personal budget to each person with intellectual disabilities. A family would use this budget to buy the appropriate services. In addition to increasing options for people with disabilities, the adoption of this form of individualised funding could help to reduce the number of children without disabilities who attend special schools because of the material advantages available.<sup>63</sup>

Access to education varies considerably from region to region. Although, according to the law, people with intellectual disabilities are entitled to individual rehabilitation and social integration programmes,<sup>64</sup> people with *severe* and *profound* intellectual disabilities in more rural areas do not have access to such programmes, and they may have little or no access to education in any form. In the poorest region of Romania, Moldova, community-based services for people with intellectual disabilities are almost non-existent.

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<sup>61</sup> Law on Education, art. 44.

<sup>62</sup> According to Article 45 of the Law on Education, only at the pre-primary or primary level can a child be "reoriented" from a special to a mainstream school or from a mainstream to a special school.

<sup>63</sup> Laila Onu, OSI Roundtable, Bucharest, May 2004.

<sup>64</sup> Law on Special Protection, arts. 18 and 19.

### 1.3 Diagnosis and assessment of disability for educational purposes

Two bodies participate in the assessment procedure for children, which is usually initiated by parents: the Service for Complex Evaluation of the Child, which initially assesses a child and compiles information about the child's present situation and longer-term needs, and the Child Protection Commission, which is a county or district level body under the supervision of the National Authority for Child Protection and which issues a certificate on the "grade of handicap", or level of disability, based on the Service's findings.<sup>65</sup>

The team of the Service for Complex Evaluation of the Child includes a paediatrician, a neuro-psychiatrist, a psychologist, a psycho-pedagogue and a social assistant. Its role is to monitor and evaluate all children with learning difficulties and social or school adaptation problems, ensuring that the diagnosis is accurate and that appropriate protection and follow-up school orientation is available. The Service may make inquiries at the child's home, in order to evaluate the situation and develop a plan for the child's continued support.

The assessment procedure stipulates that the Service presents its evaluation report to the Child Protection Commission, together with an individualised services plan, the proposal regarding the level of disability the child should receive, a school orientation plan and, if needed, the establishment of protection measures.<sup>66</sup> The presence and participation of the child under assessment is required at this stage only at the special request of the Child Protection Commission; the parents do not take part in the assessment.

The Child Protection Commissions are composed of 11 people: the director of the Public Specialised Service for Child Protection, the General School Inspector of the county or district school, a representative of the county or district prefect, a paediatrician, a neuro-psychiatrist, a psychologist, a psycho-pedagogue, a representative of the local police, a representative of the Directorate for Work and Social Solidarity and a representative of a private organisation proposed by the County or District Secretary. The President of the Commission is the General Secretary of the county or district.<sup>67</sup>

The Child Protection Commissions are responsible for issuing certificates on the "grade of handicap" for children with intellectual disabilities,<sup>68</sup> according to a procedure set out in Government Decision 1205/2001 for the approval of the functioning methodology of the Child Protection Commission. The members of each Commission then discuss proposed actions and can make alternative proposals, and the final decision is determined by the members' vote on the proposals.<sup>69</sup> The decisions of

<sup>65</sup> Government Decision on the Child Protection Commission, art. 20.

<sup>66</sup> Government Decision on the Child Protection Commission, art. 12.

<sup>67</sup> Ordinance on the Reorganisation of the Child Protection Commission, art. 2.

<sup>68</sup> Ordinance on the Reorganisation of the Child Protection Commission, art. 1.

<sup>69</sup> Government Decision on the Child Protection Commission, art. 14.

the Commissions are communicated to the interested parties five days from the day they are made. The Commissions generally follow the recommendations of the Service for Complex Evaluation of the Child. According to a report prepared under the auspices of an EU Twinning Programme, the certificates issued by the commissions are based on “rather vague” criteria that “can easily be manipulated”.<sup>70</sup>

According to some psychologists, the evaluation of children is often superficial, as the examining psychologists lack standardised instruments and tools. They have developed and produced their own testing methodologies. There is no special training for doing such evaluations, as there is no specific instruction on assessment techniques available.<sup>71</sup> However, an official from the NAPH has indicated that the Service for the Complex Evaluation of the Child and the Child Protection Commissions are staffed by highly qualified people who have all the necessary instruments to make an accurate assessment. According to the NAPH, the decentralisation of authority gives both the counties and the Ministry of Education the responsibility to ensure that children receive the support needed.<sup>72</sup>

NGO representatives have also raised concerns that the local-level commissions fail to give the appropriate level of care to their decisions. For example, when a school inspector examined the children enrolled at the Speranța Center in Mediaș, an NGO providing educational and training services to people with intellectual disabilities between the ages of two and 25 who have been denied placement in schools,<sup>73</sup> he found that there were children who met the requirements for enrolment in a special or even a mainstream school. However, the local commission had referred them to the centre rather than to any school. Thereafter, the Speranța Center requested that the local commission revise its decision and enrol the children in the special school, and the commission agreed to do so. In other cases, however, the Commission for Child Protection has not directed families and children with intellectual disabilities to the Speranța Center when it would be appropriate. Although the County Council has authorised the Speranța Center to provide services to this population, the center does not have the authority to issue diplomas, despite the special training and experience of the personnel, whose services are generally considered to be superior to State-provided services.<sup>74</sup> Without a primary school diploma, pupils cannot enrol in any secondary school and are unable to access higher education.

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<sup>70</sup> NAPH, *From Isolation to Participation*, Section 1.2.2.

<sup>71</sup> Letiția Baba, Director of the Speranța Habilitation Foundation, Timișoara, OSI Roundtable, Bucharest, May 2004.

<sup>72</sup> Dr. Paulian Sima, OSI Roundtable, Bucharest, May 2004.

<sup>73</sup> The Center was founded in 1999, as a socio-educational centre for children with special needs, assisting in their social and professional integration. See <http://www.telecom.ro/speranta> (accessed 3 September 2004).

<sup>74</sup> Maria Stănescu, President of Speranța Association from Mediaș, OSI Roundtable, Bucharest, May 2004.

The law stipulates an annual re-evaluation of each child diagnosed with disabilities, but the service can also conduct a reassessment at the request of the child's parent or legal representative.<sup>75</sup> In practice, adults with an IQ below 35 have no access to any form of education, and no opportunity for review of their initial diagnosis, under methodological instruction No. 4/20.10.2004 issued by the Ministry of Education. However, the diagnoses of all children, including those in institutions, are reviewed annually.

For children, there was previously no administrative appeal procedure to question the certificate that determines the level of disability, and thus the eligibility for social benefits. An appeal against the Child Protection Commission's decision could only be lodged with the courts.<sup>76</sup> No data is available on the number of appeals lodged. Law 343/2004 now sets out penalties for examiners who give inappropriate diagnoses.<sup>77</sup>

Parents are informed by the Child Protection Commission<sup>78</sup> when decisions regarding the degree of disability and the recommendation for placement in a special education programme are made. Parents report that they are not always treated respectfully, and that they often are advised by the members of the Child protection Commission to keep the child at home even where the Service for Complex Evaluation recommends enrolling the child in school.<sup>79</sup> Some NGOs have suggested that the rationale for suggesting families should keep children with intellectual disabilities at home appears to be the perception that "taking into account the child's diagnosis, it is better to give the place in school to a normal child".<sup>80</sup>

As a matter of law, there are no restrictions on the type of school a child may attend based on the diagnosis; the law does not set out any correlation between the type of school and the level of disability. In practice, access to education is denied entirely, or severely limited, for most people with intellectual disabilities, except for those with a diagnosis of *mild* intellectual disability. The Child Protection Commissions do not refer many children with *moderate*, *severe* and *profound* intellectual disabilities, even to special schools. Where the possibility is available, children with more severe disabilities may be placed in NGO-operated educational service centres, but these exist only in limited areas of the country.

NGOs have noted that a disproportionately high number of Roma children are diagnosed with intellectual disabilities and that, in some cases, up to 70 per cent of the

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<sup>75</sup> Government Decision on the Child Protection Commission, art. 20.

<sup>76</sup> Law 29/1990 on Administrative Procedure.

<sup>77</sup> Law on Special Protection, arts. 30, 54.

<sup>78</sup> Government Decision on the Child Protection Commission, art. 14.

<sup>79</sup> Interview with Vanda Florea, Bucharest, 9 January 2004.

<sup>80</sup> Interview with Manuela Leampăr, Bucharest, 8 January 2004; Interview with Vanda Florea, Bucharest, 9 January 2004.

students in special schools are Roma.<sup>81</sup> Roma with intellectual disabilities are at a special disadvantage, as they may face dual discrimination on the basis of both disability and ethnicity.<sup>82</sup> The Government should assess the criteria and procedures for diagnosis, to evaluate whether language or cultural barriers may impede accurate assessment, and ensure that there is adequate monitoring of the diagnostic bodies' operation.

#### 1.4 Early intervention

The lack of early intervention services in Romania is a serious problem, as the first three years are extremely important in a child's future development. There is no authority responsible for providing support to children with intellectual disabilities in these years, support that could greatly diminish or even eliminate the problems that appear immediately after birth.<sup>83</sup>

The non-governmental Speranța Habilitation Foundation, active since 1992 in Timișoara, offers the only early intervention service in Romania. This service is operated in cooperation with the Timiș County public health directorate and the Odobescu maternity hospital in Timișoara. The service is available to premature infants and newborns from at-risk pregnancies, up to the age of three. The program aims to detect any developmental disabilities as soon as possible, in order to give children the opportunity to develop to their maximum potential, to help children and their families meet their needs, and to use all possible opportunities to help children with intellectual disabilities integrate into society. Speranța offers multidisciplinary evaluation and diagnosis of premature newborns that test as potentially having intellectual disabilities, and it offers support to their families. The service also provides specialised support to infants at risk in order to help diminish or eliminate problems that might occur in early childhood. Additionally, the programme aims to set up a database of children at risk, to create an information network to share examples of good practices and to provide a model of an early intervention service for the country.<sup>84</sup>

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<sup>81</sup> European Roma Rights Center, *State of Impunity: Human Rights Abuse of Roma in Romania*, 2001, p. 64, available at [http://www.errc.org/publications/reports/romaniaE\\_2001.doc](http://www.errc.org/publications/reports/romaniaE_2001.doc) (accessed 3 September 2004).

<sup>82</sup> OSI roundtable, Bucharest, May 2004.

<sup>83</sup> Letiția Baba, OSI Roundtable, Bucharest, May 2004.

<sup>84</sup> Interview with Letiția Baba, Timișoara, 4 February 2004.

## 2. GOVERNMENT EDUCATION POLICY

*The Romanian Government has adopted a National Strategy for people with disabilities that calls for inclusive educational policy and aims for the allocation of resources based on the principle that “the funds follow the child”. The Ministry of Education has further elaborated an Action Plan of measures that, if implemented, hold the promise of real improvement for the education of children with intellectual disabilities. In particular, the recognition that children with severe and profound disabilities are also entitled to education and services is an important step forward in educational policy. The EU, through its Phare funds, in particular, the “Twinning Light” programmes, has supported the development of these national policies. However, while the European Commission has urged Romania to maintain its focus on the de-institutionalisation process, the EU should also take into account the need to provide education for people in institutions who were previously denied education.*

### 2.1 The EU and Government education policy

Romania applied for EU membership in 1995 and began accession negotiations in 1999. As part of its monitoring of candidate countries, the European Commission publishes Regular Reports on each country’s progress towards adoption of the *acquis communautaire*. The Regular Report on Romania issued in October 2004 mentions the enhanced protection against discrimination on the grounds of disability. It also notes the continuing efforts towards de-institutionalisation under the NAPH.<sup>85</sup> The Report makes no mention of access to education for people with intellectual disabilities.

As a candidate country, Romania is eligible for the EU’s Phare funding programmes, including the “Twinning Light” programme, through which an EU member State provides expert in-country consulting and support.<sup>86</sup>

### 2.2 National programmes

In 2001, the Government requested financial support for the development of the project “Elaboration of an integrated and continuous system of protection in order to increase the quality of life for people with handicaps” through the EU’s Phare “Twinning Light” Programme and the Ministry of Health, Protection and Sport from the Netherlands. The three objectives of the project are:

- the adoption of a National Strategy based on the EU legislation on disability and relevant international standards;

<sup>85</sup> European Commission, *Regular Report on Romania’s Progress towards Accession*, Brussels, 2004, p. 29. Available at [http://www.europa.eu.int/comm/enlargement/report\\_2004/pdf/rr\\_ro\\_2004\\_en.pdf](http://www.europa.eu.int/comm/enlargement/report_2004/pdf/rr_ro_2004_en.pdf) (accessed 22 October 2004) (hereafter, Regular Report 2004).

<sup>86</sup> See the website of the European Commission at <http://europa.eu.int/comm/enlargement/pas/phare/focus.htm> (accessed 3 September 2004).

- the elaboration of an action plan from 2003–2006 regarding the implementation of the Strategy in the medium and short term, based on priorities established by an evaluation of the present situation in Romania, with special attention to closing down larger residential institutions through the development of small-capacity alternative services and residential centres;
- capacity building of the NAPH.

The National Strategy for the period 2003–2006 was accordingly elaborated at the initiative of NGOs working in the field of disability, including those working in the field of intellectual disability.<sup>87</sup> The Government adopted the Strategy in October 2002.<sup>88</sup> The National Strategy includes a section that briefly addresses education. It asserts that “education for all and everyone” is a fundamental principle of the National Strategy,<sup>89</sup> and it calls for the promotion of inclusive education, to meet the needs of children with all levels of ability and from all parts of the country.<sup>90</sup> More specifically, the concept that “funds follow the student” is established in the Strategy, which provides for appropriate support to children with disabilities whether they are placed in mainstream or special schools.<sup>91</sup>

Although the principles set out in the National Strategy are fundamental to improving access to education for people with disabilities, they are broad concepts that must be further elaborated to ensure their consistent and comprehensive implementation, and they may require legal reform in addition to policy changes. It is also very important that the National Strategy is updated and aligned with the European Union *acquis* in the area of disability so that all the recommendations included in it are respected.<sup>92</sup> The current action plan for the implementation of the National Strategy is intended to help local authorities develop alternative forms of childcare as they close larger residential institutions for children.<sup>93</sup> However, implementation has already fallen behind schedule.<sup>94</sup>

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<sup>87</sup> See Inclusion International’s website on parent mobilisation action groups, available at <http://project.tomekklas.com/en/?section=initiatives#104> (accessed 13 January 2005).

<sup>88</sup> Government Decision Approving the National Strategy, 1215/31.10.2002.

<sup>89</sup> “National Strategy for the Special Protection and Social Integration of Disabled People in Romania”, Section II.6.B, available at [http://www.anph.ro/ENGLEZA/national\\_strategy\\_for\\_the\\_specia.htm](http://www.anph.ro/ENGLEZA/national_strategy_for_the_specia.htm) (accessed 8 February 2005) (hereafter, National Strategy).

<sup>90</sup> National Strategy, Section II.6.B.1.

<sup>91</sup> National Strategy, Section II.6.B.4.

<sup>92</sup> Telephone interview with Laila Onu, 28 July 2005.

<sup>93</sup> See the web site of the European Commission Delegation in Romania, [http://www.infoeuropa.ro/docs/2003-005-551.01.04\\_Protection\\_of\\_the\\_persons\\_with\\_disabilities.pdf](http://www.infoeuropa.ro/docs/2003-005-551.01.04_Protection_of_the_persons_with_disabilities.pdf) (accessed 13 January 2005).

<sup>94</sup> See the web site of the European Commission Delegation in Romania, <http://www.infoeuropa.ro> (accessed 13 January 2005).

Under the Phare 2003 programme, the project “Support to the reform of the protection system of the persons with disabilities” was launched in December 2004. The project consists of two components, deinstitutionalisation, and improvements to community-based services, particularly vocational and professional integration.<sup>95</sup> The project budget is €14.37 million.

Also through the Phare 2003 programme, EU support has been directed to another “Twinning Light” project, “Access to Education for Disadvantaged Groups”.<sup>96</sup> Between 2000 and 2003, a strategy that focused on access to education for Roma children was elaborated. For the period 2004-2007, the strategy currently under development will focus on access to education for children with special educational needs. The goals of this phase of the programme include:

- elaboration of instruments for identification of children with disabilities and elaboration of instruments for the design of the legal, institutional and educational framework that will ensure them the needed educational support and/or inclusion in mainstream education;
- enabling responsible bodies from different institutions in charge of protection and education of children to use the designed instruments;
- elaboration of a national plan for ensuring access to appropriate education for all children with disabilities;
- identification and dissemination of examples for good practice in inclusive education;
- designing a legal, institutional and educational framework that will ensure them the necessary educational support and inclusion in mainstream education.<sup>97</sup>

Through the “Twinning Light” project, German experts visited a number of special and mainstream schools throughout the country, to assess the current level of inclusive education in Romania.<sup>98</sup> The experts found that, while almost one-third of children with special education needs are attending mainstream schools, these are primarily students with *mild* disabilities; many children with *moderate* and *severe* disabilities do not attend school at all.<sup>99</sup> As of May 2004, the “Twinning Light” project had

<sup>95</sup> See the press release of the European Commission Delegation in Romania and the NAPH, available at [http://atlas.ici.ro/Disability/Comunicate/2004/Phare/Release\\_E.htm](http://atlas.ici.ro/Disability/Comunicate/2004/Phare/Release_E.htm) (accessed 28 January 2005).

<sup>96</sup> Telephone interview with Mircea Vlad, General Inspector for Special Education, Ministry of Education.

<sup>97</sup> Final Report, Twinning Light Contract RO2002/IB/OT-2 TL, Access to Education for Disadvantaged Groups, p. 4, available at <http://www.edu.ro/download/twinphare1.pdf>. (hereafter, Twinning Final Report).

<sup>98</sup> Twinning Final Report, p. 9.

<sup>99</sup> Twinning Final Report, p. 9.

completed a number of activities, including: elaborating a model resource school and criteria for selecting special schools for transformation into resource centres; issuing recommendations for monitoring the identification and placement of children with special educational needs; and organising a conference for disseminating good practices in April 2004.

As part of this same “Twinning Light” project, the Ministry of Education has also prepared a draft “National Action Plan for the Access to Education of Children with Special Needs” (hereafter, National Action Plan for Access to Education) in April 2004.<sup>100</sup> The National Action Plan for Access to Education starts with a brief analysis of the situation of children with special educational needs in the Romanian schools, and it recognises the fact that some children with severe disabilities do not receive any formal education, mainly due to the lack of adequate support in schools. The plan proposes fundamental reforms to the educational system and prioritises the inclusion and integration of children with special educational needs in mainstream schools.<sup>101</sup> The plan further proposes the introduction of “resource centres” and the transformation of special schools into resource centres, a process in line with the Salamanca Declaration.<sup>102</sup> Sections addressing early intervention, teacher training and vocational education are also included.

The National Action Plan for Access to Education sets out a number of important measures that, if implemented, have the potential to make a real difference in the level of access to education for people with intellectual disabilities. The approach is inclusive, noting:

all children are different and that there are great differences in the capabilities and problems of the children; it is not required that children with impairments or disabilities achieve the same goals as the other children in the same time. Every child must be appreciated; the ultimate aim is that children with or without [special educational needs] grow up together.<sup>103</sup>

The action plan acknowledges the need to educate children with severe intellectual disabilities. The needs of these children have not been addressed by the Ministry of Education in the past, as special schools only accept children with *mild* intellectual disabilities, while those with more severe intellectual disabilities have almost no educational opportunities in Romania.<sup>104</sup>

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<sup>100</sup> Draft of the National Action Plan for Access to Education of Children with Special Needs, elaborated by the Ministry of Education and Research under Twinning Light Project RO2002/IB/-02 TL, available at <http://www.edu.ro/download/twinphare2.pdf> (accessed 3 September 2004) (hereafter, NAP for Access to Education).

<sup>101</sup> NAP for Access to Education.

<sup>102</sup> UNESCO, Salamanca Conference on Special Needs Education, 1994, Framework for Action, Section 1, point 9.

<sup>103</sup> NAP for Access to Education, Section 4.8.2.

<sup>104</sup> Letiția Baba, OSI Roundtable, Bucharest, May 2004.

### 3. EDUCATION IN PRACTICE

*Although in theory, Romanian law and policy support mainstream education for children with disabilities, and all children have the legal right to some form of schooling, in practice mainstreaming of children with even mild intellectual disabilities is very limited. The majority of children with intellectual disabilities who attend school attend special schools, but even special schools exclude children with anything more than mild intellectual disabilities.<sup>105</sup> Teachers receive little support, training and resources to promote an inclusive environment. The highly inflexible, curriculum-focused approach to education in Romania has been cited as a problem for children with intellectual disabilities. These children also require training in basic independent living skills, in addition to academic skills, to pave the way for social integration and self-sufficiency. Special schools in Romania offer substandard education in the form of basic reading and counting skills, and thus fail to equip their students with genuine, marketable skills that would allow them to access employment after graduation.*

*Children found to lack the capacity to attend even a special school are legally entitled to home schooling, but in practice this rarely occurs as no Government funding is allocated to provide it. NGOs offer educational services to such children in some parts of the country, but these organisations can only operate on a very small scale. For many children with severe and profound intellectual disabilities, and for all adults in institutions, there are no educational options at all.*

#### 3.1 Resources and support

##### 3.1.1 Curriculum and support

Special education experts at the Ministry of Education are responsible for elaborating the curricular programmes for special education at the pre-school, primary, high school and vocational levels. The school system's high level of centralisation and focus on the curriculum create an environment where mainstreaming children with special needs is not possible. According to an expert working with people with intellectual disabilities, education in Romania is excessively focused on curriculum and academic performance, and it has changed little since the end of the socialist regime. A shift to a more up-to-date, child-centred philosophy of education is needed.<sup>106</sup>

There are concerns among parents that educational programmes for children with intellectual disabilities are not sufficiently flexible and are not adapted to the individual needs of each child.<sup>107</sup> The main objective of special education curricula is to teach basic reading and counting skills,<sup>108</sup> while the larger goals of providing children with the knowledge and independent living skills they will need to fully participate in society are not adequately addressed.

<sup>105</sup> Letiția Baba, OSI Roundtable, Bucharest, May 2004.

<sup>106</sup> Letiția Baba, OSI Roundtable, Bucharest, May 2004.

<sup>107</sup> Interviews with: Manuela Leampăr, Bucharest, 8 January 2004; Vanda Florea, Bucharest, 9 January 2004.

<sup>108</sup> Interview with Letiția Baba, 4 February 2004.

Moreover, support services that are complementary to the academic education of children with disabilities are scarce. There are areas in Romania where there are no support services for children with special needs at all. One speech therapist is available for every 1,500 children, and approximately ten per cent of these children can be expected to need some kind of support. In these conditions, it is impossible for a therapist to meet the needs of all who are eligible.<sup>109</sup> Furthermore, there is no coordination of the existing support services, and there are no financial resources available to give children with intellectual disabilities support in mainstream schools. Families are entirely responsible for finding support for mainstreamed children with intellectual disabilities.<sup>110</sup>

### 3.1.2 Teacher training

Teachers in special schools are required to hold a graduate degree in special psychopedagogy, pedagogy or psychology; teachers with other qualifications can teach in special schools only if they also have a recognised level of theoretical and practical training in one of the social sciences, such as social assistance, psychology or pedagogy.<sup>111</sup> Teachers in special schools receive incentives, including a 15 per cent higher salary than that offered by mainstream schools<sup>112</sup> and shorter working hours. The Ministry of Education regularly offers required training courses and informational sessions for special education teachers, but no other types of support services, such as counselling or coaching, are available for teachers.

According to an NGO expert, many teachers graduate from university without receiving any training on how to work with children with special educational needs, and they are not prepared to work in a mainstream class that includes children with intellectual disabilities.<sup>113</sup> Parents have expressed the concern that there is a prevailing mentality in the school system that children should conform to particular norms, even if children, especially those with intellectual disabilities, do not fit into these patterns. Socialisation is an important aspect of the school experience for all children, but those who need assistance in this area are not given the help they need, due to a lack of staff and poor awareness of these children's needs.<sup>114</sup>

The National Action Plan for Access to Education, prepared as part of a "Twinning Light" programme (see sections III.2.2 and IV.2.1), includes a section on teacher

<sup>109</sup> Letiția Baba, OSI Roundtable, Bucharest, May 2004.

<sup>110</sup> Letiția Baba, OSI Roundtable, Bucharest, May 2004.

<sup>111</sup> Law 128/1997 concerning the status of educational staff, Official Gazette No. 158, 16 July 1997, art. 7 (2).

<sup>112</sup> Law 128/1997 concerning the status of educational staff, Official Gazette No. 158, 16 July 1997, art. 49 (3).

<sup>113</sup> Letiția Baba, OSI Roundtable, Bucharest, May 2004.

<sup>114</sup> Laila Onu, OSI Roundtable, Bucharest, May 2004.

training.<sup>115</sup> This section focuses on both the identification of special educational needs and on classroom skills, such as the adaptation of curricula, measuring performance and communicating with parents of children with intellectual disabilities. The National Action Plan for Access to Education sets out specific goals for the initial and continuing education of teachers, and recommends specific methodologies and structures for reaching these goals.<sup>116</sup>

### 3.2 Inclusive education

In order to effect a shift towards a more inclusive approach to education, resources must be allocated to change attitudes, behaviour, teaching methodologies, curricula and the environment, so that educators can better meet the needs of all learners. According to the section of the National Programme for modernising special education entitled “Integration and Rehabilitation of the Children with Disabilities in/through Community”,<sup>117</sup> the main objective of special education in Romania is the integration of children with disabilities in mainstream schools. At the time of writing, there appears to have been no implementation of this programme. Meanwhile, some efforts to mainstream children with intellectual disabilities have been counterproductive, largely due to a lack of adequate preparation and support of students, parents and teachers.<sup>118</sup> The National Action Plan for Access to Education sets out a clear path towards inclusive education,<sup>119</sup> and it includes specific targets, mechanisms and criteria for making this fundamental shift in the approach to learning. However, such a profound transformation will require extensive preparation, cooperation and follow-up to meet with success, and the Government will need to make a concerted effort to ensure that all those implicated in this process have the information and support necessary.

#### 3.2.1 Mainstreaming

Before 2000, very few children with intellectual disabilities were mainstreamed, as the Commission for Child Protection generally recommended placing children with intellectual disabilities in special schools, if any school was recommended at all.<sup>120</sup> Where children with intellectual disabilities have been placed in mainstream schools, it was usually the result of parents’ advocacy and support. A small number of children with *mild* intellectual disabilities begin their education in mainstream schools, again,

<sup>115</sup> NAP for Access to Education, Section 4.8, Teacher training.

<sup>116</sup> NAP for Access to Education, Section 4.8, Teacher training.

<sup>117</sup> Order of the Ministry of National Education 3634/17.04.2000.

<sup>118</sup> Interview with Letiția Baba, Timișoara, 4 February 2004.

<sup>119</sup> NAP for Access to Education, Section 2, Principles and objectives.

<sup>120</sup> Interview with Letiția Baba, 4 February 2004.

usually on the insistence of their parents. There is no data available regarding these children.<sup>121</sup>

In 1993, the Ministry of Education implemented a pilot project for the integration of children with disabilities in mainstream schools in Timișoara, Cluj and Bucharest. While in Cluj, children with *severe* intellectual disabilities who had not been attending school at all were enrolled in special schools, in Timișoara, whole classes of children with *mild* intellectual disabilities from special schools were transferred to mainstream schools. The pilot project ended in 1997, and no other initiative of this type followed until 2000.<sup>122</sup>

In 1999, at the initiative of Baroness Emma Nicholson, the European Parliament Special Rapporteur for Romania, some 38,000 children in special schools were re-assessed according to the usual assessment procedures. Approximately half of these children were assessed as being capable of performing at mainstream educational standards, and they were accordingly reassigned to mainstream schools. The mainstreaming process took place at the order of the Ministry of Education, which also implemented the process.<sup>123</sup> While the initiative to integrate more children from special schools into mainstream facilities was well intended, the lack of preliminary work and support undermined the potential for success. No preparation of the teachers and other children from the mainstream school was provided, and many parents of children with disabilities were not prepared to support their children in the new educational environment, which presented serious challenges, such as harassment or discrimination for both children and families. Some NGOs organised training on inclusive education for a very limited number of teachers and parents, but this was done on a very small scale.<sup>124</sup> A set of manuals for inclusive education was also drawn up by civil society organisations.<sup>125</sup>

There has been no periodic evaluation of the children transferred to mainstream schools, so there are limited opportunities to draw lessons from the process to improve future mainstreaming initiatives. After the initial effort to transfer some students out of special schools in 2001, only one-fifth of that group still attends mainstream schools. Opinions differ as to whether this mainstreaming policy has been successful or not,

<sup>121</sup> Interview with Dr. Isabela Popa, National Authority for Child Protection, Bucharest, 17 March 2004.

<sup>122</sup> Interview with Letiția Baba, 4 February 2004.

<sup>123</sup> Order of the Ministry of National Education 4378/07.09.1999 regarding certain measures for the organisation of special education.

<sup>124</sup> RENINCO (the National Network of Information and Communication for the Integration in the Community of Children with Special Educational Needs) organised the courses. Interview with Professor Traian Vrasmas, EU EDF Coordinator for Romania, Bucharest, 12 January 2004.

<sup>125</sup> For example, RENINCO (the National Network of Information and Communication for the Integration in the Community of Children with Special Educational Needs) developed a teachers' guide entitled "Understanding and Answering Students' Requests from Inclusive Classes".

though there is wide agreement that adequate resources and preparation of the community should be provided for as a matter of course.<sup>126</sup>

According to the Ministry of Education, there is an example of good practice in mainstreaming children with intellectual disabilities in Cluj county. Approximately 60 teachers are assigned to support children with intellectual disabilities in the mainstream schools. Support services are provided by speech therapists and psychologists from psycho-pedagogical assistance centres.<sup>127</sup> Practice varies from school to school; some schools have established special classes for children with intellectual disabilities, while others have placed children with intellectual disabilities in mainstream classes.<sup>128</sup>

The general opinion expressed by the Ministry of Education is that children with intellectual disabilities should be mainstreamed. There is some resistance to mainstreaming among special school teachers, who fear that their jobs, and the benefits associated with working in special schools, are threatened by the loss of students to mainstream schools.<sup>129</sup>

Some NGOs are actively supporting and promoting mainstream education for children with intellectual disabilities. One such group is the Special Education Center established by the Speranța Habilitation Foundation in Timișoara. The purpose of the Center is to increase the quality of life of children with special needs, as well as their families, with a focus on helping children with intellectual disabilities integrate into mainstream schools. The Center offers support to both families and schools in the mainstreaming process, and works to change society's attitudes towards children with special needs. The Foundation also acts as a resource centre for mainstream schools.

The Center works with some 300 children from infancy to the age of 18, offering psychological, medical, pedagogical and social assessment and diagnosis, individual rehabilitation programmes, such as speech and occupational therapy, as well as counselling and support for parents. In mainstream schools, the Center: provides information and counselling for teachers, parents of children with disabilities and the children's schoolmates; offers support in the classroom through a support teacher; and develops and distributes adapted curricula. However, these training courses and curricula are not recognised or accepted by the Ministry of Education.<sup>130</sup> To date, the Center has mainstreamed and supported 136 children with intellectual disabilities in 22 schools.

<sup>126</sup> Interview with Professor Traian Vrasmas, Bucharest, 12 January 2004.

<sup>127</sup> Centres for Psycho Pedagogical Assistance are established at the county level and have up to six teachers employed to support the children with problems from the mainstream schools. They are insufficient to meet the needs of a whole county. Telephone interview with Letiția Baba, 13 December 2004.

<sup>128</sup> Written questionnaire received by fax from Mircea Vlad, 8 January 2004.

<sup>129</sup> Interview with Letiția Baba, 4 February 2004.

<sup>130</sup> Interview with Letiția Baba, 13 December 2004.

According to the Center's staff, teachers generally are reluctant to accept children with intellectual disabilities at first, as they lack information and experience in working with such children and are unaware of the children's needs and potential.<sup>131</sup> The Center first targets those teachers who express potential interest, but teachers who are opposed to including children with intellectual disabilities in their classes are also invited to attend training courses. In the course of the training, the Center staff report that resistant teachers come to recognise that their opposition is based on a lack of knowledge and skills, and following the training they are prepared to try working with children with intellectual disabilities.<sup>132</sup>

The Ministry of Education does not have information about complaints of harassment or discrimination in mainstream schools,<sup>133</sup> though unofficial reports suggest that children with intellectual disabilities experience such serious problems in mainstream schools, to the point where some students prefer to return to special schools.<sup>134</sup>

The positive example of NGO initiatives to give children with intellectual disabilities the opportunity to succeed in mainstream schools highlights the importance of a comprehensive approach; without adequate preparation of families, teachers, and communities, the abrupt introduction of students from special schools into mainstream classes is not to the advantage of any child. Long-term support, training and public awareness raising are essential to the success of inclusive educational programmes.

### 3.2.2 Special schools

There are 149 special schools for children with mental disabilities in Romania, enrolling 21,799 students as of January 2004.<sup>135</sup> These schools use separate curricula and programmes developed by the Ministry of Education to meet the needs of children with various degrees of disabilities. A child is enrolled in special school as a result of the decision made by the local Child Protection Commission, which recommends the course of education and complementary services, such as speech therapy. There are no organised psycho-social services available to parents,<sup>136</sup> though NGOs such as Speranța Habilitation Foundation in Timișoara do offer support services to parents.

In Romania, as in many other countries in the region, a disproportionately high number of Roma children are placed in the special education system.<sup>137</sup> The procedure

<sup>131</sup> Interview with Elena Petric, psychologist at the Speranța Habilitation Centre, 4 February 2004.

<sup>132</sup> Interview with Elena Petric, 4 February 2004.

<sup>133</sup> Written questionnaire received by fax from Mircea Vlad, 8 January 2004.

<sup>134</sup> Interview with Vanda Florea, Bucharest, 9 January 2004.

<sup>135</sup> Written questionnaire received by fax from Mircea Vlad, 8 January 2004.

<sup>136</sup> Interview with Letiția Baba, 13 December 2004.

<sup>137</sup> See EU Accession Monitoring Program, *Monitoring the EU Accession Process: Minority Protection*. Budapest, 2001, p. 397.

for assessing disability is one contributing factor to this serious problem: difficulties arising from language and cultural barriers may be misdiagnosed as intellectual disability in some instances. In other cases, the additional benefits available through the special schools, such as free meals and supplies, create an incentive for disadvantaged families to seek a diagnosis that would place their children in the special education system.<sup>138</sup>

According to the Ministry of Education, parents and NGO representatives consider the education available in special schools to be appropriate for students who cannot attend mainstream schools under current conditions, due to *severe* or *profound* disabilities, and associated physical disabilities.<sup>139</sup> However, some experts in the field indicate that, in practice, special schools generally accept only children with *mild* intellectual disabilities.<sup>140</sup> Parents and NGO representatives do not consider the quality of special education to be high, but merely satisfactory.<sup>141</sup> Parents report that the most serious problem in special schools is the teachers' lack of adequate training, motivation and concern for working with children with intellectual disabilities.<sup>142</sup> Although there are benefits associated with working in the special educational system, there is also a perception among teachers and society in general that teaching in special school is a lower prestige position, and this perception reduces teachers' motivation for working with the children with intellectual disabilities.<sup>143</sup>

The National Action Plan for Access to Education calls for the transformation of special schools into resource centres, which would offer training to mainstream school teachers, distribute materials and explain approaches, offer support to schools, teachers and families, and help to ease the transition from education to employment.<sup>144</sup> The extensive detail and elaboration provided in the National Action Plan establish a model framework that the Government should ensure is used as the guide in pursuing this transformation process.

<sup>138</sup> Save the Children UK, *Denied a Future? The right to education of Roma/Gypsy and Traveller children in Europe*, Vol. 1, London, 2001, p. 326, available at [http://www.savethechildren.org.uk/temp/scuk/cache/cmsattach/648\\_dafvol1.pdf](http://www.savethechildren.org.uk/temp/scuk/cache/cmsattach/648_dafvol1.pdf) (accessed 3 September 2004).

<sup>139</sup> Written questionnaire received by fax from Mircea Vlad, 8 January 2004.

<sup>140</sup> Letiția Baba, OSI Roundtable, Bucharest, May 2004.

<sup>141</sup> Interview with Manuela Leampăr, Bucharest, 8 January 2004; Interview with Vanda Florea, Bucharest, 9 January 2004.

<sup>142</sup> Interview with Vanda Florea, Bucharest, 9 January 2004.

<sup>143</sup> Interview with Elena Petric, psychologist, Speranța Educational Centre, Timișoara, 4 February 2004.

<sup>144</sup> NAP for Access to Education, Section 4.2.1.

### 3.3 Education outside the school system

Educational options outside the school system are extremely limited. Although home schooling is available under the law, very few children actually receive education at home. Children in institutions are granted the same rights to education as other children, but the opportunities to receive an education are virtually nil.

#### 3.3.1 Home schooling

In principle, home schooling is available in Romania under articles 18 and 19 of the Law on Special Protection.<sup>145</sup> In practice, there are very few children with intellectual disabilities who actually receive education at home;<sup>146</sup> only 95 children with disabilities were recorded as receiving home schooling in December 2003.<sup>147</sup> Awareness of this option is quite low among parents, but in general, parents express a preference for their children to have an opportunity to study in special or mainstream schools rather than at home.<sup>148</sup> According to an expert, home schooling is not appropriate for children with intellectual disabilities as their main problem is integration in a social environment and learning social skills, which can be done only in a school class and not at home where they are isolated in a socially limited environment.<sup>149</sup> Many children with intellectual disabilities who are living at home because parents do not wish to send them away to institutions receive no education at all.

#### 3.3.2 Education in institutions

There is no opportunity for education or development of any kind in institutions for adults with intellectual disabilities. In theory, children in institutions have the right to all the educational options available to the children who are not in institutions. The negative attitudes of staff in these institutions remain largely unchanged, and consideration for individual capacity and needs of the residents is virtually non-existent.<sup>150</sup> Most institutions are overcrowded, and residents have no privacy. In the worst cases, conditions are inhuman and degrading, clearly violating basic human rights. Following the exposure of the shocking conditions in children's institutions in the early 1990s, the Romanian Government, with support from the EU and other donors, has taken steps to

<sup>145</sup> Law on Special Protection, arts. 18-19.

<sup>146</sup> Interview with Manuela Leampăr, Bucharest, 8 January 2004.

<sup>147</sup> Statistics reported by the Specialised Public Service for Child Protection, table A.9, available at <http://www.copii.ro/mai2004en.xls> (accessed 2 September 2004).

<sup>148</sup> Interview with Lucia Ciobanu, President of the Downs Syndrome Association Oradea, Timișoara, 5 February 2004.

<sup>149</sup> Interview with Laila Onu, July 2005.

<sup>150</sup> Interview with Manuela Leampăr, Bucharest, 8 January 2004.

improve the living conditions in these institutions, but nothing has been done for the improvement of institutions for adults with intellectual disabilities.

Deinstitutionalisation is the main focus of the National Strategy. However, this process is a gradual one, and because institutions did not and do not offer educational programs that would enable persons with intellectual disabilities to live independently, educational options should be provided to adults and children remaining in residential care.

## 4. TRANSITION FROM EDUCATION TO EMPLOYMENT

*The outlook for people with intellectual disabilities after finishing school is generally bleak: there is little support for making the transition from education to employment. Vocational training is provided for in the law, but in practice few people with intellectual disabilities acquire marketable skills that would lead to employment on the open market. Civil society initiatives offer training in some fields, but educational requirements for many professions are too high for most people with intellectual disabilities to meet. Opportunities for lifelong education are limited, even though basic “refresher” courses would be an important factor in helping people with intellectual disabilities to retain their skills and increase their chances of finding and maintaining employment.*

### 4.1 Vocational training

As a matter of law, vocational special education in Romania must offer a wide range of professions in which people with mental disabilities can receive training. In practice, there are few curricular opportunities for people with intellectual disabilities to learn marketable skills. The Ministry of Education and the Ministry of Labour, Social Protection and Family have signed a protocol that seeks to optimise schooling plans and to adjust curricula to the demands of the job market. The Ministry of Education is responsible for making the appropriate curricular adjustment, but reportedly, this does not always happen in practice.<sup>151</sup>

No support is provided, either through the education system or other State-supported channels, to help people with intellectual disabilities make the transition from school to employment. As a component of the National Strategy’s deinstitutionalisation process, the preparation of “personal plans” for each institutional resident is expected. These individual programmes are to include activities and therapy through outside occupations or employment that would develop job and life skills.<sup>152</sup> Implementation of this aspect of the National Strategy has been delayed, however, and no evaluation of its progress is currently available. The National Action Plan for Access to Education also addresses vocational training, recommending that existing vocational training

<sup>151</sup> Liliana Grecu, National Institute for Research in Labour and Social Protection, OSI Roundtable, Bucharest, May 2004.

<sup>152</sup> NAPH, *From Isolation to Participation*, Section 2.4.2.

institutions remain open and that all vocational schools should be open for all students, with appropriate support available for students with special educational needs.<sup>153</sup> At the end of 2004, no implementation of this Action Plan had been reported.

Advocates for people with intellectual disabilities have proposed the introduction of a more flexible job training system, which opens vocational training paths for certain jobs to people without a primary school diploma. The law currently requires a primary school diploma to be eligible to qualify as a baker, for example. Civil society initiatives have demonstrated that without a diploma but with adapted training, people with intellectual disabilities can work in a bakery and produce a marketable product.<sup>154</sup>

## 4.2 Employment services

The NGO Pentru Voi in Timișoara<sup>155</sup> provides supported employment services to people with intellectual disabilities. To date, the Pentru Voi Centre has assisted 22 people in finding jobs on the open market. Pentru Voi also helps people with intellectual disabilities select a vocation, and it currently assists in finding job placements for 15 people. All these services are provided in partnership with the Timișoara City Local Council, which is the main source of funding. The mother of a young woman who takes part in the Pentru Voi Centre's sewing workshop reports that the NGO provides a unique opportunity for her daughter, who would otherwise have little chance of working on the open market. The parent noted that her daughter has integrated into the centre and is highly motivated to work. The fact that the daughter is happy and occupied also gives the parents a feeling of wellbeing.<sup>156</sup>

## 4.3 Lifelong education

Although the Law on Special Protection provides for adult education,<sup>157</sup> at present, there are few examples of adults with intellectual disabilities receiving continuous education or "refresher courses" to help them retain the skills they have developed. A civil society representative has indicated that, while there are isolated cases where social workers have helped clients improve their literacy skills, there should be training for case managers to support lifelong learning more systematically.<sup>158</sup> In particular, the lack of opportunities for people in institutions to receive any form of childhood

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<sup>153</sup> NAP for Access to Education, Section 4.2.2.

<sup>154</sup> Laila Onu, OSI Roundtable, Bucharest, May 2004.

<sup>155</sup> The Pentru Voi Foundation is a non-governmental, not-for-profit organization, working to increase the quality of life for persons with intellectual disabilities. The philosophy of the Foundation is inclusion, built on the belief that all people are equal and should be respected and valued and that this is a basic human rights issue.

<sup>156</sup> Telephone interview with Eva Fidisan, parent, 18 March 2004.

<sup>157</sup> Law on Special Protection, art. 19.

<sup>158</sup> OSI Roundtable, May 2004.

education is compounded by the absence of adult education programmes, and this gap poses a serious barrier to their integration upon de-institutionalisation.

As many people with intellectual disabilities often need extra support to retain skills acquired through formal education, government policy should incorporate measures for lifelong education. In particular, it should incorporate measures that offer educational services to people who were, or are, institutionalised.

## IV. Access to Employment

### 1. LEGAL AND ADMINISTRATIVE FRAMEWORK

*Romanian law guarantees the right to work and to choose a profession. While anti-discrimination legislation requires employers to adapt facilities to the needs of people with disabilities, in practice such accommodation is not enforced. The same multi-disciplinary committee determines both the capacity to work and eligibility for benefits; although there are frequent appeals regarding the level of disability, and the corresponding level of benefits, only a small fraction of these appeals are successful. The capacity to work is re-evaluated each year. Both the minimum wage and disability benefits are very low, giving little incentive for people with disabilities to seek employment, and, although some people with disabilities are eligible for unemployment benefits, it is not possible to receive both unemployment and disability benefits. Recently amended legislation may offer people with more severe disabilities the opportunity to retain some portion of their benefits while receiving a salary, but it is as yet unclear how effective this measure will be in encouraging employment.*

#### 1.1 National employment legislation

While Romania has adopted legislation that encourages the employment of people with disabilities, in reality the number of people with disabilities who are employed is very small.<sup>159</sup> For people with intellectual disabilities, finding work is especially challenging, due to the stigma associated with their disability. Moreover, there are very few opportunities for people with intellectual disabilities to acquire the skills necessary to apply for jobs on the open market. Competition for work is very high in Romania, and under these conditions, people with intellectual disabilities have almost no chance of finding employment. In some cases, the families of people with intellectual disabilities present an obstacle to employment: they may be overprotective or may not consider the capacity of the person with intellectual disability sufficient to find and keep a steady job.<sup>160</sup> The main problems are the lack of specialised services and the discouraging legislation in the employment area, and weak incentives for employers.<sup>161</sup>

Implementation of Law 343 of 12 July 2004, for the modification and completion of Emergency Government Ordinance 102/1999 regarding the special protection and employment of persons with handicap, does not measure up to standards set by the EU's Employment Directive regarding "reasonable accommodation for disabled people". Although Romanian legislation stipulates that employers should ensure all adaptation and facilities that are needed for eliminating all impediments to the employment activity of people with disabilities,<sup>162</sup> in reality, equal treatment in the

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<sup>159</sup> Interview with Dr. Paulian Sima, Bucharest, 22 December 2003.

<sup>160</sup> Interview with Vanda Florea, Bucharest, 9 January 2004.

<sup>161</sup> Laila Onu, OSI Roundtable, Bucharest, May 2004.

<sup>162</sup> Law on Special Protection, art. 42.

workplace is not enforced, and employers are unwilling to invest in adaptations and facilities for people with disabilities.

In addition to Law 519/2002 and Ordinance 102/1999, other legislation relevant to the employment of people with intellectual disabilities includes Government decision HG 1215/31.10.2002, approving the National Strategy, and Law 76/16.10.2002 on the system of unemployment insurance and the stimulation of the work force. These laws make no distinction between physical and intellectual disability.

The National Council for Fighting Discrimination, established in 2001 by Government Decision 1194/2001, is responsible for addressing cases of reported discrimination. The role of the Council is to implement the principle of equality among citizens; in order to accomplish its goal, the Council may propose actions or special measures for the protection of vulnerable persons or categories of people situated in an unequal position due to their social origin or a disability.<sup>163</sup> To date, no cases of discrimination on the grounds of disability have been reported to the Council.<sup>164</sup>

There is no enhanced protection for people with disabilities working on the open market. The only available support is professional counselling from the Territorial Agency for Employment, which provides “assisted employment”.

## 1.2 Diagnosis and assessment for employment and benefits purposes

The institutions responsible for establishing the level of intellectual disability capacity for employment are the Medical Expert Commissions for People with Handicap, which are based in each county and in Bucharest districts. The commissions are made up of three members: two medical specialists and an NGO representative. The president of the commission is a medical specialist, appointed by the NAPH at the proposal of the local branch of the NAPH. A secretary is also appointed by the local authority.<sup>165</sup>

Order 303 of the President of the NAPH established the High Commission of Medical Experts for Adults with Handicap in 2003. The role of the High Commission is to make the final decision on appeals brought by people with disabilities regarding the level of disability certified by their local commission, where new documents regarding the person’s condition are presented. These certificates can only be contested up to 30 days from the communication of the certificate; after 30 days, there is no right to

<sup>163</sup> Government Decision 1194/2001 concerning the organisation and functioning of the National Council for Fighting Discrimination, Official Gazette No. 792/12.12.2001, art.1.

<sup>164</sup> Interview with Corina Macoveanu, Bucharest, January 2004.

<sup>165</sup> Law on Special Protection, art. 22.

appeal.<sup>166</sup> Because the High Commission receives some 1,200 appeals each month, it has drafted instructions for filing appeals in order to streamline the procedure.<sup>167</sup> Less than ten per cent of the reassessments for adults with disabilities who request reassessment result in a change of the “grade of handicap.”<sup>168</sup>

According to Methodological instruction number 5/10.11.2003 elaborated by the NAPH, the Medical Expert Commissions for People with Handicap are also responsible for assessing the level of disability and the “remaining capacity” for work, which is expressed as a percentage. Based on its assessment, the commission makes socio-professional recommendations, related to the age, degree and type of disability of each individual. There is a correlation established by the Medical Expert Commissions between the grade of handicap and the deficiency produced by that grade, and the remaining capacity of work, but the assessment is expected to examine the individual’s abilities.

**Table 2. Levels of disability and capacity to work**

“Deficiency”	Grade of Disability	Remaining work capacity (per cent)
None	Infirmity (Grade 0)	100-80
Light	Light (Grade 0)	79-51
Medium	Medium (Grade III)	50-39
Accentuated	Accentuated (Grade II)	30-11
Severe	Severe (Grade I)	10-0

**Source:** Methodological instruction number 5/10.11.2003 elaborated by the NAPH.

People with disabilities, with the exception of those who are not mobile, are required to participate in the development of their professional and social reintegration plan.

The evaluation takes place annually for those who are below the standard age for retirement and whose IQ is above 35. People with disabilities, or their guardians, may request a reassessment: an appeals procedure is set out in Law 519/2002.<sup>169</sup> The appeal goes to the High Medical Expert Commission for People with Handicap if the appeal is made on the basis of the same medical documents that were presented to the local Medical Expert Commission; if new documents are introduced, the local commission reassesses the case.

<sup>166</sup> Order 90 from 9 August 2002, regarding the Rules of Organisation and Functioning of the Medical Expert Commissions of Adults with Handicaps.

<sup>167</sup> Interview with Dr. Paulian Sima, Bucharest, 22 December 2003.

<sup>168</sup> Interview with Dr. Paulian Sima, Bucharest, 22 December 2003.

<sup>169</sup> Law on Special Protection, art. 26.

### 1.3 The role of the social welfare system

The disability allowance available to all people with disabilities who have no income is not correlated with the cost of living, and it is insufficient to support a person with disabilities. Nevertheless, the motivation for people with disabilities to find employment is not enhanced by the relatively small difference between disability benefits and the minimum wage: disability benefits are ROL 1,550,000 (Romanian Lei, approximately €40<sup>170</sup>) per month, while the minimum wage in Romania is twice that sum, ROL 3,100,000 (approximately €80) per month, as of 1 January 2005.

According to the law, people with disabilities who meet certain criteria<sup>171</sup> are entitled to unemployment benefits. People who are receiving disability benefits are not entitled to unemployment benefits.<sup>172</sup> Many people with disabilities have been discouraged from seeking employment, because they fear that, if they lose their disability benefits and then find themselves in a situation in which they cannot maintain their job, they would have no source of income until they can be reassessed.<sup>173</sup> Law 343/2004 introduces a new provision that permits adults with *severe* or *accentuated* grades of disability to retain 50 or 30 per cent respectively of their benefits while receiving an income from salary.<sup>174</sup> This provision is expected to encourage employment among people with disabilities.<sup>175</sup>

However, the actual legislation is discriminatory with regards with to the employment of people with disabilities as long as the adults with *severe* or *accentuated* grades of disability can retain 50 or 30 per cent respectively of 1,550,000 ROL, while blind people with severe disabilities receive a social allocation of 1,584,000 ROL regardless of income from salaries. This discriminatory treatment favours the employment of people with sensory disabilities and explains the high percentage of blind people who are employed. There is no rationale for this discrimination.<sup>176</sup>

<sup>170</sup> The exchange rate is calculated at ROL 38,750 = €1.

<sup>171</sup> These criteria include: employment for 12 months in the last 24 months; no other source of income or income from authorised activities that is lower than the unemployment benefits; being ineligible for retirement according to the law; registration at the territorial agency for work force employment.

<sup>172</sup> Law on Special Protection, art. 19 (1).

<sup>173</sup> Telephone interview with Laila Onu, 30 December 2003.

<sup>174</sup> Law on Special Protection, art. 19.

<sup>175</sup> Ministry of Public Finance, Grant Scheme for Institutional Reform in the Sector of Protection of Disabled People, Guidelines for Grant Applicants Responding to the Call for Proposals for 2004, Central Finance and Contracting Unit, p. 1, available at [http://www.anph.ro/phare/Ghid\\_EN/Guide%203.12.04.doc](http://www.anph.ro/phare/Ghid_EN/Guide%203.12.04.doc) (accessed 18 January 2005).

<sup>176</sup> E-mail communication from Laila Onu, 28 July 2005.

## 2. GOVERNMENT EMPLOYMENT POLICY

*The main mechanism the Government has put in place for improving the employment situation of people with disabilities is a quota system that requires companies and state agencies of a certain size to hire people with disabilities. Larger companies are required to make sure that four per cent of their employees are people with disabilities, but, in practice, employers evade compliance with quota requirements and avoid penalties by advertising positions with qualifications that no person with disabilities could meet. Companies that have a 30 per cent or higher level of employees with disabilities are eligible for various benefits, including tax exemptions. Legislation provides for the Government to pay the salary of employees with disabilities, but only for 18 months, after which the employer is under no obligation to retain the employee.*

### 2.1 The EU and Government employment policy

The European Commission's 2004 Regular Report does not specifically address the issue of employment of people with intellectual disabilities.

The Action Plan for the implementation of the National Strategy, adopted in 2002, has received funding through the Phare program and through the EU's "Twinning Light" programme (see sections III.2.2 and III.3.1.2). Regarding employment, the Action Plan aims to assess all people with disabilities in institutions, and to prepare individual plans for rehabilitation and reintegration for each of them. These plans are to be implemented in phases, starting with the people with the most severe disabilities; implementation of all plans is to be completed by 2006. Full implementation of the National Strategy is expected by the end of 2007. The objectives for 2003 were not completed, however, and further delays in implementation may slow its progress.

### 2.2 Government requirements and incentives

The Law on Special Protection provides measures to improve employment options for people with disabilities in general. It establishes a quota system, requiring that people with disabilities make up four per cent of the work force in companies with over 75 employees and state authorities with at least 25 employees who do not have the statute of civil service commissioners.<sup>177</sup> This quota applies both to public and private sector enterprises. Companies that do not respect this provision are fined in an amount equal to the minimum wage of each employee with disabilities that would need to be employed in order to make up the four per cent minimum.<sup>178</sup> If a company can prove that it requested applications from people with disabilities through the National Agency for Employment but no one applied, it is exempt from penalties. This exemption is easily abused, as businesses can simply advertise positions requiring

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<sup>177</sup> Law on Special Protection, art. 15.1.

<sup>178</sup> Law on Special Protection, art. 43.

qualifications higher than a person with disabilities could possibly meet. There are no specific requirements regarding the employment of people with intellectual disabilities.

Businesses where at least 30 per cent of the employees are people with disabilities are granted special status. These businesses, known as “protected units”, a form of sheltered employment, are:

- exempt from taxes on profits, on the condition that 75 per cent of the amount saved through this exemption is reinvested in the business;
- exempt from customs duties for the import of raw materials, materials, and equipment;
- exempt from VAT payments for producing goods within the framework of the protected units;
- entitled to other benefits authorised by the local administration from local funds.<sup>179</sup>

In addition, Law 76/2002 on the unemployment insurance system and employment stimulation stipulates that employers who hire people with disabilities on open contracts will receive a monthly sum equal to one-and-a-half times the minimum wage for a period of 18 months.<sup>180</sup> There is no monitoring to gauge compliance with this policy, but these measures have limited effect, as the employer may dismiss the employee two years after the initial 18-month period.

### 3. EMPLOYMENT IN PRACTICE

*Romania has a high overall unemployment rate, making it even more difficult for people with intellectual disabilities to compete for jobs on the open market. Supported employment, in which people with intellectual disabilities work closely with a coach or colleague on the job, has been an effective model for improving employment opportunities for people with intellectual disabilities. A local NGO in Romania has helped a number of people to find work by offering this type of support, and the Government should look to the experience and practical knowledge developed by civil society in the development of national employment policy. At present, there are no Government-operated sheltered workshops specifically for people with intellectual disabilities. A very limited number of NGO-operated workplaces do cater specifically to people with intellectual disabilities, but these function primarily as training and occupational facilities, and offer only a segregated working environment for people with disabilities.*

<sup>179</sup> Law on Special Protection, art. 38.

<sup>180</sup> Law 76/2002 on the unemployment insurance system and employment stimulation, Official Gazette 740/10, October 2002, art. 80.

### 3.1 Statistical information

There are no statistical data available regarding the employment of people with intellectual disabilities. Nor is data on the employment of people with any kind of disability generally available. The rate of unemployment in Romania is approximately seven per cent, although the rate varies from region to region.<sup>181</sup> There are no available data regarding the percentage of people with intellectual disabilities among the total number of the unemployed.

### 3.2 Supported employment on the open market

In Romania, there is no methodological model elaborated by the Government for supported employment of people with intellectual disabilities on the open market. The Pentru Voi Foundation has developed materials on this subject that are printed in *Inclusion of Persons with Intellectual Disabilities in Community – A Guide for Parents, Professionals, and Organisations*.<sup>182</sup>

Services for people with intellectual disabilities are highly specialised to meet the needs of users, and, currently, the Pentru Voi Centre is the only example of a supported employment programme in Romania. On the open market, there are a small number of businesses that employ people with intellectual disabilities in some situations: Pentru Voi developed an employment project that has successfully found employment for 15 persons on the open market in Timișoara, with the support of job seekers and job coaches employed by Pentru Voi. Pentru Voi has supported people with intellectual disabilities in finding jobs in construction, food services, baking, confections, repair work, selling newspapers and cleaning. At present, 80 people are working in the various workshops of the Pentru Voi Centre, and 30 of these workers are prepared for employment on the open market.

The director of the Pentru Voi Foundation has indicated that the main problem with the employment of people with intellectual disabilities is not helping them find jobs but helping them retain jobs. While people with intellectual disabilities may be able to meet job requirements, they do not always have the social skills needed to be a part of the workplace and to interact with their colleagues. Schools do not teach people with intellectual disabilities how to behave in social situations, how to initiate a discussion, how to ask for permission to leave or how to speak with authorities.<sup>183</sup>

According to the Foundation, people with intellectual disabilities who are working in the open market are targets of discrimination and hostility, usually by other employees.

<sup>181</sup> As of April 2004, according to the National Statistical Office, see [http://www.insse.ro/ComuNou\\_sinteze/a04/sic04e04.pdf](http://www.insse.ro/ComuNou_sinteze/a04/sic04e04.pdf) (accessed 22 October 2004).

<sup>182</sup> Speranța Romanian Society, Habilitation Foundation Speranța from Romania, Pentru Voi Foundation and Mencap, eds, *Employment of People with Disabilities*, pp. 305–340.

<sup>183</sup> Laila Onu, OSI Roundtable, Bucharest, May 2004.

In one case reported by the director of Pentru Voi, a woman with intellectual disabilities was working in a business where the employees decided to protest against the work conditions. When the owner wanted to discuss their concerns, the other employees, aware that the person with intellectual disabilities had poor social skills, designated her to talk to the owner. She was not able to communicate effectively with the owner and as a result, the woman was fired.<sup>184</sup> Such examples demonstrate the importance of preparing employers and co-workers to receive an employee with intellectual disabilities.

Legislation regulating the financing of NGOs to develop employment services, or to establish day centres with vocational activities for people with disabilities, stipulates the conditions and procedures for NGOs to receive funding from the State budget.<sup>185</sup> Generally, NGOs for people with intellectual disabilities are given funding for specific projects that are considered viable.

### 3.3 Sheltered employment

According to the NAPH, there is no state-funded sheltered workplace for people with intellectual disabilities in Romania. There are sheltered workplaces for people with intellectual disabilities established and operated by NGOs, but these are not organised according to the legal definition of “protected units” under Romanian law (see section IV.2.2).

The NGO-operated workshops can best be described as training workplaces, where people with intellectual disabilities can learn skills for potential future jobs on the open market while also improving their social and communication skills.<sup>186</sup> These workshops accept anyone from the local area, the only criteria being an individual’s willingness to attend and the willingness of the parents to allow their children’s participation. There are people with *severe* and *profound* intellectual disabilities who attend such workshops.<sup>187</sup>

One workshop is operated by the Pentru Voi Foundation in Timișoara. In 1996, Pentru Voi signed a partnership with the Timiș State Inspectorate for Persons with Disabilities and the Timișoara Local Municipal City Council to establish a day centre, which has developed into a successful example of public-private partnership in Romania. The convention with Timiș Local City Council was signed in 2004 and adjusted according to the new Legislation (Law 343/200) in 2005. The day centre is a community-based service specifically for people with intellectual disabilities. The objectives of the centre are to teach and support every young person in various

<sup>184</sup> Telephone interview with Laila Onu, 30 December 2003.

<sup>185</sup> Government Decision 696/19.07.2001.

<sup>186</sup> Interview with Manuela Leampăr, Bucharest, 8 January 2004.

<sup>187</sup> Telephone interview with Laila Onu, 30 December 2003.

activities, with the goals of increasing personal independence and integrating clients into the community.

Approximately 100 adults with intellectual disabilities and their families take part in the programme. The participants may take part in five workshops, producing various handcrafts while developing their communication and social skills. The Centre also offers job-coaching services and a vocational certification programme in baking. Six young people with intellectual disabilities have received a diploma in baking through this training. The Centre also has a garden, an orchard and a greenhouse where service users may pursue their own activities.<sup>188</sup>

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<sup>188</sup> Inclusion Romania, National Federation of Organizations for Persons with Intellectual Disabilities from Romania, ed., *Examples of Good Practice In the Field of Community-Based Services for Children and Young People with Intellectual Disabilities*, Bucharest, 2003, available at <http://www.pentruvoi.ro/publicatii/good%20practice.pdf> (accessed 14 February 2005).

## V. Conclusions

An absence of reliable, comprehensive data related to people with intellectual disabilities has contributed to a lack of attention to this group. Without basic information related to the situation of people with intellectual disabilities as a group, policymakers cannot elaborate appropriate programmes. The regular collection of data related to people with intellectual disabilities should be a priority for the Government, and this data should be made available to the public, with suitable protection for individual privacy.

In Romania, education, health, social protection and employment for people with intellectual disabilities are the responsibility of a number of different institutions: the Ministry of Education, the Ministry of Health, the NAPH, the Ministry of Labour and Social Protection, the National Authority for Child Protection and the Ministry of Public Finance. The cooperation that should exist among these institutions does not always function well, and existing coordination is inadequate. To address the situation of people with intellectual disabilities, so that social inclusion can be promoted more effectively, laws and policies must ensure a holistic approach that includes appropriate measures to enhance and ensure coherent action and implementation by the various bodies involved.

There are far too few community based services across the country that teach people with intellectual disabilities the social and professional skills that are necessary for their social inclusion. Most of the existing efforts have been established at the initiative of local civil society organisations with the financial support of foreign donors. Services offered by NGOs are not available nation-wide; most are concentrated in the western part of the country, in Bucharest and the central-northern region. In Moldova, the poorest part of the country, community based services for people with intellectual disabilities are non-existent.

The Government has adopted the National Strategy, which was elaborated by NGOs and the NAPH, and which calls for the closure of large institutions and the development of alternative community based support services as a priority. This entire process is based on individualised assessment and the elaboration of individual plans for the residents of institutions, but it does not refer to improving the educational system for people with intellectual disabilities. Most institutions are overcrowded, offering little privacy and respect for personal dignity. In the worst cases, conditions are clear violations of basic human rights. Generally, residential institutions for adults offer no educational programs that would enable persons with intellectual disabilities to develop their capacities for independent living. Moreover, even if living conditions in children's institutions are improved, institutions for adults remain in a very poor state, and institutional care will never promote social inclusion. The implementation of the Action Plan must take place more rapidly, with adequate funding and close monitoring and evaluation of results.

Even if legislation and government response to the situation of people with intellectual disabilities has improved over the past several years, there are still significant steps to be taken regarding accessibility and quality of education for children with intellectual disabilities. The mainstreaming initiative that started in 2000 suffered from a lack of adequate preparedness and resources, and the absence of monitoring and evaluation of results has further endangered the process.

According to the law, people with intellectual disabilities have access to various forms of education according to their degree of disability, and the educational system provides for the existence of all possible forms of education for children with disabilities. However, in practice, the mechanisms and the necessary resources that would permit the implementation of a range of real educational options are not in place. For example, home schooling for children with intellectual disabilities is not available in practice, though legislation provides for the possibility. Furthermore, educational professionals often do not have enough information and training to discuss the educational options that are available with families and with people with intellectual disabilities.

The quality of education for children with intellectual disabilities in special schools is inadequate. The main objective of the teachers and the curricula is to teach reading and counting skills, while personal development, independent living skills and vocational training are not addressed. The educational system does not provide a real opportunity for social inclusion of children with intellectual disabilities.

Ordinance 137/2000, the Romanian Constitution and Law 519/2002 that modifies Ordinance 102/1999 foresee the right of every person with disabilities to work. The reality is that only very few people with intellectual disabilities are able to find employment. In general, people with intellectual disabilities who are employed have received support in finding and retaining a job through a family member or an NGO. Legislation establishing a quota system for firms employing people with disabilities has not been an effective means of stimulating employers to hire people with intellectual disabilities. Without the intervention of a family member or NGO, very few firms are willing to take on an employee with disabilities.

The incentives for people with disabilities to find work are limited by the structure of social welfare benefits. Forced to choose between disability benefits and employment, many people with disabilities opt to continue receiving benefit payments, which, while extremely low, are half the minimum wage and offer greater security than many jobs.

In Romania, there is no special legislation for raising public awareness about disability issues. The State Secretary for Persons with Handicap, the NAPH and the Ministry of Education have supported information campaigns, but most public awareness raising activities are initiated by NGOs. The recently-adopted National Strategy for people with disabilities includes raising public awareness as one of its objectives; effective implementation of this element of the policy could lead to a better acceptance of

persons with intellectual disabilities in the community, in mainstream schools and by employers.

As a matter of law, access to education and employment is equal for all citizens. In reality, people with intellectual disabilities have only limited access to education, and very limited access to meaningful and gainful employment. Resources to support the implementation of individual educational programs, such as home schooling, specialised teachers or aides, are simply not available. NGOs and parents have frequently expressed concern about the attitudes of state employees who do not take into consideration the needs and rights of people with intellectual disabilities. The Government must take steps to realise the commitments it has made to people with disabilities in its laws and policies; implementation of these commitments will be the first step in ensuring that people with intellectual disabilities reach their potential and are included as equal citizens in society.

## ANNEX 1. Tables

**Table A1. Number of persons who were not institutionalised as of 30 June 2004**

Grade of Handicap	Category	Mental Handicap	Neuro-psychiatric handicap	Associated Handicap	Total
Severe (Grade I)	Children	6,124	5,257	3,185	14,566
Severe (Grade I)	Adults	15,316	15,037	7,435	37,788
Accentuated (Grade II)	Children	3,880	2,192	1,273	7,345
Accentuated (Grade II)	Adults	43,516	24,163	15,050	82,729
Medium (Grade III)	Children	3,851	1,535	980	6,366
Medium (Grade III)	Adults	1,629	1,323	611	3,563
All grades	Children	13,855	8,984	5,438	28,277
All grades	Adults	60,461	40,523	23,096	124,080
All grades	Children and Adults	74,316	49,507	28,534	152,357

Source: National Authority for People with Handicaps (NAPH) website, available at <http://www.anph.ro> (in Romanian) (accessed 11 February 2005).

**Table A2. Number of institutionalised persons as of 30 June 2004**

Grade of Handicap	Category	Mental Handicap	Neuro-psychiatric handicap	Associated Handicap	Total
Severe (Grade I)	Children	68	327	101	496
Severe (Grade I)	Adults	1,660	1,610	1,224	4,494
Accentuated (Grade II)	Children	61	56	22	139
Accentuated (Grade II)	Adults	3,416	2,883	1,102	7,401
Medium (Grade III)	Children	8	17	8	33
Medium (Grade III)	Adults	772	469	433	1,674
All grades	Children	137	400	131	668
All grades	Adults	5,848	4,962	2,759	13,569
All grades	Children and Adults	5,985	5,362	2,890	14,237

Source: NAPH website, available at <http://www.anph.ro>

## ANNEX 2. Legislation cited in the report

### Constitution

The Constitution of Romania of 1991, amended and completed by Law No. 429/2003 on the revision of the Constitution of Romania, Official Gazette No. 758, 29 October 2003, republished by the Legislative Council on the grounds of article 152 of the Constitution, with the updated denominations and the renumbered texts (Article 152 became, in the republished form, Article 156)

### Laws and Acts

Law 29/1990 on Administrative Procedure

Law 4/1953 on the Family Code, as amended by Law 23/26.01.1999, Official Gazette No. 35, 28 January 1999

Law 84/1995 on Education, republished in the Official Gazette No. 606, 10 December 1999

Law 76/2002 on the Unemployment Insurance System and Employment Stimulation, Official Gazette 740/10 October 2002

Law 53/2003, the Labour Code, Official Gazette No. 72, 5 February 2003

Law 27/2004 that approves Ordinance 77/2003 on Prevention and Punishment of All Forms of Discrimination, Official Gazette 216, 11 March 2004

Law 343, modifying and completing Emergency Government Ordinance 102/1999 on the Special Protection and Employment of People with Handicap, Official Gazette No. 641, 15 July 2004

### Government and Ministry Orders

#### *Government level*

Government Decision Approving the National Strategy for the Special Protection and Social Integration of Persons with Handicaps in Romania, 1215/31.10.2002

Government Decision on the Child Protection Commission

#### *Ministry level*

Order of the Ministry of National Education 4378/07.09.1999, regarding certain measures for the organisation of special education

Order of the Ministry of National Education 3634/17.04.2000

Order 725/01.10.2002, jointly elaborated by the Ministry of Health and the National Authority for Child Protection and Adoption (on classification of intellectual disability)

Order 726/01.10.2002, on the criteria upon which the grade of handicap for adults is established and the measures for their special protection applied, Official Gazette No. 775, 24 October 2002

Order 90 from 9 August 2002, regarding the Rules of Organisation and Functioning of the Medical Expert Commissions of Adults with Handicaps

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