

LITIGATION SURGERY ON THE RIGHT TO EDUCATION
IN CENTRAL AND EASTERN EUROPE
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The right of children with autism from Romania to accessible and appropriate education
(case study)

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A.

Which is the current status of children with autism in Romania?

1.

No statistics concerning the number of **persons with autism** - children, young people, and adults - exists in Romania.

But, if it is to consider the estimates and statistics based on researches recognized in the scientific world, we may say that out of the approximately **6 million children** in Romania (according to the data of the National Authority for Child Protection and Adoption) approximately **3000** might have classic autism, **Autism Spectrum Disorders (ASDs)**, and approximately **30000-40000** might have **Pervasive Developmental Disorder (PDD)** (or atypical autism) and **Asperger Syndrome**.

2.

In Romania **the highest Authority for the Protection of Persons with Disabilities** has no data concerning the persons with autism.

This disability is still not clearly recognized in Romania.

In Romania, the types of disabilities *for major persons* are: physical disability, visual disability, hearing disability, deaf blindness, somatic disability, *mental disability*, *psychical disability*, HIV-AIDS, related disability, rare diseases.

The levels of disability are low, medium, severe and high.

For children under 18 years, the diagnostic and disability of autistic disorder exist.

Adults with autism holding disabled person certificate fall within two categories: *psychical* (approximately 77 000 persons) and *mental* (approximately 100 000 persons), according to the data provided by this institution.

3.

NGOs taking care of these persons in Romania state that the problems of children with autism are not recognized, their needs are not met, the services are inappropriate, therefore very often their situation is critical.

Most children with autism are not diagnosed, and the authorities' efforts concerning the problems of these persons are insufficient.

It is alarming that most children with autism having no diagnostic or an inappropriate one are outside of any therapy and education form.

The consequence is the **drastic reduction, even the elimination, of child's development chances**, because of the failure to grant **equal opportunities** for development, high or total dependence of an adult, isolation, social exclusion, poverty, despair of the families of persons with autism.

The diagnosed persons are mostly **pre-school/school** age children, but even their number is not known.

The Ministry of Education has no actual data to reflect only the number of children with autism; the existing statistics on schooling of children with deficiencies refer only to 4 categories: *mental disorders, motor/neuromotor disorders, sight and hearing disorders*.

In Romania, some associations of parents of children with autism exist.

Autism Romania – 415

National Association for Children and Adults with Autism in Romania – <http://www.ancaar.home.ro/>

Although they are present in the public space and endeavour to persuade the authorities to take measures, still the results are minor.

B.

How are regulated the rights of children with autism in Romania?

Our legislation, in the attempt of alignment to European standards, includes a series of regulations which should enable the integration of children with special needs in regular schools or in special schools.

But unfortunately there is a gap between legal provisions and their practical application.

The existing educational services for children with autism are limited and fail to provide real development and progress opportunities.

Children with autism remain outside the education system, special or regular, even more than other children with special needs and they do not benefit of equal opportunities in terms of education.

Although the right to education exists, at present this is limited only to theoretical free access to regular or special nursery schools or schools.

Regarding this matter, the Romanian legislation has two major issues. There is no clear regulation of the right of persons with autism, and the existing laws are not enforced.

C.

How important is the education for a child with autism?

For people with autism education represent more than a basic right. Lifelong education is necessary to achieve and maintain the highest possible degree of self- sufficiency and to compensate for the great difficulties that people with autism have in extracting meaning from simple experience.

Most other people do not need any educational support to acquire basic everyday life skills, and learn things without being conscious of doing so, through incidental non structured learning, which arises from a spontaneous interest in something, or though automatic or natural self-derived learning by imitation, observation, natural categorization.

On the contrary, most current research shows that people with autism have difficulties in the following abilities: *curricular learning* (as they may not be motivated by the interest of the teacher and may not understand the means of communicated used.), *incidental learning*, since they may not share interest with other people; *automatic/ natural or self derived learning* as many of the basic requirements needed are nor present or do not evolve spontaneously.

The primary role of education for the people with autism is therefore to compensate any possibly overcome the difficulties they have with automatic/natural or self-derived learning and communication.

Education is the only way children with autism can learn all the things that other children learn so easily by themselves.

For this reason our subject is important and very particular in this case.

We can say in few words: **education for a person with autism is the medication necessary for all their life.**

D.

Which are the main problems concerning the access of children with autism to education in Romania?

Children with autism do not benefit of equal opportunities in terms of education, and the quality of the education is unsatisfactory.

a) Child with autism at nursery school

As it has been showed, special nursery schools for children with disabilities exist in Romania, but their number is very low.

Often at the pre-school age the child is not yet diagnosed and, moreover, does not yet have a disabled person certificate.

Therefore parents want to register their child in a regular nursery school. They claim that they cannot register their children in nursery school. Sometimes the refusal is express, other times is justified by the lack of seats.

At the beginning of this school year the Romanian mass media presented a great number of such cases.

b) Child with autism at school

The applicable law in this matter provides several possibilities for the education of a child with autism.

Generally speaking, a child with autism should have access to a **special school**.

In order to be registered to such a school, the child needs a recommendation from the Local Service for Child Protection.

Many newspaper articles and parents state that the registration to the special school depends on the existence of the certificate for disability.

It must be mentioned that for persons under 18 years, the Local Service for Child Protection issues this certificate after a long and burdensome procedure.

- *Special schools are not prepared to provide children with autism with appropriate education.*

Parents state that their children are not received in special schools, and if they manage to register them, subsequently there is the tendency of **exclusion of children with autism** motivated by the fact that they are too severe cases, and those schools do not have the financial and human resources to cope with the problems generated by autism.

Their exclusion from school may be direct, the teacher talks with the parent and supports the idea that the child 'cannot to be schooled' or is 'irrecoverable'.

In other cases the school uses more subtle methods and calls the other parents in the class to force the parent of the child with autism to withdraw the child from school. The reason would be that the problems of the child with autism make the other children in the class to suffer and disturb them from learning during classes.

I have been provided with these data by the Chairperson of the Autism Romania Association who has a child with such problems. Mrs. Iacoblev's daughter is 16 years old and studies in a special school. Many times she was asked by the parents of the other children to withdraw her child from school because she disturbs sometimes the other children in the class.

That is why this parent first faced major difficulties in registering her child in a special school, and after that in keeping her child in such a school.

The same happens when a parent requests information on the education of the child or criticizes the teaching methods. Mrs. Iacoblev has a great number of letters on this matter with the school. Every letter ends by recommending her to withdraw her child from school and to register her in those medical and educational centres called **educational alternatives**.

These centres do not provide actual training and education; they ensure the medical, physical, social, affective and behavioural recovery, kinesis therapy and medical physical culture, as specified in the documentation of the Ministry of Education.

I do not have clear documentation and information on these educational alternatives, but based on the statements of the parents it might be said that in all these cases there is no education or school training, but a form of care for the child with autism outside the family.

In fact, these centres only supervise children with learning disorders or severe disabilities and the effect is their further isolation from the other children.

Most children with autism get in these centres.

Because of the communication-relating, self-care problems and or certain ‘atypical’ behaviours, they are not stimulated, and the teachers' expectations are very low under these conditions.

We may conclude that **the first problem of the child with autism is the actual access to school as main place of education and training.**

➤ *The second problem is related to the teaching methods and curriculum.*

Once registered to a special school, children with autism study in classes together with children with actual psychical and mental disorders.

This is explained by the fact that this disability is not yet legally recognized, on one side, and by the fact that at the school level there is no difference between the person with mental retardation and the persons with autism, on the other side.

These classes have only one curriculum and use the same teaching methods.

The teacher talks to the class and eventually distributes individual tasks.

The school does not address the specific learning difficulties:

- unequal profiles of difficulties and skills/strong and weak points;
- attention deficit;
- difficulties of learning by observation and imitation;
- difficulties of auditory information processing;
- inability to transfer/apply in other spaces/places what was learnt in one space (difficulties of generalization);
- problems concerning the organization and planning;
- difficulties in understanding the concept of time;
- difficulties in passing from one activity to another;
- their difficulties in memorizing sequences of an activity or task or difficulties in communicating and relating.

In these cases, the ‘traditional’ methods of education/teaching-learning based on verbal communication are no longer efficient, on the contrary they are quite harmful.

Often children with autism are mere spectators in the class and this may cause serious psychological problems.

➤ *the integration of children with autism in mass school is only a physical integration not a real one*

Children with mild autism (Asperger Syndrome, atypical autism, etc) may be registered, upon parents' insistent requests, in regular schools. The number of these children is very low.

They do not benefit of customised curriculum, specialized support or this is discontinuous, inappropriate and inefficient.

The support teacher does not know how to adapt the regular school's curriculum to the needs of the child with autism and because he/she is not aware of the specific learning characteristics of these children, fails to give enough time/the additional support they need.

At school level there is no individual educational plan for the child with autism, meaning no individual curriculum prepared by professionals based on the evaluation of the child.

Therefore, direct or indirect pressure put on parents by professionals exist also in the case of children registered in the mass schools (assertions like: *'you stress your child for nothing'* or *'it would be better for him/her in a special school where are specialists'*).

This pressure to guide those children to special education is a direct consequence of the failure to understand the principle saying that school is for everybody.

There are teaching staff, mostly pre-school teachers and school teachers who, upon the requests of the parents, accept more openly and without reserves children with autism in regular nursery schools/schools, but these teaching staff has no training in the education of children with autism, even though they are well-meaning and open in integrating these children in their groups/classes.

Therefore, the child with autism who manages to be integrated in a regular school must cope with a permanent stress of not being able to meet the requirements of a regular school, to 'adapt' to these requirements.

The idea that the school must also adapt to the child's need does not yet exist.

At the level of mass schools no real conditions exist for providing education and training to a child with autism together to children without deficiencies.

In order to ensure the success of a child with autism in a regular class the following are needed:

- friendly environment;
- customised curriculum;
- individual educational plan;
- understanding the difficulties of the child with autism and teachers' empathy;
- flexible and individual teaching-learning strategies, adapted to child's educational needs and individual teaching materials;
- individual support in class and outside the class;
- various levels of adaptation of the class environment in order to facilitate learning, cognitive psycho pedagogic assistance, assistance for language/communication/relating, 'therapeutic-cognitive-vocational activities'.

We may conclude that the integration of children with autism in mass school is only a physical one not a real one.

c) Child with autism in vocational schools

Major problems exist at the level of schools that should prepare children with autism for certain professions.

Vocational schools are not prepared to receive children with autism, and the few children with autism who get in such schools do not receive a proper education or a proper vocational training.

This is happening because the teachers are not trained to deal with autism, and generally they reject these '*atypical children*' considered as retarded, with whom one cannot work, and who do not understand the '*technological processes*'.

Moreover, these crafts schools have an offer in inadequate domains for children with autism: *tailor-knitter, hairdresser, manicurist, pedicurist, cook, confectioner, pastry cook*.

Many children with autism have skills, for example, in computers or may easily provide services implying routine and precision and repetitive activities (banknote or coin sorting in a bank, sorting and arranging products in supermarkets, office services, etc), and those with medium IQ can provide such services implying routine, precision, repetition with an astonishing efficiency, they are hardworking, honest and reliable.

As a conclusion, children with autism do not benefit of appropriate educational services, of real equal opportunities and chances for education, respectively, for real school integration, therefore the chances of social integration are very reduces under these conditions.

d) Educational possibilities after vocational schools do not exist.

Young people over 18 years and adults with autism find themselves in an alarming situation. According to the existing legislation, they do not even exist, and they must obtain a certificate for psychical disability if they want to benefit of social rights.

Autism, as it was internationally set since 70s, is a development disorder not a psychical illness.

Consequently, considered psychically ill, if not only retarded, young people/adults with autism not diagnosed as such end up very often being hospitalized in hospital-shelters, the effects of hospitalization in a psychiatric institution and of a psychiatric treatment are devastating.

Persons with autism do not need medication, excepting the cases where aggression/self-aggression is present or when depression, anxiety are associate.

Instead, they need **permanent education and stimulation**, creation of **learning opportunities**; they need to **learn certain crafts, to be included in community** and not to be hospitalized in a medical/psychiatric institution.

Applicable legislation

1.

The Constitution of Romania (Article 32)

The right to education is provided by the compulsory general education, by education in high schools and vocational schools, by higher education, as well as other forms of instruction and postgraduate improvement.

2.

Law No. 272 of 21 June 2004 on the protection and promotion of the rights of the child

Children are entitled to protection and assistance in fulfilling and fully exercising their rights.

The rights provided by this law are granted to all children without any discrimination, regardless of race, colour, gender, language, religion, political opinion or other opinion, nationality, ethnicity or social origin, welfare standard, level and type of a deficiency, birth status or acquired status, training and development issues or other kind of issues of the child, of the parents or of other legal representatives or of other kind of representatives.

The child is entitled to be provided with an education which shall allow him to develop his skills and personality, under non-discriminatory conditions.

The Ministry of Education and the subordinated authorities must take necessary measures:

a) to facilitate the access to pre-school education and to provide compulsory and free general education to all children;

The child (himself or represented or assisted by his legal representative) is entitled to challenge/to dispute the evaluation methods and results and, to this end, to contact the management of the education institution, under the law conditions.

3.

The Education Law No. 84 of 1995 has a chapter on *special education*.

The special education is organised by the National Ministry of Education for pre-school age children and pupils with mental, physical, sensory, language, social emotional and behavioural disorders (or with related disorders) in order to train and educate them, to recover and integrate them into society.

The special elementary and secondary education is compulsory.

The duration is of 9 to 10 years, as the case may be.

The special education is free of charge.

Children with special education requirements, who could not be reoriented to the mass education, including the special classes, continue the education process in **special elementary, secondary, vocational, high school, post-secondary education institutions, differentiated by type and level of disability.**

4.

Law No. 448/2006 on protection and promotion of the rights of persons with disabilities

This law should include provisions regarding persons with autism, but this disability is not yet recognised as such in Romania.

The types of disabilities are: *physical disability, visual disability, hearing disability, deaf blindness, somatic disability, mental disability, psychical disability, HIV-AIDS, related disability, rare diseases.*

The levels of disability are *low, medium, pronounced/severe* and *high.*

It should be emphasised that the Romanian State undertakes to observe and to grant to persons with disabilities the rights set in accordance with the provisions of the *European Social Charter (revised)* adopted at Strasbourg on 3 May 1996 and ratified by Law No. 74/1999, as well as with the other national and international instruments on this matter to which Romania is party.

Regardless of age, the persons with disabilities have free and equal access to any type of education, according to the type, level of disability and their education needs.

The persons with disabilities are provided with permanent education and lifelong vocational training.

The persons with disabilities (or, as the case may be, the family or the legal representative) have the right to decide and to choose the form and type of education, as well as the education institution.

The education of the persons with disabilities is integral part of the national education system coordinated by the Ministry of Education, Research and Youth.

The education of the persons with disabilities is provided by:

- a) special education institutions;
- b) individual integration in mass education institutions, including institutions teaching in national minority languages;
- c) compact special groups and classes, integrated in mass pre-schools and schools;
- d) educational services provided by itinerant/support teachers;
- e) home education until the graduation of high school studies, but by the age of 26 the latest, by care of the Ministry of Education, Research and Youth;
- f) education 'by the hospital bed', during the hospitalisation;
- g) Educational alternatives.

To have access to the school, the children with disabilities need *the school and/or vocational guidance certificate* from the Commission for Child Protection.

During the education process, regardless of its level, the persons with disabilities are entitled to:

- a) support educational services;
- b) supply and use of technical equipment adapted to the type and level of disability;
- c) adaptation of the class room furniture;

In order to provide the access of the persons with disabilities to school, public authorities have the following obligations:

- a) to promote and *grant the access of the persons with disabilities to education and vocational training*;
- b) to provide for person who can't walk with disabilities *home education* during the compulsory education period, as well as school training, regardless of the place where the person with disabilities is, including by the itinerant/support teachers;
- c) to provide access to *permanent education* forms, adapting them to the educational needs of the persons with disabilities;
- d) to support the *cooperation of the special or mass education institutions with the family and the community*, in order to provided an education offer meeting the individual needs of the persons with disabilities;
- e) to support *the training of the teachers* in order to adapt the educational practices for pupils with disabilities in regular education groups or classes;
- f) to give any person with disabilities the opportunity *to practice a sport*, and to provide the training of the teachers in order for them to acquire medical and special technical knowledge;
- g) to provide support *educational services for the persons with disabilities and for their families*, by experts in special psycho-pedagogy;
- h) *To provided the access to education facilities and institutions.*

A special provision of this law states that the persons with disabilities must endeavour to benefit of the legal rights and also to follow the activities and services provided for in the recovery plan.

5.

DECISION No. 1385 of 18 November 2009 on the incorporation, organisation and operation of the National Authority for the Protection of Family and Child Rights

The National Authority for the Protection of Family and Child Rights has the following objectives:

- a) promotion and observance of civil rights and freedoms of the children;
- b) monitoring the observance if child rights at national level;
- e) *protection of certain vulnerable groups of children and young people needing special protection*;
- f) development of the service system designed for the child protection at national level;
- g) *methodological guidance* in its speciality field for the activities of the **Directorates-General for Social Assistance and Child Protection** operating under the *County Councils* and,

respectively, under the *Local Councils* of Bucharest districts, as well as for the activities of the Public Service for Social Assistance;

6.

DECISION No. 1437 of 2 September 2004 on the organisation and methodology for operation of the Commission for Child Protection

The Commission for Child Protection, hereinafter named the Commission, is a specialized body, *without legal personality*, of the County Council, respectively of the Local Council of relevant Bucharest district making decisions in terms of protection and promotion of the rights of the child.

The main responsibilities of the Commission are as follows:

- a) it establishes the level of disability classification for the child with disabilities and, as the case may be, the their educational guidance;
- c) it regularly reevaluates the decisions concerning the protection measure, as well as the level of disability classification and the educational guidance for the children;
- f) it solves the complaints lodged by children, unless other institutions have this responsibility by law;

In exercising their responsibilities the Commission issues *certificates for level of disability classification for the child with disabilities* and *certificates of examination and educational/vocational guidance*.

The Directorate has the following responsibilities:

- a) *it identifies children with disabilities* who need the classification to a level of disability and educational/vocational guidance, following direct requests, references of the expert working with children with disabilities and *ex officio* notifications;
- b) *it verifies the fulfilment of the conditions* concerning the child's classification to a level of disability and his/her educational/vocational guidance;
- c) it draws up the complex evaluation report and the *recovery plan for the child with disabilities*, and it submits to the Commission a proposal concerning the child's classification to a level of disability and his/her educational/vocational guidance;
- d) it draws up *the individual protection plan* for the child with disabilities;
- e) *it follows up the fulfilment of the recovery plan* for the child with disabilities and, respectively, of the individual protection plan approved by the Commission;
- f) it carries out the annual reevaluation of the conditions concerning the child's classification to a level of disability.

The management of the special education institution shall not enrol the child in the special education, unless the educational/vocational guidance decision of the Commission for Child Protection is produced.

7.

DECISION No. 1251 of 13 October 2005 on certain measures for the improvement of the learning, training, compensation, recovery and special protection activities for children/pupils/young people with special educational requirements within the special education system and integrated special education system

Structure of special education and special integrated education

The Romanian **special and integrated special education** is integral part of the national education system and includes:

- a) nursery schools;
- b) special nursery school groups organised within special schools;
- c) special schools for all types and levels of disability;
- d) **groups/classes of children with autism;**
- e) arts and crafts schools – special education;
- f) special high schools
- g) special education centres and school complexes;
- h) special post-secondary education schools/classes;
- i) day centres;
- j) special education centres
- k) centre for curative pedagogy
- l) groups/classes of children with multiple sensory disorders (deaf blindness);
- m) re-education schools for pupils with behavioural disorders;
- n) Schools /classes organised in hospitals, sanatoriums and penitentiaries.

Within the integrated special education, there may operate:

- a) special nursery school groups within mass nursery school;
- b) compact special classes integrated in mass schools;
- c) groups of pupils with special educational requirements integrated in mass schools;
- d) pupils with special educational requirements integrated in mass schools;
- e) arts and crafts special classes integrated in mass arts and crafts schools and in mass high schools and school complexes;
- f) interschool logopedic centres
- g) school centres for inclusive education
- h) county centres/Bucharest centre for resources and educational assistance

In order to carry out the action regarding the integration of children with special educational needs in mass schools, the Ministry for Education and Research, through county school inspectorates/Bucharest school inspectorate, may dispose:

- a) establishment or elimination of special school units,
- b) reorganisation and restructuring of certain special education activities,
- c) transformation of certain special schools in mass schools,
- d) transformation of certain mass schools in integrating schools,

- e) transformation of certain special schools in school centres for inclusive education,
- f) establishment of educational alternatives: education centres, centres for curative pedagogy, day centres, etc.

Arts and crafts schools – special education, arts and crafts school classes integrated in similar mass education schools, special high schools, special school complexes, special education centres and special post-secondary schools

Educational alternatives

- a) it is possible to organise educational alternatives.
- b) The organisation, the structure and the content of the teaching-learning-evaluating process within educational alternatives are carried out by county inspectorates/Bucharest school inspectorate in cooperation with the organising units and with institutions interested in the education field, in accordance with the legislation on special education in force.

The content of special and integrated special education is regulated by:

- a) national curriculum for special and integrated special education,
- b) specific curriculum for special education,
- c) mass school curriculum adapted for integrated special education,
- d) specific methodologies, guides and guidelines, elaborated and approved by the Ministry for Education and Research.

8.

LAW No. 151 of 12 July 2010 on integrated health, education and social special services for individuals with autism spectrum disorders or associated mental health disorders

The aim of this law is the regulation of integrated health, education and social special services regarding early identification, treatment, recovery and improvement of the quality of life and of the social functioning of individuals diagnosed with autism spectrum disorders or associated mental health disorders, services provided by the special multidisciplinary team.

Early active detection is carried out on children with ages of 0-3 years, according to the standards established by the methodological rules for implementation of this law.

All individuals diagnosed with autism spectrum disorders or associated mental health disorders have free access to the integrated health, education and social special services provided for by the law.

Integrated health, education and social special services for individuals with autism spectrum disorders or associated mental health disorders are provided, within the occupational scheme, by medical practitioners specialised in child psychiatry and by clinical psychologists, their competence being attested by the Psychologists' College of Romania.

Essentially, this law regulates for the first time special rights for individuals that suffer from autism.

These rights are connected to the disorder and its treatment and in no way to issues regarding education.

9.

ORDINANCE No. 137 of 31 august 2000 on prevention and punishment of all forms of discrimination

Access to education. According to this ordinance, refusing the access of an individual or of a group of individuals to the public or private education system of any form, degree or level on grounds of race, nationality, ethnicity, religion, *membership of a particular social group or disadvantaged group* respectively on grounds of beliefs, age, gender or sexual orientation of the respective individuals is considered a contravention.

The provisions mentioned above are applicable for all phases or stages of the education system.

10.

The CONVENTION for the Protection of Human Rights and Fundamental Freedoms¹ as amended by Protocols Nos. 11 and 14 with Protocols Nos. 1, 4, 6, 7, 12 and 13.

Romania ratified the European Convention on Human Rights in 1994 and the Protocol number 12 was ratified in 2006.

Article 2

Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

¹ Romania :

Adhésion au Conseil de l'Europe : 7 octobre 1993 ;

La Convention européenne des droits de l'homme Signature : 7 octobre 1993 ;

Ratification : 20 juin 1994 ;

Nombre total d'arrêts : 648 ;

Arrêts de violation : 584 ;

Arrêts de non-violation : 18 ;

Autres arrêts : 46 ;

Décisions d'irrecevabilité : 18 917 ;

Requêtes pendantes : 9 812

E.

How can we engage the responsibility of Romanian Stat based on national laws?

As in the above presentation I identified general major issues concerning categories of children with autism, hereunder I will try to present how it can be actually attempted to remedy the situation by judicial means.

I must mention that we cannot talk about a case-law in this field.

But taking into consideration the disabled person's obligation to endeavour to benefit of the rights provided by law within the existing framework, the parent must try to obtain the observance of the rights of his child.

➤ **Against who and for what?**

❖ **Against the State represented by the local authority.**

A Public Service for Complex Evaluation of the Child with Disabilities exist in every county.

This Public Service has the following obligations:

- *to identify children with disabilities* and learning disorders who need to be classified to a level of disability;
- *to verify the fulfilment of the conditions* concerning the child's classification to a level of disability and his/her educational/vocational guidance;
- to draw up the *recovery plan* for the child with disabilities;
- to draw up, under the law conditions, *the individual protection plan* for the child with disabilities;
- to follow up the fulfilment of the recovery plan for the child with disabilities, approved by the Commission;
- to carry out the annual reevaluation of children with deficiencies (upon the request of the parents or legal representatives) for their educational guidance.

The first step is the **evaluation of the child** by a **psychologist**, an **expert in psycho pedagogy** and a **social assistant**. A file will be prepared for the child under supervision, and following the analysis a **decision** will be issued, containing three important documents (as annexes).

- Certificate for level of disability classification for children with deficiencies (by the age of 18 years). After 18 years, another local authority issues the certificate for disability.
- Certificate of educational and vocational guidance
- Recovery plan for the child with disabilities (access to special services of recovery, therapy)

The rights are grant only based on the certificate for disability. The copy of the certificate of educational and vocational guidance is filed with the educational institution recommended to the child.

The parent must follow all this steps and obtain the required documents in order to be able to claim rights.

➤ **What is he entitled to contest? Under which conditions?**

The Local Service assigns a case manager who will take care of the entire procedure and who shall follow up the entire procedure and the child's evolution.

The decisions issued by the Local Service may be contested according to the special law on this matter.

In fact, the parent may contest the **classification to a level of disability** within 30 days from the receipt of this document.

The recovery plan is a complex instrument and, in my opinion, the parent should pay special attention when signing it.

The Local Service proposes a recovery plan which usually refers to the identification of a school to be attended by the child, as well as to other medical special or educational services.

The parent must inform the case manager of any school-related problem, from the refusal of registering the child to teaching methods used.

There are legal provisions (*Order No. 3989/2003 on the methodology for the evaluation of the child with disabilities and classification of the level of disability*) according to which the case manager must take care of providing the services, that is to assist the child and the family in obtaining and using the necessary services and, when needed, to be able himself to launch legal procedure.

The case manager shall clearly establish the roles and responsibilities of all those involved in the implementation of the customized plan of service: parents, child, professionals, institutions, community.

He also must ensure that the recommended services and interventions address the real needs and priorities of the child and family, and that the family and child have access to the recommended services and interventions.

➤ **How is ensured the fulfilment of the special plan of services?**

The Local Service for Child Protection proposes a contract with the parent or legal representative specifying the conditions under which the specific services and responsibilities are to be provided.

The contract with the family is an instrument used by the case manager for the follow-up. This may be revised and amended whenever needed.

The Local Service shall conclude partnership agreements with the main institutions providing service for the child with disabilities.

The most important fact is that the case manager has the right, but also the obligation to conclude collaboration agreements with the Directorates for Health and with the School Inspectorates for the proper implementation of this law.

The case manager is the one who:

- a) verifies how services are provided based on written and verbal reports from parents or providers;
- b) identifies on time logistical or procedural problems related to the provision of special services;
- c) collaborates with the family in order to solve problems;
- d) must identify the dynamics of the child's progress during the provision of the services;
- e) directly communicates with the family and the professionals providing the special service in order to identify problems, to set amendments and to solve conflicts;
- f) may amend the plan of services;
- g) evaluates how the implementation of the plan of service helps the child in terms of achieving the objective proposed;
- h) must provide the information obtain through follow-up to all parties involved: family, professionals, Services.

The County Councils and Local Councils of Bucharest districts, the Directorates for Public Health and the School Inspectorates must fulfil these provisions.

In my opinion, parents of children with autism must start from here in order to trace the problems aforementioned.

I assert that the Romanian law is quite generous, but it is not enforced, it stays only on paper.

In fact parents do not use these legal means because they are not aware of them and because they consider that the State should act from its own initiative.

Mrs. Iacoblev told me that she refused to sign the contract for her daughter. The reason was that the only services propose were *the school* and activities within the *family*, without any other special services, because these did not exist.

➤ **Judicial recourses and means.**

Although we talk about administrative instruments, by law (*Decision No. 1437/2004 on the organisation of the Commission for Child Protection*) the contestations against the decisions fall under the responsibility of civil court in the jurisdiction where the child has the domicile (Departments for Minors and Family). The prosecutor must be present at the trial of these cases.

Usually the trial of the case must take place on short-notice, and the decision is enforceable on its merits. It may be contested by appeal.

The Tax Court for the contestation (2 Euros) is insignificant, but if damages are claimed for the failure to enforce the obligation, the Tax Court is calculated according to the amount claimed.

The contestation is against the local authority because the Commission has not legal personality.

By settling the case, the court may oblige the local authority to carry out a certain administrative operation. In the case of administrative contract, the court may oblige the authority to fulfil those items contested by the parent.

Discussing with the Chairperson of a Court of Appeal I found out that he did not know cases in which to be contested the recovery plans and/or the plan of services. There were disputes where the level of disability was contested.

The decision delivered by a civil court must be enforced within the specified term.

Things are much 'softer' in civil matters. One can expect the failure to enforce simply because the defendant is the administrative authority that will invoke the impossibility of enforcement, moreover because the measures should be actually taken by the Ministry of Education or by the school.

➤ **What can be actually contested?**

The refusal of registration to the nursery school must be notified to the case manager. By virtue of his tasks, he either mediates the conflict, or finds another nursery school. In case of impossibility of registration, the recovery plan cannot be enforced due to the authority.

The parent has the possibility to initiate a proceeding by which the local authority to be obliged to find an appropriate unit for benefiting of education and training.

All suggestions of child's withdrawal from the special or mass school and his registration in centres as '**educational alternatives**' must be notified to the case manager and agreed by the parent. Otherwise the parent is entitled to lodge a contestation.

The lack of proper specialization at the vocational school may be contested; the parent will contest the certificate of educational guidance.

The teaching methods criticised by parents of children with autism theoretically may be the subject of a contestation against how the recovery plan is enforced, but I consider that this has few chances of success.

❖ **A direct proceeding of the parent against the Ministry of Education** is theoretically possible by virtue of the rights of the child.

For example, a parent or several parents may request the Ministry to be obliged to set up an IT specialization within vocational schools.

If this is the case, we may speak of an actual proceeding of administrative contentious. After a previous procedure, the parent may contest the refusal of taking this administrative measure necessary for the exercise of the right to education of the child with autism.

- It may observe that the contentious matter court is more favourable for the parent.
 - For claiming damages the Tax Court would not have been charged;
 - Upon request, other interested parties could have been brought to the trail (school, nursery school);
 - The case manager could have been sued, if the proceeding is admitted he/she is jointly liable with the local authority;
 - The unit manager's failure to enforce the decision of the contentious matter court is considered offence;
 - Penalties can be easily applied for every day of failure to enforce;
-

❖ The refusal of registration to school or nursery school, the unequal treatment of the child with autism compared to other children or children with disabilities may as well be **contested with the National Council for Combating Discrimination**.

Within one year from the offence, the parent may notify the violation of the right to education and vocational training.

➤ **What can be actually obtained?**

The local authority may be obliged to take actions in order for the child to be kept within the mass or special school;

The local authority may be obliged to take actions for the setting up of an IT section within the vocational school;

The local authority may be obliged to initiate proceeding with the Ministry of Education for the revision of the school curriculum.

The Ministry may be obliged to take the administrative measure requested.

The National Council for Combating Discrimination may ascertain the discrimination, may request the removal of the consequences of the discrimination and the reset of the situation previous to the discrimination. The parent must prove the discrimination. The decisions of the Council may be contested with the administrative contentious court.

The person who deems himself discriminated may lodge a request with the law court for grant of compensations and annulment of the situation caused by the discrimination. The request is exempted from the judicial fee and is not conditioned by the notification of the National Council for Combating Discrimination.

➤ **Conclusions**

In light of the aforementioned, one may state that the national legislation includes provisions that enable the protection of the rights to education of the children with autism.

This legislation, which may be and must be improved, must be first of all applied.

In our opinion, the notified problems relates to the fact that the local and central authorities do not grant funds and do not reasonably prepare curricula for these categories of children.

The effort of the parent must be constant in order to inform the responsible entities of the size of the phenomenon and of the need of measure taking.

Parents must use both national and international judicial means.

F.

Request before the European Court of Human Rights in case of violation of the right to education and training provided by the national laws, as well as in Article 2 of the Protocol 1 to the European Convention?

The parent of a child with autism may successfully address the European Court if he did not obtain the protection of his rights at national level.

Based on those mentioned, there are **national appeal proceedings** which must be followed previously to lodging a request with the Court.

At present I do not know parent who have already used such appeal proceedings and could address an international court.

If parents follow these steps, a case similar to *Belgian Linguistic case*² may be created.

I imagine several individual complaints each justified according to the main issue raised.

It would be interesting to find children with autism of different school ages. These complains may be jointly analyzed and thus a conviction of the State may be obtained according to the problems presented above.

➤ **For what can a child and parent lodge a complaint with the Court?**

- Article 2 of the Protocol 1 to the Convention
 - Article 14 together with Articles 8 and 1 of the Convention
 - Article 1 of the Protocol 12 to the Convention
-

In our case, it will be engaged the responsibility of the State for failure to fulfil his positive and negative obligations, as regulated by national and international legislation.

The Romanian State failed to take those practical measures enabling the application of the laws already adopted; it failed to take the necessary measures for ensuring the access to appropriate education for children with autism.

Article 1 of the Convention implies and claims the fulfilment at State level of the conditions ensuring the grant of the rights set by the Convention within the entire jurisdiction and for every person.

The European Court once ³ stated that the obstacle *de facto* may as well lead to the violation of the Convention as an obstacle *de jure*.

²Affaire "relative a certains aspects du regime linguistique de l'enseignement en belgique" c. Belgique (*Requête n° 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64*) ; 23 juillet 1968

³ CASE OF AIREY v. IRELAND, Application no. 6289/73, 1979

➤ **Aspects from the jurisprudence of the European Court with incidence in our case.**

In *Belgian Linguistic case* the Court stated that the first part of Article 2 of the Protocol 1 does not refer to the obligation of the State to create schools.

This Article contains only the right of access to schools which exists at a certain moment, as well as the right to obtain a diploma proving the studies followed.

We do not claim to be set up other schools, but to be ensured an effective access to education in the existing schools.

We must find at least a case at national level which to provide us more information on the educational alternatives which, from my point of view, are not schools but care centres. Although the state includes them in the category of schools, the services provided by these institutions do not ensure the right to education.

We do not complain that those schools are not better financed; we ask that effective education and access to training for these children should be ensured by the resources provided.

In *Belgian Linguistic case* it was stated that the aspects concerning the subsidizing of education does not fall under Article 2P1.

The case *Klerks v Pays-Bas*⁴ where the Court analyzed the problem of a child with disability based on Article 2 P1 and which was rejected as unfounded may be a good example for us.

In this case the child was completely deaf and attended a special school. The parents were not satisfied because the child had not any progress in terms of education, and the teaching methods were inappropriate. They register their child to another special school where he started making progresses. After two years, the school informed that the child could no longer follow its courses and needed to go back to the school for deaf persons.

The parents requested the child's registration in a mass school, justifying that this may be good for him. The school did not accept him and the parents contested before court the decision, but without success.

The parents were sanctioned because school was mandatory, but they kept the child home. The parents complained of the mass school's refusal to register their child.

The Court retained that the second part of Article 2 of the Protocol 1 imposes to the State to ensure that the education and training provided to the child are compliant with the religious and philosophical believes of the parents.

⁴ Martin KLERKS c/PAYS-BAS, Requete N° 25212/94, 1995.

This obligation takes into consideration the content of teaching, as well as other aspects of the educative function. There are not taken into consideration the obligations of the State to create special means of education.

It was underlined that there is a general tendency saying it is better for the children with disabilities to be included within regular schools; still the State has a *margin of appreciation* and decision concerning the ability of the child with deficiency to be integrated in such an education system.

In this case it was considered that the State acted correctly, and the child was provided with the most appropriate education for him/her.

I consider that this case is totally different from the cases presented concerning children with autism. If in the case presented, the State was taking care to keep the child in the special school, in our case the school wants to get ride of the children with autism.

Therefore the parents are entitled to evaluate the teaching methods used within the school, because they are interested of the content of the school's teaching methods and of the results obtained.

If in that case the State endeavoured and its attitude was to the benefit of the child, in our case everything is the other way around.

The cases *Kjeldsen and others v Denmark*⁵, *Folgero and other v Norway*⁶, are important for us because the content of Article 2 P1 is defined.

The right to training is related to the consideration of the parents' opinions concerning the content of teaching. Not only religious aspects must be taken into consideration, but also the curriculum as a whole and the teaching methods.

Even though the individual interest must be subordinated to the interest of a group, there must be ensured a balance and an equitable balance for the minorities with the purpose of avoiding the abuse of a dominate position.

Even if the States have a broad *margin of appreciation* in organizing the curriculum, and the Court has no competence in this regard, parents may oppose the content of teaching.

In the case *Folgero*, the Court supported the conviction, based on the fact that the State failed to pay enough attention to the objective and critical dissemination of the information and knowledge contained in the curriculum, for the fulfilment of the provisions of Article 2P1.

⁵ *Kjeldsen and others v Denmark*, requete nr.5095/71, 5920/72, 5926/72; 1976.

⁶ *Folgero and others v Norway*, requete nr. 15472/02, 2007.

Therefore it results that all our critics concerning the content of the common teaching curricula for mental retardation and autism falls under the responsibility of the Court because they aim the result of the teaching.

If this potential case will become a real case, the complaints in regard to the jurisprudence of the European Court may differ.

I believe that if certain parents will want to follow all these steps, they will be able to claim pertinently and convincingly that the Romanian Stat breaches the provisions of Article 2P1.

G.

We can learn from other countries' experience

The decision of **The European Committee of Social Rights** of November 2003 - *Autism Europe v. France* - concluding that France failed to fulfill its educational obligations to persons with autism under the European Social Charter.

It was mentioned that most of the French official documents still *use a more restrictive definition* of autism than that adopted by the World Health Organization and that *there are still insufficient official statistics* with which to rationally measure progress through time.

The Committee considered that the fact that *the establishments* specializing in the education and care of disabled children (particularly those with autism) *are not in general financed from the same budget as normal schools*, does not in itself amount to discrimination, since it is primarily for States themselves to decide on the modalities of funding.

It was considered that the proportion of children with autism being educated in either general or specialist schools is much lower than in the case of other children, whether or not disabled. It is also established, and not contested by the authorities, that there is a *chronic shortage of care and support facilities for autistic adults*.

For these reasons, the Committee said that the situation constitutes a violation of Articles 15§1 and 17§1 whether alone or read in combination with Article E of the revised European Social Charter.

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- b) **National Strategy Disability 2006-2013** On the social protection, integration and inclusion of people with disabilities for the period 2006 – 2013 –
„Equal opportunities for people with disabilities – towards a non-discriminatory society”
The attached document:
[National Strategy Disability 2006-2013.doc](#)
- c) **Quarterly Statistical Bulletin Q2 2009** (official documents on the site of The National Authority for Disabled Persons). The attached document :
[Quarterly Statistical Bulletin Q2 2009.doc](#)
- d) http://www.autismromania.ro/site/files/pozitia_ar_educatie.pdf
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