



6.5.2019

NOTICE TO MEMBERS

Subject: Petition No 0959/2018 by Constantin Vlădescu (Romanian) on denial of health care services for disabled persons in Romania

1. Summary of petition

The petitioner is severely disabled: he has diabetes, an amputated leg and a fully paralysed arm. He complains that the Romanian authorities, in particular the National Health Insurance House (CNAS), deny him access to adequate prosthetics and a power wheelchair, in breach of the UN Convention on the Rights of Persons with Disabilities (CRPD) and of Romanian legislation in force. As a consequence, he is completely immobilised in bed and has a very low quality of life. The petitioner points out that situations like his are very frequent, but that widespread corruption and incompetence in the Romanian national healthcare system and the National Authority for Persons with Disabilities (ANPD) dissuades very vulnerable persons with disabilities from claiming their rights and entitlements.

2. Admissibility

Declared admissible on 4 February 2019. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 6 May 2019

The Commission's observations

The petition deals with the rules governing the entitlement and the procedure for the supply of assistive devices for persons with disabilities under the health care system in a Member State.

Essentially, the provision of social security is a competence of Member States. Article 48 of the Treaty on the Functioning of the European Union (TFEU) confers on the Union only the

competence for the coordination, not the harmonisation, of Member States' rules in the field of social security. Article 153 TFEU reiterates the right of Member States to define the fundamental principles of their social security systems. This includes the rules governing the conditions of entitlement for the supply of assistive devices for persons with disabilities through the national health care system.

Nevertheless, the Commission attaches great importance to the situation of people with disabilities in all Member States through the European Semester and through monitoring the situation of persons with disabilities by collecting data in the Member States, which includes data about income inequality, poverty and social exclusion. The Commission has also supported work raising visibility about the availability of assistive technologies and facilitated exchange of information.

In Romania, people with disabilities and children face a higher risk of poverty than the EU average. In 2016, at the European level, 30.1% of people with disabilities aged 16 and over live in households which are at risk of poverty or social exclusion while in Romania the value is 39.4%.

The Council Recommendation on the 2018 National Reform Programme of Romania¹ indicates a particularly higher risk of poverty or social exclusion for people with disabilities. It further states that the social reference index, which provides a reference when calculating the most important social benefits, has not been updated since 2008.

It should be noted that the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which Romania ratified in 2011, includes provisions to ensure access to health services needed by persons with disabilities specifically because of their disabilities (Article 25 (b) UNCRPD). In addition, the UNCRPD indicates that “*States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities*”. This includes for example mobility aids, devices or assistive technologies (Article 20 UNCRPD). Furthermore, it states that “*States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation*” (Article 26 (3) UNCRPD).

Since Romania has not ratified the Optional Protocol of the UNCRPD, individual complaints to the UNCRPD Committee against the violation of the Convention to the UN Committee on the Rights of Persons with Disabilities are not possible. Nevertheless, Romania must take the necessary measures to implement Article 20, 25 (b) and 26 (3) UNCRPD, the same as any other State Party, which has ratified the UNCRPD.

¹ Source: ‘Council Recommendation on the 2018 National Reform Programme of Romania and delivering a Council opinion on the 2018 Convergence Programme of Romania’, Recital 12, <https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-specific-recommendation-commission-recommendation-romania-en.pdf>

The Romanian Institute for Human Rights (Institutul Român pentru Drepturile Omului) acts as the independent monitoring body according to Article 33 (2) UNCRPD to promote, protect and monitor the implementation of the Convention. Furthermore, the Romanian Ombudsman (Avocatul Poporului) has the purpose to defend individuals' rights and freedoms in their relationship with the public authorities. This also concerns matters related to the rights of persons with disabilities in Romania.

Conclusion

As a State Party to the UNCRPD, Romania has committed to adopting effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities and promoting the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation. In view of the competence conferred by the TFEU, however, EU law cannot be called upon to request the Romanian legislator to change the way the supply of assistive devices as part of national health care is organised.