

## SOCIAL ASSISTANCE FOR THE ELDERLY AND LEGISLATIVE CHALLENGES DURING COVID 19

Cătălina G. DINU<sup>1</sup>

**Abstract:** *The proliferation of clandestine homes for elderly people is encouraged by the underfunding of the establishment of such centres by central or local public administration authorities and the small number of places available at already existing centres or the poor conditions that are provided. The elderly represents a vulnerable category, most of the people who live in such centres have a precarious financial or family situation or various chronic diseases that require constant medical care. Through this study, we want to analyse the causes and possible legislative solutions that can lead to the improvement of the lives of these people.*

**Key words:** *asylum, medical care, social assistance.*

### 1. Introduction

Long-term care services for dependent elderly are still insufficient in Romania. Thus, in 2019, 1.3% of the population over 65 benefited from social services. 39.87% of 52,276 people from this vulnerable category benefited from care in a residential centre, 28.44% benefited from home care services and 10.96% in day care and recovery centres. Also, there are counties where no home care facility is established.

Considering these aspects, namely, that the social care homes of disadvantaged administrative territorial units cannot allocate sufficient resources for the operation of social services, the sums requested from the state budget, in addition and the increase of the amount of the sums allocated from the state budget, in addition to those from the local budget, are essential.

According to the legal provisions in force, and especially those of art. 8 of Law no. 197/2012 on quality assurance in the field of social services, providers can provide social services only if they have *an accreditation certificate*, and social services can only operate on the territory of Romania if they have *an operating license*.

For helping the legal procedure to continue, In the context COVID-19 pandemic, social service licensing applications could be submitted to the Ministry of Labour and Social Protection.

In the conditions where the social inspectors find non-compliance with the legal

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<sup>1</sup> *Transilvania* University of Braşov, [catalina.matei@unitbv.ro](mailto:catalina.matei@unitbv.ro), Senior Lecturer PhD.

provisions, they can propose the *withdrawal* of the accreditation/licensing and the application of the regulated contraventional sanctions, including the situation "if, due to the seriousness of the facts found, it is estimated that the fundamental rights of the beneficiaries are being violated, putting their lives at risk".

## **2. The Effects of the Measure of Withdrawal of the Provisional Operating License**

According to the framework Regulation on the organization and operation of public social assistance services, approved by Government Decision no. 797/2017, with subsequent amendments and additions, the public social assistance services from care homes have the obligation to communicate or, as the case may be, to make available institutions/structures of competent public authorities with duties in monitoring and controlling the respect of human rights, in monitoring the use of procedures to prevent and combat any form of abusive, negligent, degrading treatment of social service beneficiaries and, as the case may be, to give the institutions/structures with duties regarding the prevention of torture, the information requested and providing support in carrying out monitoring visits.

Sometimes, the control public authorities found several deficiencies in the asylums that they visit, the following situations: the necessary personnel according to the number of beneficiaries is not ensured, there are not provided sufficient services for the elderly, classified as dependent; in some bedrooms, the corresponding area of 6 square meters is not allocated, according to the minimum quality standards; minimum furniture is not provided; the lack of proper sanitation of the premises, the presence of a strong smell of urine, both in the corridors of the centre and in the rooms.

For the identified deficiencies, the social inspectors may order remedial measures, all these measures being monitored at the deadlines established in the control act.

In the case of non-fulfilment of the ordered measures, the withdrawal of the Provisional Operating License is proposed and contraventional sanctions are applied.

Despite this, after the withdrawal of the provisional operating license by the Ministry of Labour, the social service provider could submit another file to the same ministry to license the social service, which is resolved within 60 days from the date of registration of the licensing application.

Therefore, we consider that the sanction of withdrawing the provisional operating license has no real effect on the activity of the concerned centre, since it can be started a new procedure to obtain a new provisional operating license and obtaining it means the reopening of its activity.

In this sense, we appreciate that a differentiation is necessary between the centres that apply for a provisional license *without having previously been sanctioned* with the measure of withdrawal of a previous provisional license, respectively the centres for elderly people that *have been sanctioned with the measure of withdrawal* of the provisional operating license as a result of not meeting the minimum quality standards even after the deadline imposed by the social inspectors who carried out the control (for example, the regulation of a time interval during which the latter centres are not entitled to apply for a new such license).

On the other hand, increasing the level of information of the population regarding the regulated procedures for quality assurance in social services is essential. Thus, when choosing a social service provider, the person must find out whether the provider has an accreditation certificate and an operating license.

### **3. Proposal of Modification of the Legislation of Social Services**

According to Annex no. 1 of the Order no. 29/2019 of the Minister of Labour, which regulates the minimum quality standards for social services with accommodation organized as residential centres for the elderly, the provider of social services (home) must make available to the control public authorities the results of the beneficiary satisfaction questionnaire (M.V.-Im5S1.2) and keep the control reports requested by the law (considering that the centre is subject to an internal audit once every 3 years);

According to art. 6 of Annex no. 2 from the Government Decision no. 797/2017, with subsequent amendments and additions, the social assistance departments subordinated to the local public authorities have the main obligation to communicate the requested information or, as the case may be, to make available to the institutions/structures with attributions in monitoring and controlling the respect for human rights, in monitoring the use of procedures to prevent and combat any form of abusive, negligent, degrading treatment on the beneficiaries of social services and, as the case may be, the institutions/structures with attributions regarding the prevention torture and providing support in carrying out monitoring visits, in accordance with the law (Gontea, M., 2020).

However, we underline the need to change the legal framework represented by Law no. 197/2012, republished and by the Methodological Norms for the application of the provisions of Law no. 197/2012, approved by Government Decision no. 118/2014, as follows: the amendment of art. 27 paragraph (2) Letter c) of Law no. 197/2012 on ensuring the quality of social services, regarding the withdrawal of the operating license of the social service, since in the text of the mentioned article reference is made to paragraph (6) of art. 11 of the law, which establishes the stages and conditions of the initial licensing (provisional license) and which cannot thus be correlated with the provisions of art. 27 paragraph (2) which refers to the situations in which the withdrawal of the license is ordered for the functioning of the social service. Thus, it is proposed to supplement art. 27 paragraph (2) letter d) with the following content: "if, due to the seriousness of the ascertained facts, it is estimated that the fundamental rights of the beneficiaries are being violated, putting their lives in danger, and prohibits the establishment of social services *for a period of at least one year*".

### **4. Providing Social Services at Home for the Elderly**

Another difficult situation is that of ensuring social services at home for the elderly, considering that they benefit of social care at home in a much less number than the required one. The incoherence of the legislation and its misinterpretation conducted to local public authorities' decisions that denied the right to homecare for pensioners that are also recognized as persons with disabilities (Marc, C., Bacter C., Timofte, C.S., 2018).

Regarding the legal framework in the field, the following is noted:

According to art. 8 letter a) of Law no. 17/2000, republished, with subsequent amendments and additions, the community services provided to elderly people at home are also represented by the personal care services provided for in art. 31 and art. 32 paragraph (1) from the Social Assistance Law no. 292/2011, with subsequent amendments and additions.

The legal provisions to which reference is made establish:

(1) personal care services are addressed to dependent persons who, as a result of the loss of functional autonomy due to physical, mental or mental causes, require significant help to carry out the usual activities of everyday life;

(2) Dependency is a consequence of illness, trauma and disability and can be exacerbated by the absence of adequate social relationships and economic resources.

Through art. 5, the Law no. 292/2011 regulates the principle of non-discrimination, according to which vulnerable people benefit from social protection measures and actions without restriction or preference towards (...) disability (...), under the conditions that, according to art. 6 letter h), disability is defined as the generic term for impairments, activity limitations and participation restrictions, in the context of the interaction between the individual who has a health problem and the contextual factors in which he finds himself, respectively environmental and personal factors.

Art. 31 of the same law provides that the personal care services are addressed to dependent persons who, because of the loss of functional autonomy due to physical, mental or mental causes, require significant help to carry out the usual activities of everyday life.

The dependency situation is a consequence of illness, trauma and disability and can be exacerbated by the absence of social relations and adequate economic resources.

So, it is established that disability is a state of fact that is later recognized by being included in one of the degrees of disability established by law, and it is precisely this special need that led to the regulation of personal care services.

Moreover, art. 36 mentions the three categories of beneficiaries of personal care services: the elderly, the disabled and the chronically ill, and the person's request is addressed to the public social assistance service organized under the authority of the local public administration (art. 44).

According to art. 84 of the Law no. 292/2011, the person with disabilities has the right, based on the socio-psycho-medical evaluation, to social services organized and granted in accordance with the law.

Local public administration authorities are responsible for organizing and financing or co-financing social services appropriate to special care needs, these being provided at home, in residential centres or in day care centres, designed and adapted to the individual needs of the assisted person, in accordance with the national strategies, the county strategies and the annual action plans. Also, according to art. 88, local public administration authorities have the obligation to ensure, with priority, home care services intended for people with disabilities.

On the other hand, art. 94 of the law regulates the conditions that must be met by the elderly to benefit from social assistance, without indicating the prohibition of

classification as a handicap.

Local public administration authorities have the obligation to provide personal care services provided at home or in residential centres for elderly dependent people alone or whose family cannot provide care for them.

According to Decision no. 867/2015 for the approval of the Nomenclature of social services, as well as the framework regulations for the organization and operation of social services, Annex 1, home care services for elderly people, people with disabilities, people in a situation of dependency are identified, including the category of personal care at home (pt. 36), which consists of help to carry out the instrumental activities of daily life.

On the other hand, according to the Order no. 82/2019 of the Ministry of Labour, currently in force, as well as the previous Order no. 67/2015 of the Ministry of Labour, regarding the approval of the minimum quality standards for the accreditation of social services intended for adults with disabilities, the minimum standards of quality for home care services for adults with disabilities, Annex 4 regulates specific minimum mandatory quality standards for the Home Care Service for adults with disabilities, this being established by the decision of the county/local council for public centres or the decision/disposition of the governing body provided by law for private centres.

According to the Order no. 2126/2014 of the Ministry of Labour regarding the approval of the minimum quality standards for the accreditation of social services intended for the elderly, homeless people, young people who have left the child protection system and other categories of adults in difficulty, as well as for the services provided in the community, services provided in the integrated system and social canteens (currently repealed by Order no. 29/2019), Annex 8, point S2.1., the minimum quality standards for home care services for the elderly are established, according to which the provider of the home care service for the elderly develops and applies its own procedure for accessing the service, which also specifies the eligibility criteria of the beneficiaries.

The beneficiary submits a file containing the acts/documents issued in accordance with the law certifying the degree of dependence of the person/degree of disability and the recommendation for home care, a fact that we believe therefore attests to the possibility that elderly people beneficiaries may be classified as disabled and not a prohibition in this sense. By the Order no. 29/2019, the previously mentioned provisions remained unchanged, being repeated exactly.

The Government Ordinance no. 68/2003 on social services, with subsequent amendments and additions, regulates the main categories of people who can benefit from a complex assessment of individual social needs, including children in difficulty, the elderly and the disabled, the sick chronicles, etc. (art. 32), and, in order to determine the material competence of which public authority is the provision of social services, art. 12 of the ordinance mentions: The public social assistance service, organized at the local level, has the responsibility of creating, maintaining and developing primary social services, depending on the identified social needs, with the priority aim of supporting the social functionality of the person in their own living environment, family and community.

Primary social services are social services whose purpose is to prevent or limit situations of difficulty or vulnerability, which can lead to marginalization or social exclusion (art. 32).

On the other hand, The Government Decision no. 797/2017 for the approval of the framework regulations for the organization and operation of public social assistance services and the indicative personnel structure, Annex 2 of the Framework Regulation for the organization and operation of the social assistance department organized in the subordination of local councils of municipalities and cities establishes, by art. 8, the competences in charge of these directions, both in terms of home care of disabled people (art. 8 paragraph 3, letter a) and elderly people (art. 8, paragraph 5, letter a).

Therefore, the legislation in force does not prohibit the provision of home care services to the elderly with disabilities by the local public authorities and the law establishes rights for both the elderly and the disabled.

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