

# THEORETICAL AND PRACTICAL ASPECTS OF THE AMENDMENTS TO LAW NO. 448/2006 ON THE PROTECTION AND PROMOTION OF THE RIGHTS OF PERSONS WITH DISABILITIES BY EMERGENCY ORDINANCE NO. 69/2018

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## **Abstract**

*The scientific approach aims to analyze the amendments that the Emergency ordinance no. 69/2018 brings them to Law no. 448/2006 on the protection and promotion of the rights of persons with disabilities, for the stated purpose of ensuring them, in accordance with the provisions of the Convention on the Rights of Persons with Disabilities, ratified by our country, both respect for fundamental rights and equal opportunities with other men's in society.*

*If the Emergency ordinance no. 60/2017 proposes to reform the legal framework of the analyzed institution by supporting the necessity to apply the principle of activation, the normative act, that is the subject of the study, introduces regulations whose main purpose is to prevent the institutionalization of persons with disabilities and to stimulate their social inclusion (increased personal assistance, day centers).*

*The study aims to identify the legislative changes mentioned, but also to highlight the practical effects of these changes, with concrete proposals, by lege ferenda, where it is considered necessary.*

**Keywords:** *the protection and promotion of the rights of persons with disabilities, institutionalization, increased personal assistance, day centers, residential centers.*

**JEL Classification:** [K 31]

## **1. Introduction**

The social policies of the last years in Romania, regarding vulnerable groups, have introduced the terms of exclusion and the correlative one of social inclusion, for the reason of exceeding, in accordance with the European specialized doctrine, the sphere of the concept of poverty, which strictly referred to the deficit of financial resources.

In the early 90s, "exclusion and inclusion have been integrated into all EU policies since the Treaty of Maastricht and its annexed Protocols, European Social Fund reform objectives, documents of the European Parliament and the Commission's Social Action Programs." (Arpinte, et al, 2008, pp. 339-364).

The specialized doctrine argues that there are at least two reasons why social exclusion has been adopted so quickly at the European institutional level. On the one hand, the refusal of the conservative governments of that time in Europe, namely the Thatcher government of the United Kingdom and the Kohl government of Germany to recognize the existence of poverty. They prefer the term social

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exclusion, perceived, rather, rather vague. On the other hand, there is the preference of the European Union for the use of social exclusion, as it refers to the need to accompany economic integration with measures that promote social integration, thus avoiding the possibility of economic integration causing poverty for certain vulnerable groups or areas. (Gorski and Corman, 2011)

In a doctrinal opinion, the term (phrase) of social exclusion is defined as representing "the inability / failure to integrate a person or group into one or more (sub) systems of the following: the democratic and legal system, which implies civic integration, labor market and which requires economic integration; the welfare state system that promotes what can be called social integration; the family and community system that promotes interpersonal integration" (Preda, 2002, p.186).

The term correlative social inclusion is a much newer term. This is defined as a policy of response to social exclusion situations, in the documents of the European Council of 2000, between which we distinguish the Lisbon Strategy.

In the Romanian legislation in the field of social assistance there is a definition of *social inclusion*, seen as *a process* "representing the set of measures and multidimensional actions in the fields of social protection, employment, housing, education, health, information, communication, mobility, security, justice and culture, aimed at combating social exclusion and ensuring the active participation of people in all economic, social, cultural and political aspects of society" (art. 6 lit. cc, Law no. 292/2011 of the social assistance).

We consider that another phrase, which needs to be specified, is that of vulnerable group (s), defined expressly by the provisions of art.6 letter. p. of the Social Assistance Framework Law, Law no. 292/2011. Thus, the vulnerable group designates "persons or families who are at risk of losing their ability to meet daily living needs due to illness, disability, poverty, drug or alcohol dependence or other situations leading to economic and social vulnerability".

People with disabilities also belong to the category of vulnerable groups, along with other categories of people (elderly people, people over 45 years, abandoned children, etc.).

In close connection with the notion of a person with a disability, we consider that it is necessary to clarify the terms: deficiency, incapacity and disability, in order to define as precisely as possible the concept that we will use during the scientific approach (Onica Chișea, 2018, pp. 184-187).

Thus, in 1980, the World Health Organization adopted a classification meant to bring some terminology details needed in activities with people with disabilities.

The deficiency thus corresponds to "any absence, loss or alteration of an anatomical, physiological, psychological structure or function". Deficiency implies the externalization of the pathological state at the level of a certain organ, and of the categories of deficiencies we mention: intellectual, mental, speech and speech deficiencies, hearing, ocular, visceral, supportive, aesthetic, general functions, etc.

The term incapacity "corresponds to any reduction (whether partial or total) of the possibilities of carrying out an activity in a way or within the limits of what is considered to be normal for a human being". The forms and the levels of incapacity concern the person in the integrity of his characteristic features. The main categories of incapacities are those of behavior, communication, and personal hygiene, and displacement, control of the limbs, motor dexterity, special aptitudes and other particular situations.

Disability means "a disadvantage, resulting from a deficiency or incapacity, which impedes or makes it impossible for the individual to fulfill a normal role (in relation to age, sex, social and cultural factors)".

Thus the handicap is characterized "by a certain degree of difficulty or impossibility to carry out certain tasks and by observing certain skills, in one sphere or another of development: physical, intellectual, sensitive, affective, and behavioral". "The degree of difficulty that appears to a certain person in carrying out certain activities is evaluated in relation to the requirements of the environment, to the social norms, making possible the assessment of his level of personal autonomy". (Bara et al, 2013, p. 15-22)

Persons with disabilities, within the meaning of Law no. 448/2006 regarding the protection and promotion of the rights of persons with disabilities, are those persons who, due to physical, mental or sensory disorders, lack the ability to carry out daily activities normally, needing protection measures in support of recovery, integration and social inclusion. (Art. paragraph 1)

Disability is a generic term for disorders / deficiencies / activity limitations / participation restrictions, defined according to the International Classification of Functioning, Disability and Health, adopted and approved by the World Health Organization and which reveals the negative aspect of the individual-context interaction. (art. 5 pt. 16)

In order to combat the marginalization / social exclusion of vulnerable groups and with a predilection for promoting their social inclusion, preventing the institutionalization of people with disabilities is an important objective. Increased role of personal assistance, day centers, home care, restructured residential centers, so as to stand out as integrated services in the community addressed to the beneficiary. These are concrete ways of achieving the stated objective.

This perspective is equally found in all the legal provisions applicable to other disadvantaged social categories, such as children without parental care, elderly persons. In these cases, institutionalization must be a last resort, which will be used only in the case where the other intervention modalities cannot be used or the results obtained would be unsatisfactory.

## **2. Benefits and social services for persons with disabilities between the regulation in the framework law of the field and the amendments introduced by GEO no. 69/2018**

The principle of subsidiary, inherent to social assistance, expresses the idea that in the situation when the person or family cannot fully satisfy their social needs, the local community and its associative structures and, complementarily, the state intervene. The mentioned principle expresses the order of intervention if a natural person, a family, a group or a community is in a state of social need, requiring intervention from the social assistance.

The amendments, which GEO no. 69 of 2018 brings them to law no. 448/2006 regarding the protection and promotion of the rights of persons with disabilities, are in full agreement with the mentioned principle. Thus, the purpose declared by the legislator, in the preamble of the normative act, is to ensure, through the proposed measures, the urgency of the transition process from the institutionalized system, regarding the disabled, to integrated services in the community. These are achieved by diversifying the measures of prevention of institutionalization, encouraging alternatives to institutionalization, financing of day-care and residential-type protection measures.

We consider that the legislative intervention was necessary and useful, in the context in which the whole social assistance system emphasizes the idea that institutionalization must be the last solution. This will be adopted only if the other measures cannot be used or their use is insufficient to solve the social need in which the beneficiary is.

GEO no. 69/2018 introduces point 23 (1) in the article 5 of Law no. 448/2006, which explicitly mentions the protective measures for the disabled as follows: personal assistant, professional personal assistant, social services at home or day or residential centers.

The personal assistant is the natural person who insures, according to the provisions of Law no. 448/2006, care and assistance to the person with severe disability, under an individual employment contract, which ends with the mayoralty of the locality of residence or residence of the person with severe disability. The professional personal assistant assures the care and protection of the adult person with severe or accentuated disability, who does not have a living space, does not realize incomes up to the level of the average salary on the economy, under an individual employment contract concluded with the county general directions of social assistance and protection of the child or by private providers of social services, accredited, according to the law (art. 45-50). The issues regarding the fiscal regime of the individual labor contract are analyzed in the specialized doctrine. (Cârmaciu, 2010, p. 136-137).

The amendment introduced by the provisions of art. 45 paragraph 1 (1) of GEO no. 69 / 2018, stipulates that the care and protection of the adult person with severe or accentuated disability will be ensured by the professional personal

assistant, other than the husband, wife or relatives in straight line. Also, the text refers expressly to the monthly care allowance that is granted for each disabled adult in the care and protection of the professional personal assistant. These amounts represent monthly expenses for housing, food and equipment as follows: 1, 2 from the reference social indicator, stipulated by Law no. 76/2002 regarding the unemployment insurance system and the stimulation of employment, for the disabled person with an accentuated disability (in amount of 600 lei) and 1, 5 of the same social reference indicator for the adult person with severe disability (in the amount of 750 lei). The financing of these amounts will be realized from the own budget of the county, respectively of the sector of the Bucharest municipality, in whose territorial area the professional personal assistant has his domicile or residence. Also, art. 47 (1) provides the possibility for the County General Directorates of social assistance and child protection to contract social services licensed as professional assistant with private providers of social services, accredited according to the law. This public-private partnership referred to in GEO no. 69/2018 regarding the provision of the mentioned social service, is frequently encountered in social assistance and corresponds to the desire to focus on integrated services in the community, as a viable alternative to institutionalization, including with regard to persons with disabilities. If the public services do not have the capacity to employ a sufficient number of professional personal assistants to provide protection and care for the disabled, the alternative of contracting services, from the private providers, is able to solve this situation properly.

In accordance with the provisions of art.51 of the analyzed normative act, persons with disabilities can benefit from social services, provided in day centers and in residential, public, public-private or just private centers.

Day centers and residential centers represent social services provided to adults with disabilities, qualified staff and adequate infrastructure, and residential centers are social services where the disabled person is hosted for at least 24 hours. The analyzed normative act modifies the provisions of Law no. 448/2006, in the sense of expressly including the day and residential centers in the category of social services, in full agreement with the provisions of the framework law of the field, Law no. 292 of 2011.

According to the assistance regime, social services can be hosted, for a fixed or indefinite period: residential centers, protected housing, night shelters, etc., as well as social services without accommodation: day centers, centers and / or units home care, social canteens, mobile food delivery services, social ambulance (art. 30 paragraph 3 of Law no. 292/2011). In the category of residential centers for adults with disabilities, Law no. 69/2018 includes protected housing, centers for independent living, centers for empowerment and rehabilitation, centers for care and assistance and centers for breathing / crisis centers.

In order to reorganize the residential centers, the normative act stipulates that, the capacity of the residential centers for adults with disabilities cannot exceed 50 places.

The admission of a person with a disability in a residential center, with the exception of respiratory centers and crisis centers, is done if they cannot be provided services at home or in the community.

The analyzed normative act also establishes the legal regime of these social services for adults with disabilities, expressly stipulating that they can be set up as structures, with or without legal personality, regardless of whether they are public or private but with the opinion of the National Authority for Persons with Disabilities, but also with the obligation to respect the specific quality standards in force. Day centers and residential centers, which are established and function as public structures, are either subordinated to the county councils, respectively local to the sectors of the municipality of Bucharest, in the structure of the general directions of social assistance and child protection, or subordinated to the public administration authority local at municipal, city or commune level, within the structure of the public service of social assistance, with the exception of the centers for independent living and of the care and assistance centers (art.51). The financing of these social services, as otherwise the entire national system of social assistance, is realized from the state budget, through the budget of the general directions of social assistance and the protection of the child or the authority of the local public administration at the level of the municipality, city or municipality. The state budget represents, in fact, the main source of financing of social services with a public provider, the interference with other sources of financing possibly being realized in the situation of public-private partnerships, realized between the providers of social services.

GEO no. 69/2018 sets a deadline for the reorganization of public or private residential centers, respectively December 31, 2018, reorganization to be carried out with the opinion of the National Authority for People with Disabilities, taking into account the individual needs of the beneficiaries, correlated in at the same time with the specific quality standards in force at the specified date.

The task of elaborating the plans of restructuring the residential centers with a capacity of more than 50 places will be concretely returned to the county departments for social assistance and child protection, respectively to the sectors of the municipality of Bucharest, but also to the accredited private social service providers. The document must be endorsed by the National Authority for Persons with Disabilities and approved by the county council, respectively local of the sectors of the municipality of Bucharest. They must ensure the transition of persons with disabilities, beneficiaries of social services, from old residential institutions to newly established family care homes or residential institutions.

## Conclusions

People with disabilities belong to the category of vulnerable groups at risk of social exclusion, to whom social assistance is directed with social benefits and services, whose purpose is to support them in order to overcome the state of social need in which they are.

The amendments that GEO no. 69/2018 brings them to Law no. 448/2006 regarding the protection and promotion of persons with disabilities, is aimed at the social services system, meant to ensure the social inclusion of this vulnerable group, with a special emphasis on social services integrated in the community, to the detriment of institutionalization. Institutionalization should be the last solution that can only be used when the expected outcome is not achieved through the other intervention modalities.

The finality of the modification provisions is therefore the social inclusion of persons with disabilities, by ensuring the necessary framework in which they can exercise their rights fully, insisting on their right to independent life and to integration in the community, as well as to respecting dignity and non-discrimination.

## Bibliography

1. Arpinte, D., Badoi, A., Cace, S., Tomescu (Doboş) C., Stănescu, I. (2008), *Social inclusion policies*, Life Quality Magazine, 3-4, p. 339–364;
2. Cîrmaciu, D. (2010), *The law of public finances*, Oradea: University of Oradea Publishing House;
3. Gorski, H., Corman, G., S. (coord.) (2011), *Study on the level of adaptation on the labor market of vulnerable groups in the Central Region*, Sibiu: University of „Lucian Blaga” Publishing House;
4. Onica-Chipea L. (2018), *Some considerations regarding the theoretical and practical effects of the amendments brought to law no. 448/2006 regarding the protection and promotion of the rights of persons with disabilities through O.U.G no. 60/2017*, Oradea Law Faculty Magazine, 1, Bucharest: ProUniversitaria;
5. Preda, M. (2002), *The Romanian social policy between poverty and globalization*, Iaşi: Polirom;
6. Bara, M., Boca, L., Danuletiu, D., *Support training course*, 15-22 (on line). Available at: [http://www.incluziunesociala.ro/upls/172\\_Suport\\_de\\_curs\\_Seria\\_J.pdf](http://www.incluziunesociala.ro/upls/172_Suport_de_curs_Seria_J.pdf), 2013, p. 10 (Consulted on 10.12.2017).