

REGULATORY AND PRACTICAL MATTERS REGARDING CHILD PROTECTION IN ROMANIA

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Abstract

Social protection of children as prerequisite of social economy is a topic of theoretical and practical analysis over Romanian law system. Addressing the regulatory framework in force and following the practical impact of the effects that legal rules may generate, the article leads to conclusions on improving and developing institutions and mechanisms that support the coherent functioning of the social economy.

Key words: *social protection, regulatory framework, people in need*

1. Introduction

Social child protection is not only an institution of the family's rights, but also a mandatory condition of social economy. In the situation of Romania, the subject is still actual and critical, the vices of the past (which are in fact relatively recent) and the difficulties of the present are ever-living analysis subjects for both theoreticians and also for the practitioners.

For sure, the legal approach for the social protection of the children in difficult situations would be much too technical, but the picture of the way in which it is actually applied and of the effects that the current norms are generating, represent an useful analytical undertaking for the improvement and for the progress of the institutions and of the mechanisms that support the coherent functioning of social economy.

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2. Historical benchmarks regarding the laws in the field of child protection in Romania

During the communist regime, the existence of homeless children was totally denied. The pro-birth policies (legal sanctions for abortions, no family planning or contraceptive education, as ways to avoid the birth of unwanted children) have led to an increase in the number of children abandoned in institutions. Institutionalization, as a form of protection, has represented the only answer of the state to all the family's problems.

The system of child protection was regulated at that time by *Law nr. 2 from the 26th of March 1970 regarding the regime of protection for some categories of minors and the Code of Family*, a system that has resisted until June 1997, due to the lack of concern showed by the lawmakers in doing rapid and fundamental changes in this field.

Although Law 3/1970 contained some modern principles for the protection of the family and of the child, the intervention measures were based on placing the children in difficult situations into residential institutions that were not able to meet the needs of the child. The children (or the minors, this being the only term used in the past law regime) were divided in four categories:

- Those whose parents were deceased, unknown or in any other situation that leads to the appointment of the foster care;
- Those who, being deficient, need a special care that the family is not able to provide;
- Those with families that are a danger for their physical, moral or intellectual development or for their health;
- Those who have committed deeds provided in the criminal law, but who are not legally responsible or those who present a risk of committing such deeds or those who behave in such ways that spread viciousness or immoral habits among other minors.

Depending on these four categories, the following protection measures were taken:

- foster care, consignment or placement into orphanages, children asylums for pre-school and school children.

- integration into the special education systems (elementary schools, specialized training schools for recoverable deficient children);
- confinement in medical-educational institutions (school dorms and workshop dorms for partially recoverable and non-recoverable deficient children);
- home protection – for the serious handicaps;
- adoption.

The runaway children from those times, and from later during the period 1990-1997, were included according to the law either in the first category, either in the fourth, depending on the position in which the minor was found and taken by the police. The first measure was the emergency confinement, for all categories, into a Center for Receiving Minors.

In this way, these Centers faced critical situations where all children were confined, without any difference in the recovery or education program they received, both the children who were considered abandoned and without any protection, and also the children considered as having behavior problems, the so called *pre-delinquent*.

Although there is a new legislative framework, this situation still goes on today in most counties, the cause being the lack of an alternative institution for one of the two categories of children (Tofan, Petrisor, 2013).

The essential characteristic of the past law system was the total lack of concern for preventing child abandonment and for supporting the parents in order for them to carry out their parental responsibilities.

3. The Romanian legal framework regarding child protection after 1989

After 1990, the social protection system, and especially social assistance, has not benefited from the necessary legal changes given the fact that new social problems have occurred and in particular the phenomenon called *street children*.

Until June 1997, the moment when the Government has passed the *Emergency Ordinance nr. 26 regarding the protection of children in*

difficult situations, the following bills from the field of child and family protection were approved:

1. *Decision-Law nr. 138 from the 11th of May 1990 regarding the improvement of the conditions for the protection, education, schooling and the professional training of children and young persons with physical or intellectual deficiencies and of the misfit minors.*

Article 6 of this law annuls article 19 of Law nr. 3/1970 that was providing the fact that the parents who have abandoned their children must contribute, during the entire period of the protection measure, to the up keeping of the children by paying a certain amount of money. This fact has led to an indirect encouragement to abandon the children in the institution by practically eliminating the only liability measure for the parents.

2. *Law nr. 18 from the 27th of September 1990 for passing the ONU Convention regarding the Rights of Children.*

This convention is the fundamental international piece of act set up as a law within the Romanian legislation and intended to create the conditions for substantial adjustments that favor the child. Unfortunately, the passing of this text was not followed by some concrete measures for the principles expressed. Its approval has represented rather a political undertaking, a proof in this sense being the lack of interest showed by the state authorities for a period of seven years until the emergency ordinances were issued in 1997.

3. *Decision nr. 103 from the 18th of March 1993 regarding the set up of the National Committee for Child Protection* with responsibilities in drafting projects and governmental strategies with views to improve the living conditions of the children from the protection institutions and also with proposals for normative acts regarding child protection.

4. *Law nr. 15 from the 25th of March 1993 for Romania joining the European Convention in the field of child adoption* signed on the 24th of April 1967, in Strasbourg.

5. *Law nr. 47 from the 7th of July 1993 regarding the Court's statement for child abandonment* is the normative act that introduces for the first time into the Romanian legislation the concept of *abandon*, defined as

the situation of a child whose parents have showed no interest in him, in an obvious way, for a period longer than six months.

In the same time, the law mentions that the Court declaring the abandon can delegate the discharge of the parental rights to the social protection institutions or to the state medical institution (a confuse provision by not specifying which one) or to the private institution, legally constituted (the first legal mention of the non-governmental organizations).

6. Decision nr. 972 from the 4th of December 1995 regarding the approval of the National Plan of Action in the favor of the child. This Government Decision represents the first act with a normative character issued by the National Committee of Child Protection. Its importance is justified by the fact that it expresses for the first time the approach principle of giving priority to the family type alternatives against the institutional type ones.

What has represented until then only the conviction of the specialists and of those directly involved in child protection, has finally become a principle acknowledged through a Government decision. There is also a mention here, for the first time in the Romanian legislation, of the *street children* problem, considered misfit children. The initiation and the development of some commune programs, on short and medium term, are the equal responsibility of the Ministry of Education, of the Ministry of Health, of the National Committee of Child Protection and of the local public authorities.

The involvement of the non-governmental organizations in resolving the street children problem is done with the help of the local public administration and of the county commissions for the protection of minors. (Bercu, 2012).

7. Emergency Ordinance nr. 25 from the 9th of June 1997 regarding adoption.

8. Emergency Ordinance nr. 26 from the 9th of June 1997 regarding the protection of children in difficult situations.

This normative act represents a major change, by confirming some principles and responsibilities that are necessary for building a modern

child protection system. The Ordinance introduces the phrase "*child in difficult situation*", giving up on the term "minor" and there is an attempt to make the local communities responsible by creating territorial networks of professional maternal workers, by creating within the community day care centers that provide services leading to the welfare of the child together with his parents. In the same time, the Commission for the Protection of Minors is being re-organized, becoming the Commission for Child Protection, also another institution is being created, more precisely the Public Specialized Service for Child Protection, both of them functioning as subordinates of the County Council.

The Emergency Ordinance has provided seven measures for child protection and these are:

- *consignment of the child to a family, to a person or to an authorized private body,*
- *consignment of the child for adoption,*
- *temporary consignment of the child to the specialized public service,*
- *foster care placement of the child to a family or to a person,*
- *foster care placement of the child to the specialized public service, or to an authorized public body,*
- *emergency foster care placement.*

On this occasion, the term private authorized body is introduced to represent any foundation, association, organization that has the objective to initiate and develop social programs designed for children. The normative act gives priority to the re-integration of the child in his natural family or into a substitute family over placing him in an institution; in fact, also the transformation of the child asylums into foster care centers confirms the same intent of letting go of the institutionalization concept, regarded now as the ultimate solution.

The Ordinance proposes a new social profession: the *professional maternal worker* who represents a short-term family alternative, with the role of avoiding the placement of a child in an institution.

9. Decision nr. 217 from the 9th of April 1998 regarding the conditions for obtaining the status of professional maternal worker. This new social profession is based on the principle of giving priority to the family type alternatives over the institutional type ones.

Starting with the 1st of January 2005, the new legislative package regarding child protection has been enforced and it clearly marks the limits of the services and the special forms of child protection and also the decision factors in this sense.

10. *Law nr. 272 from the 21st of June 2004 regarding the protection and the promotion of children's rights*, discussing in much detail the civil rights and the liberties of the child, the family environments and alternative care, the health and the welfare of the child, education, recreational and cultural activities.

The normative act has in view also the special protection of the child who is lacking, temporary or definitely, the protection of his parents, setting up as protection measures *foster care, emergency foster care placement and specialized surveillance*.

Each chapter of the law distinctly approaches the aspects of refugees children protection and child protection in armed conflict, protection of the child who has committed a criminal deed and does not have criminal liability, the protection of children against economical exploitation, the protection of children against drug consumption, the protection of children against abuse or negligence, kidnap or any other forms of trafficking. The regulatory framework is made complete with some provisions at institutional level, the law having in view to set up institutions and services for child protection, both at central and also at local level. There is also consideration for the potential involvement of the private bodies in the activities for protection of the children in difficult situations. For the first time, the child under 2 years of age cannot be committed to a residential type service and he benefits from foster care within the extended or substitute family.

There are specified all the forms of child ill-treatment and the competencies of each institution that carry out the foster care process, having the involvement of the Court, when the child is being abused or neglected, abandoned by his mother in medical units, when the parents are deceased, unknown or incapacitated of their parental rights.

The law has provided that, for any other protection measure, the social assistance public service has the obligation to draw up a *services*

plan with the purpose of implementing the protection measure. (Anton, 2012).

4. The children's rights and how they reflect into domestic laws

Children must benefit from the general rights of the individual that we are all entitled to since the moment we are born. Respecting the human rights means that each of us must treat others the way he would like to be treated: with dignity, respect, equality, justice. The human rights must be respected without any difference of citizenship, nationality, race, ethnicity, language, gender, sexual orientation, abilities or any other status.

But, in order to have an objective analysis for the matter of respecting the human rights, we must start from the non-debatable reality that children are different from adults. They are vulnerable, they must play, they are in a development process and they need nurture, without completely restricting their autonomy. This is the reason they need their own rights, with a special or specific character:

The rights of children can be grouped in three categories:

1. The right to protection, which refers to the protection against any form of physical or emotional abuse, and also against any form of exploitation.
2. The right to development, which refers to the availability and the access to all types of basic services, such as education and medical care services.
3. The right to participation, which refers to the right of the child to be involved in the decisions which regard him.

At a superficial reading of the normative act, we can conclude that the provisions of Law nr. 272/2004 and the children rights, in general, are subverting the authority of the parents, of the other members of the family or of the other persons who are caring for the child. Nevertheless, such an interpretation is not fair, given the fact that Law nr. 272/2004 has emphasized the importance of the family in the child's life, and also the respect that the child owes to his parents, to the other adults and also to the other children.

Article 33 from Law no. 272/2004 shows the importance of family and how important it is to not separate the child from his parents and article 22 forbids the arbitrary interference in the child's family life. Article 29 from the ONU Convention regarding the children rights, emphasizes the necessity to develop respect for the parents, stating that this is one of the main purposes of the child's education.

As a consequence, providing rights to the children does not automatically exclude the parental authority and the responsibilities of the children. Children have rights but they also have responsibilities. They must respect the rights and the obligations of the other children and adults with whom they relate with.

Table no. 1. *Rights and responsibilities of children*

THE CHILDREN'S RIGHTS	THE CHILDREN'S RESPONSIBILITIES
The right to be treated adequately;	The responsibility to treat other people adequately;
The right to not be exposed to risk situations;	The responsibility to not expose other people to risk situations;
The right to be listened;	The responsibility of listening to others;
The right to non-discrimination;	The responsibility to not discriminate others;
The right to property protection;	The responsibility to respect other people's property;
The right education;	The responsibility of going to school;
The right to privacy;	The responsibility to respect the privacy of other people;
The right to be protected against any form of verbal or physical intimidation, against any abuse or form of exploitation;	The responsibility to not intimidate abuse or bully other people.

5. Vulnerability aspects in the social integration of the young people from the foster care centers. Study case

The foster care center « Ion Holban Iași » was set up in 2000 and fosters around 250 children, with ages between 7 and 25 years old. At first, it has fostered children with moving disabilities who were attend-

ing special education classes, but currently it has also children without physical deficiencies who attend the normal education system.

The center has provided three types of foster care and these are: a) residential foster care for intern children/young adults within the institution; b) assisted foster care for children/young adults who attend high-school, professional schools and universities and c) day care fostering. The children/young interns are actually living in the center during the entire year, the assisted children/interns live in the dorm houses during the school/university year and come back to the center only during the school holidays, and the children/young adults from the day care center benefit from the services only during the day and they go to their families after the end of the program.

During the foster care period all children/young adults are benefiting from a training-educational program adapted to the level, age and needs of each child/young adult and this is the profile used for working on age and problem groups. A unique intervention strategy is established for each particular case.

The general objective of the institution is to rehabilitate and to socially and professionally re-integrate the children fostered within the center. The specific objectives have in view to assist and support the child in order for him to freely express his opinion, to professionally guide the young adults, to identify and resolve the current problems of the children, to collaborate with the competent state institutions from the territory (local councils, the social assistance public services at local level – the Community Assistance Directorate Iași, non-governmental organizations certified for the provision of social, political services, etc.) in order to: improve the activity of child protection, collect funds and materials, assistance and counseling, cultural-artistic and sports activities.

In order to analyze the concrete effects of the provisions within the normative enforced framework on the child in a difficult situation, we had in view the situation of a 24 year old girl who is university graduate but without degree, who has refused to collaborate for finding a job. This person wants to use the legal provisions that give her the right to benefit from special protection another two years after graduation, thinking that during this period of time she will find a job.

A very important aspect for preventing and reducing the behavior disturbances of the institutionalized child is to create harmonious group relationships between children, under the direct guidance of the educator and of the psychologist, relationships that have a positive educational and therapeutic effect on the children with behavior issues, this fact being in the favor of their social-moral learning process. For this reason, in order to have a normal mental development, the child must live within a normal, continuous and authentic interaction process.

The children from a foster care center can be immature from the affective point of view, and a person without the experience with working in such institutions can, very easily, be the victim of an inadequate sensibility towards these children. The educator, psychologist, social worker, psycho-pedagogue, speech therapist, each of these must know their role and their mission very well within a group like this.

The social problems in general and the problems of the children within a foster care center in particular, are always caused by the internal structures. Due to this reason, the educator and the psychologist must not treat only the symptoms. The work of the educator from a foster care center must start from the way he inter-relates with the children.

For managing this case, several interventions took place, according to the legal framework, as follows:

- *psychological intervention*: counseling for setting up a future plan and for raising the awareness on the fact that foster care is a temporary situation and that the final objective is the integration into the community.

- *the intervention of the social worker*:

- meetings regarding the clauses of the Services Contract for the young people within the foster care centers (we have to specify that the young girl has refused to sign the contract), that provide the fact that if the young girl consequently refuses two jobs, her foster care measure is revoked;

- presenting some employment options and/or drafting the unemployment file;

- requesting from the County Agency employment and professional training in order to record the person who is looking for a job;

- participating to job fairs, support for contacting the companies who are hiring.

- meetings in order to raise awareness on the importance of a job and of the fact that during these years, when the law provides the right to protection, she must prepare himself for the independent life, respectively to gather experience at the job, in order to reduce the risk of losing her job; to set up a bank deposit and place a part of the salary in it, in order to afford a rent after the foster care measure ends, to learn efficient methods for personal money management, etc.

- *multi-disciplinary intervention*: debating the situation and setting up an intervention plan within the multi-disciplinary team;

- *other interventions*: getting in contact with certain NGOs, meetings between the specialists and the reference persons, etc.

Although this concrete case was approached in conformity with the related legal provisions, unfortunately it was not yet solved.

The staff working in the foster care centers is confronted sometimes with the legal impossibility of applying certain sanctions, because all the legislation regarding child protection provides only the rights, not having any article that regulates the liability of the negative deeds of a minor/young adult. The educator must be in the same time also a pedagogue, professor, friend, brother, sometimes parent, etc. But the educator does not always have the necessary resources for covering all these roles. Sometime, sharing their own responsibilities with another person, the educator, is not in the best interest of the child's development.

The fact that the enforced legislation does not offer precise responsibilities makes the practical situations encountered in the foster care centers a confusing one. Not applying some clear sanctions in certain situations creates vulnerability in the work carried out by the foster care institutions, leaving room for all kind of interpretations. Therefore, the application of punishment and work related sanctions to a minor/young adult in some serious behavior situations may result in accusations such as confinement, whereas forbidding the access to certain facilities could be interpreted as the infringement of some rights, etc.

6. Final considerations and conclusions

The acknowledgment made through the enforced normative framework of the rights of the protection system beneficiaries - children and young adults- allows them to have something to say regarding their life, provides them the opportunity to express their opinions, to discuss the matters they believe are important, and also to seek and receive information that is relevant for them.

Once Law no. 272/2004 was adopted, the work of the specialists from the child protection field was simplified, because the law provides a wider area of intervention, but in the same time it has many procedural flaws that are making the problem solving process more difficult.

Before the year 2004, the normative acts in the field of child protection specified only the rights of the child and did not provide obligations and responsibilities for the children, depending on their development stage. Law 272 was conceived as a focus on the children's rights, fact that often makes the ones considered by this law (the children and the adults who care for them) not understand in a correct manner the spirit of the law and tend to abuse its provisions. It is praiseworthy that Law 272 /2004 was drafted with the aid of UNICEF specialists, but – unfortunately – without a sufficient number of consultations with specialists from the national institutions in this field of activity. The result was a normative act – a precise copy of the ONU Convention regarding the protection of the child -, without taking account of the socio-economical situation of the country.

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