

Considerations regarding the evolution of the Romanian System for the protection of the Child Rights following 1989

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ABSTRACT

The Romanian child rights protection system has undergone multiple transformations over the nearly 30 years since the 1989 Romanian revolution. New institutions have been set up to ensure the coordination of this system at national and county level. Quality standards have been developed for social services offered to children and their families. Large non-performing residential institutions have been closed. Family-type houses and a foster care system have been established so that children who could not remain in their natural or enlarged families can benefit from conditions as close as possible to a family environment. But there are still much that can be improved. From the opening to the community of residential child protection services until equal treatment is ensured for all categories of children at risk. Finally, awareness of the importance of initial and continuing training of staff working in the child protection system. All these improvements require human, material and financial resources to be provided continuously and consistently, as children continue to be the most vulnerable category of people under the care of the Romanian state.

KEYWORDS: *evolution of the social services system, child, constitutional principle of equality, principle of the best interest of the child, guardianship of the child, Civil Code.*

1. Considerations concerning the national system of social services in Romania and, in particular, regarding the child protection system

The bases of the national system of social services were laid only in 2001, 12 years after the Romanian revolution, through **Law no. 705 regarding the national system of social services**, which entered into force on January 1, 2002. According to this law, **social assistance, a component of the social protection system**, represents the *entirety of institutions and measures through which the state, the public authorities of the local administration and the civil society ensures the prevention, limitation or removal of the temporary or permanent effects of certain situations that may cause the social marginalization or exclusion of some people*. The main goal of social assistance

is the protection of persons who, due to economic, physical, psychic or social reasons, cannot ensure their social needs, are not able to develop their own capacities and competences for social integration. Social assistance is the responsibility of specialized public institutions of central and local public administration authorities and of civil society organizations and includes the rights granted through **benefits in money or in kind**, as well as **social services**. Social services are provided at home, in specialized institutions or in residential institutions. **The Ministry of Labor and Social Solidarity** (currently the Ministry of Labor and Social Justice) establishes national priorities as concerns social services and initiates draft normative acts in order to regulate their grant. **County and local councils** establish local strategies and priorities according to the needs of the respective community, according to the national strategy.

Law No. 705/2001 was repealed by **Law No. 47/2006**, subsequently repealed by **Law no. 292/2011 on the social assistance, subsequently amended**. **Law No. 292/2011** should be analyzed and put into effect taking also into account the provisions of **Law No. 197/2012 on the quality assurance in the field of social services**, also amended almost yearly, until 2019.

Pursuant to Article 66 of **Law No. 292/2011 updated**: “*the state ensures the protection of the child and guarantees the observance of all his/her rights through the specific activity carried out by the public authorities/institutions with responsibilities in the field*. The child has the right to be raised with his/her parents in conditions that enable his/her physical, mental, spiritual, moral and social development. The child has the right to benefit from social assistance measures, depending on his/her personal situation and the social and economic situation of the family or of the persons who act as his/her guardian. In order to fulfill their obligations towards the child, the authorities of the *central and local public administration support the family by granting social assistance benefits, as well as by providing social services*. The principle of the child's best interests of will prevail in all the steps and decisions concerning children, undertaken by the State, as well as by any natural or legal person, either public or private....”

Nevertheless, the main normative act in the field of child protection remains **Law No. 272/2004 on the protection and promotion of the rights of the child**, amended many times until 2019. According to this law, **the General Directorate of Social Assistance and Child Protection is a public institution with legal personality, set up under the subordination of the County Council, respectively of the local councils of the Bucharest districts**, which exercises the duties provided by the normative acts in force in the field of the child rights protection.

2. Considerations Regarding the Legislative Framework for the Child Rights Protection Starting with 1989

In December 1989, the rights of the child were protected based on Law no. 3/1970 regarding the regime of protecting certain categories of minors¹⁾,

¹⁾ Which was repealed in 1997 through the approval of GEO No. 26/1997 on the protection of the child in difficulty.

applicable to children in difficulty and based on the **Family Code**²⁾, that is, based on **Law No. 4/1953** (with amendments related to 1956, 1966, 1970 and 1974).

Article 1 of Law No. 3/1970 established the following: "The protection, according to this law, **is granted to minors**: a) whose parents are deceased, unknown or in any other situation that leads to the establishment of guardianship, if they have no assets or other material means of their own and there are no persons who were obliged or who may be obliged to support them; b) who, being deficient, need special care which cannot be provided within the family; c) whose physical, moral or intellectual development or whose health is endangered in the family; d) who have committed offences provided by the criminal law, but are not criminally liable or are exposed to commit such offences or whose behaviors contribute to the spread of vices or immoral habits among other minors."

Article 2 from the same law established that "Minors provided in Article 1 (a), as well as minors whose health is endangered in the family, may be given in a family foster care to a family - husband and wife - or to a person who consents to it and who has the required moral, material and sanitary conditions..."

Article 3 provided as follows: "In case that, concerning the minors shown in the previous article, it was not possible to take the measure of placing in a family foster care, as well as in case that the physical, moral or intellectual development of the minor is endangered in the family, the Commission for Minors Protection may decide to give him/her to a family or a person, with his/her consent".

Alternatively, **Article 5** established thus: "In order to raise, educate and train the deficient minors, as well as the minors indicated in Article 1 (a) and (c), if for them none of the measures provided for in the previous articles could be taken, the Commission for Minors Protection may order their entrustment, as the case may be, to one of the following institutions of protection:

- a) orphanages for children aged up to 3 years;
- b) orphanages for pre-school and school children;
- c) kindergartens, as well as general schools and high schools of general knowledge for deficient minors who are recoverable;
- d) vocational schools and specialized high schools for deficient minors who are recoverable
- e) school homes and workshop homes for the partially recoverable deficient;
- f) homes for deficient minors who are not recoverable."

On the other hand, **Article 1** of the **Family Code** provided the following: "In the Socialist Republic of Romania, the state protects marriage and family; through economic and social measures, it supports the development and strengthening of the family. **The state defends the interests of the mother and the child and puts forth a special concern for the raising and education of the young generation.** The family is based on the freely agreed marriage between the spouses. In the relations between spouses, as well as in the **exercise of rights towards children**,

²⁾ The Family Code was amended several times after 1989, respectively in 1990, 1993, 1997, 1999, 2004, 2007, 2010 and 2011. It was repealed by Law No. 71/2011 for the implementation of Law no. 287/2009 concerning the Civil Code.

man and woman have equal rights. **The parental rights are exercised only in the children's interest.** "Article 113 of the Code provided that:" In case both parents are dead, unknown, lapsed from parental rights, placed under prohibition, disappeared or declared dead, **the child is curtailed of the care of both parents**, as well as in the case provided in Article 85, **the child will be placed under guardianship**".

For the child's rights protection system, the most important changes were those of 1997, when there have been set up, at national and local level, specialized institutions for protecting the rights of children. Thus, in 1997, through a series of normative acts, for the first time it was established a **specialized system to promote and defend children's rights**. Through **Emergency Government Ordinance no. 26/1997 regarding the protection of the child in difficulty**, based on Article 4, there have been set up **public services specialized for the child protection and commissions for the protection of the child**, subordinated to the county councils, respectively, the local councils of the districts of Bucharest.

For the purposes of this emergency ordinance, **the child is in difficulty if his or her physical or moral development or integrity is endangered**. The child in difficulty enjoys protection and assistance in the full achievement and proper exercise of his/her rights. Any child who, temporarily or permanently, is abridged of his family environment or who, in his own best interests, cannot be left in this environment, has the right to protection and special assistance from the local community. The state guarantees the child protection against any form of violence, including sexual, injury, physical or mental abuse, abandonment or negligence, ill-treatment or exploitation, while he/she is in the care of the parents or one of them, his/her legal representative, or any other person.

The specialized public service is founded through a decision of the county council, respectively of the local council of the Bucharest districts, and functions as a public institution of county, respectively local interest, with legal personality. The specialized public service proposes to the commission the measures for protecting the child in difficulty and ensures their enforcement. The specialized services subordinated to the local councils, which carry out activities in the field of the tutelary authority and the protection of the child's rights, will support the county public service specialized in the fulfillment of the duties assigned to it. The activity of the specialized public service is coordinated by the secretary of the county council, respectively by the secretary of the city hall of the Bucharest district.

Emergency Government Ordinance no. 26/1997 regarding the protection of the child in difficulty, repealed Law 3/1970 on the protection regime of certain categories of minors, applicable to children in difficulty before 1989, starting with 12 June, 1997 this law ceasing its enforceability. The transfer of protection institutions - **orphanages, children's houses - and of the reception centers for minors**, which functioned according to **Law no. 3/1970**, the transfer of the patrimony and their personnel, as well as their reorganization into **foster care centers and child reception centers** within the specialized public services, has been made until the entry into force of Law on the state budget for 1998, by protocol concluded among the county councils, respectively the local councils of the districts of Bucharest,

and the authorities in whose subordination these institutions functioned until the enforcement of this emergency ordinance.

The Methodological Norms of 1999 for applying the provisions of the Government Emergency Ordinance No. 26/1997 regarding the protection of the child in difficulty, as well as of the Methodology for coordinating the activities of protection and promotion of the rights of the child at national level, approved by **Government Decision no. 117/01.03.1999** established the practical way in which the child protection activity will be carried out and the new directions of action in this field, **and they also provided for the taking over of all other existing institutions of protection until June 12, 1997, regardless of their form of organizing them, institutions which, according to their object of activity, received and protected children in residential regime, through decisions of the former territorial commissions for the protection of minors, which functioned according to Law no. 3/1970 concerning the regime of protecting certain categories of minors.**

Another specialized body responsible for the protection of the child in difficulty is **Commission for Child Protection** subordinated to the county council, respectively to the local council of the Bucharest district. This establishes the measures for protecting the child in difficulty, according to **Emergency Government Ordinance no. 26/1997**. Through **Emergency Government Ordinance No. 123/2001 on the reorganization of the child protection commission (approved and amended by Law No. 71/2002)** and **Government Decision no. 1205/2001 regarding the approval of the methodology of functioning of the child protection commission**, the duties of the commission for the child protection have been updated, this taking over also the duties of the **commissions of medical expertise for children with disabilities and of the expertise commissions for special education**, organized pursuant to the provisions of Article 23 of **Emergency Government Ordinance no. 102/1999 regarding the special protection and employment of persons with disabilities**, respectively of Article 43 of the Education Law no. 84/1995, republished, which is dissolved.

The Commission for child protection was reorganized through the enforcement of the **Government Decision no. 1437/2004³⁾**. By this amendment and according to Law No. 272/2004, **the court becomes an important actor in the field of child protection**, this being the one that will make the decision to establish a protection measure for the child in difficulty most of the time starting with 2005. Thus, **the foster care measure is established by the Commission for Child Protection**, in the event that the parents' agreement exists, for the child who, with a view to protecting his interests, cannot be left in the care of the parents for reasons not attributable to them, and the child who has committed an offence provided by the criminal law and who is not criminally responsible. **The foster care measure is established by the court**, upon the request of the general directorate of social assistance and child protection, as follows:

- a) for the child whose parents are dead, unknown, lapsed from the exercise of parental rights or who have been enforced a punishment of forbidding parental

³⁾ Approved based on Article 104 of Law no. 272/2004 on the protection and promotion of the rights of the child and repealed by GD 502/2017.

- rights, interdicted, declared dead or missing judicially, when guardianship could not be set up
- b) for the abused or neglected child and the child found or the child left in health care institutions, if it is necessary to replace the emergency foster care ordered by the general directorate of social assistance and child protection,
 - c) for the child who, in order to protect his/her interests, cannot be left in the parents' care for reasons not ascribable to them, and the child who has committed an offence provided by the criminal law and who is not criminally liable, when there is no parental consent or, as the case may be, of one of the parents, for setting up this measure.

Government Decision no. 1437/2004 was repealed by **Government Decision no. 502/2017 on the organization and functioning of the commission for child protection**, which is currently in force, and mentions that the special measures for child protection are established by the Commission, only when there is an agreement of the parents, as well as the consent of the 14-year-old child spoken in front of the Commission.

As a matter of fact, in 2004, by **Law no. 272/2004 concerning the protection and promotion of the rights of the child, the system of protecting the child rights is reorganized**. According to this law, public authorities, authorized private bodies, as well as natural and legal persons responsible for the child protection are obliged to observe, promote and guarantee the rights of the child established by the **Constitution and the law**, in accordance with the provisions of the **United Nations Convention on to the Rights of the Child, ratified by Law no. 18/1990**, and of the other international acts in the matter to which Romania is a party. This law and any other regulations adopted in the field of observing and promoting the rights of the child, as well as any legal act issued or, as the case may be, concluded in this field, are subordinated prevalently to the principle of the best interests of the child, which will prevail in all the steps and decisions regarding children, undertaken by public authorities and authorized private bodies, as well as in the cases settled by the courts.

In the same year was adopted **Government Decision No. 1434/2004 on the duties and the Framework Regulation for the organization and functioning of the General Directorate of Social Assistance and Child Protection**. This has been amended several times until 2017, when it was repealed by **Government Decision no. 797/2017 for approving the framework regulations for the organization and functioning of public services of social assistance and the personnel structure of guidance**, as subsequently amended by **Government Decision no. 417 of 8 June, 2018**.

The provisions of **Law No. 272/2004** are supplemented by other regulations referring to the rights of the child. On these lines it should be mentioned the **Civil Code, which incorporated the old Family Code. Law no. 287/2009**, respectively the **Civil Code of July 17, 2009**, as subsequently amended and supplemented, includes important regulations regarding the protection of the child.

Thus, Article 110-163 of the Civil Code has provisions regarding **the guardianship of the minor**, Article 110 establishing the following: "The minor guardianship starts when both parents are, as the case may be, deceased, unknown, lapsed from the exercise of parental rights or have been enforced a criminal punishment of forbidding parental

rights, interdicted judicially, disappeared or declared as dead, as well as in case that, at the adoption termination, the court decides that it is in the interests of the minor to establish a guardianship ". Article 133 provides that "Guardianship is exercised only in the interests of the minor, both as concerns the person and his/her goods".

In addition, Article 264 of the Civil Code establishes a very important rule regarding the **respect of the child's opinion**, thus: "In the administrative or judicial procedures concerning the child, the listening of the child who has reached the age of 10 years is mandatory. Nevertheless, can be heard the child who has not reached the age of 10, if the competent authority considers that this is necessary for settling the case. The right to be heard implies the possibility of the child to ask for and receive any information, according to his/her age, to tell his/her opinion and to be informed of the consequences that this may have, if it is respected, as well as of the consequences of any decision that concerns him/her..."

All these normative acts, adopted through almost 30 years since the events of 1989, have led to the **restructuring of the child protection system, its improvement** and the **establishment of quality social services**, which function according to minimum mandatory standards, and which are permanently monitored and evaluated by other specialized institutions. Emphasis is laid on the protection of the child in the family, there are provided clear deadlines for the closure of old foster care centers and for setting up small-sized social services, as close as possible to the idea of family. However, it should be also accelerated the **activity of preventing the child reaching a situation of risk and abandonment**, by creating as many social services as possible in each local community, so that the children remain, if they cannot in their natural or extended family, at least in a family from the community from where they come, since only in this way they will be able to keep in touch with those from whom they come and where they will have to return after they become major.

3. Proposals concerning the improvement of legislation applicable to the system of protecting the rights of the child

3.1. Observing the principle of equal rights for all children/young people who do not benefit from parental protection

Law no. 272/2004 regarding the protection and promotion of the rights of the child establishes in Article 54 that: "The special protection of the child is the entirety of measures, performances and services intended for the care and development of the **child deprived, temporarily or permanently, of the protection of his/her parents** or of the one who, in order to protect his/her interests, cannot be left in their care." Also, Article 55 establishes as follows: **(1) The child benefits from the special protection provided by this law until acquiring the full capacity of exercise.** **(2) Upon the request of the young man, expressed after acquiring the full capacity of exercise, if he/she continues his/her studies only once in each form of full-time**

learning, the special protection is granted, according to the law, throughout the entire continuation of the studies, but without exceeding the age of 26. "

Article 128 establishes that: "(1) For each child for whom it was taken the measure of foster care to a family, person, foster carer, in a residential service of an accredited private body or **it was instituted guardianship**, according to the law, it shall be granted a monthly foster care allowance, related to the social reference indicator, in amount of 1.20 ISR. (2) The allowance provided in par. (1) shall be paid to the person, foster carer, the family representative, of the accredited private body that has taken the child in foster care or the guardian and is intended to ensure the rights provided in Article 129 paragraph (1)".

Moreover, Article 129 establishes the following: "**(1) Children and young people for whom a special protection measure has been established, as well as the protected mothers in maternal centers, have the right to food, clothing, footwear, hygienic-sanitary materials, writing materials/manuals, toys, transport, cultural-sporting materials, as well as amounts of money for personal needs.** (2) The need for clothing, footwear, hygienic-sanitary materials, writing materials/manuals, toys, cultural-sporting materials is determined according to the age and the needs of the child, by decision of the county council, respectively of the local councils of the Bucharest districts or, as the case may be, of the governing body of the accredited private body. (3) In the case of children with disabilities, infected with HIV or with AIDS disease, the amount necessary for granting the rights provided in par. (1) is increased by 50% in relation to the amounts granted. **(4) Children and young people for whom a special protection measure has been stipulated, as well as protected mothers in maternal centers, have the right, when going out of the special protection system, to an allowance that is granted once, equal to the value of the minimum gross base salary per country, guaranteed in payment, fixed according to the law.** The allowance is also granted, upon leaving the special protection system, to the children for whom a final decision to approve the adoption has been given."

Therefore, according to Law no. 272/2004, **children and young people for whom a special protection measure has been set** have the right to receive a monthly foster care allowance for the entire duration of the protection measure. In addition, upon going out of the special protection system, these children or young people will be granted an allowance that is given one time, equal to the value of the minimum national gross base salary in the country, guaranteed in payment, determined according to the law.

Instead, **the children for whom it was set up the guardianship, can only benefit from the foster care allowance**, until, according to the Civil Code, **the guardianship ceases**. Thus, Article 156 of the Civil Code provides that the guardianship ceases **when the situation that led to the establishment of the guardianship no longer maintains**, as well as in the case of the death of the minor. Article 110 establishes the cases of guardianship setting up, as follows: "The guardianship of the minor is set up when both parents are, as the case may be, deceased, unknown, lapsed from the exercise of parental rights, or they have been criminally punished by the prohibition of the parental rights, interdicted judicially, disappeared or declared dead by court order, as well as if, at the end of the adoption, the court decides that it is in the interest of the minor to establish a guardianship".

Consequently, most of the time, **the guardianship ceases when the child reaches the age of 18 years**. Although, mostly, the situations that led to the establishment of the guardianship will not cease when the child reaches the age of 18, he/she, growing young, **will no longer be able to receive the foster care allowance** which the young person who benefited from a measure of special protection can receive until the age of 26, if he/she continues his/her full time learning. He/she will neither benefit from the allowance granted one time, equal to the value of the minimum gross base salary in the country, guaranteed in payment, established according to the law, upon going out of the special protection system.

On account of the above presented, I consider that the two categories of children/young people, although they are in similar situations, respectively they are not under parental protection, **do not benefit from an equal treatment**, being violated the right provided by Article 16 para. (1) of the Constitution, thus: **Citizens are equal before the law and public authorities, without privileges and without discrimination**. Also, there should also be mentioned the provisions of **Article 49 para. 1 of the Constitution**, named *Protection of children and young people*, as follows: "Children and young people enjoy a special regime of protection and assistance in the achievement of their rights".

Therefore, I propose that **Articles 55 and 129 of Law no. 272/2004 be amended in order to broaden the categories of beneficiaries by including the children/ young people who benefit/have benefited from the guardianship measure, in order to achieve both the constitutional principle of equality and non-discrimination and the principle provided by the special legislation, that of compliance with the best interests of the child⁴⁾.**

3.2. Widening of the field of persons who can be appointed by the parent to take care of children while working abroad

Section 4 of Law No. 272/2004, entitled *Protection of the child with parents who work abroad*, establishes in **Article 104** that "The parent who exercises alone the parental authority or with whom the child lives, who is going to leave for working abroad, has the obligation to notify this intention to the public service of social assistance at home, with minimum 40 days before leaving the country. The notification shall contain, in a mandatory manner, the designation of the person in charge of the child's care during the absence of the parents or guardian, as the case may be. Confirmation of the person who will take care of the child will be carried out by the guardianship court, in accordance with the provisions of this law. The provisions of this article are also applicable to the guardian, as well as in case that both parents are to go to work in another state".

⁴⁾ See also Cătălina Georgeta Dinu, Cătălina Georgeta Dinu, *The Equal Opportunities of Dyslexic and Dysgraphic Persons to Participate as Candidates for The Driving License Examination*, in Public Administration&Regional Studies, 10th Year, No. 1 (20) – 2018, Galati, Romania: University Press, pp. 62-70; Elisabeta Slabu, *Buna administrare în spațiul administrativ european*, Bucharest, Romania: Ed. C.H. Beck, 2018, pp. 88-98.

In Article 105 para. 1 it is provided that: "The person appointed according to Article 104 para. (2) must be part of the wide family, be at least 18 years old and fulfill the material conditions and moral guarantees necessary for the raising and care of a child..."

Given the current social realities, according to which more and more children have abroad both their parents and most part of the relatives capable of providing raising and care of the child, Article 105 para. 1 must be amended in order to widen the field of the persons who can be appointed by the parent to care for children, while he/she is working abroad. There can also be appointed the in-laws of the children or other persons towards whom the children feel affection, if they fulfill the material conditions and the moral guarantees required for the raising and care of a child.

4. Conclusions

The Romanian system for the child rights protection has undergone multiple changes during the almost 30 years that have passed since the Romanian revolution in 1989. New institutions have been set up in order to ensure the coordination of this system at national and county level. There have been conceived quality standards for the social services provided to children and their families. Large and non-performing residential institutions were closed. There have been established family-type homes and a network of professional foster carers so that those children who could not stay in their natural or extended families could benefit from conditions as close as possible to a family environment. But there are still many things that can be improved. From the opening to the community of residential services of child protection until **ensuring an equal treatment for all categories of children at risk**. And, finally, the awareness of the importance of the initial and continuous training of the personnel working in the child protection system. All these improvements require human, material and financial resources, resources to be provided continuously and consistently, as children are still the most vulnerable category of persons in the care of the Romanian state.

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