

GENERAL CONSIDERATIONS REGARDING THE SPECIAL PROTECTION OF THE CHILD TEMPORARILY OR PERMANENTLY DEPRIVED OF THE PROTECTION OF HIS PARENTS

Adrian NICOLESCU¹

¹University of Craiova, Craiova, Romania

Abstract

Currently, in Romania, the legislation in force regulates placement, emergency placement and specialized supervision as special child protection measures. All these special protection measures that fall under the umbrella of the law have the role of providing increased attention to children in various difficult situations. The special protection measures are applied on the basis of the individualized protection plan, a legal instrument of particular importance, based on which the planning of services, benefits and measures for the special protection of the child is carried out, with a view to the rapid integration of the child who has been separated for various reasons not imputable by his family, in a family environment that allows him a physical, mental, spiritual and moral development. Recently, all central and local institutions are making a sustained effort to harmonize the legislation in our country with the legislation of the European Union.

Keywords: protective measures, placement, monitoring measures.

In the current context, the internal legislation in the field of the protection of children's rights is in a period of crystallization, a fact materialized by the numerous normative acts adopted, but also by the draft laws that are introduced in the legislature and are subject to discussion, parliamentary debates, and that later undergo the voting procedure. At the European level, the rights of the child are provided for in four main acts, namely the European Convention on Human Rights, the European Social Charter, the European Convention on the Exercise of the Rights of the Child and the Convention on Personal Relations Concerning Children.

It should be specified that „all these normative acts, which we have referred and will refer to throughout the paper, are supplemented with national legislation, when it is more favorable to the child, and, likewise, they exclude it from application when it is in contradiction with European principles"(Nicolescu, 2019, pp.73).

These mentions gain importance in the context in which, in the last period, Romania, as a member state of the European Union, „went through and continues to go through stages of harmonization of national legislation with that of the Community." It is about legislation in multiple fields, a complex process of legislative coordination and unification" (Nicu, 2013, pp.50).

Returning to Romanian legislation, more specifically to art. 54 of Law no. 272/2004 on the protection and promotion of the rights of the child, it should be emphasized that it provides a clarification of the special protection of the child, defining it as the set of measures, benefits and services intended for the care and development of the child deprived, temporarily or permanently, of the protection of his parents or of the one who, in order to his interests, he cannot be left in their care. Being an international legal instrument, the Convention on the Rights of the

Child, adopted by 196 member countries of the United Nations (except the USA), defines in art. 1 the notion of a child as „any human being under the age of 18, with the exception of cases when, based on the laws applicable to the child, majority is established under this age" (European Convention on the Rights of the Child, art. 1).

Law no. 272/2004 on the protection and promotion of children's rights regulates special child protection measures as follows: placement, emergency placement, specialized supervision.

In accordance with the provisions of art. 60 of Law no. 272/2004 on the protection and promotion of the rights of the child, the beneficiaries of special protection measures are children whose parents are deceased, unknown, lapsed from the exercise of parental rights or to whom the punishment of the prohibition of parental rights was applied, placed under prohibition, declared by the court dead or missing, when guardianship could not be established; the child who, in order to protect his interests, cannot be left in the care of his parents for reasons not attributable to them; the abused or neglected child; the child found or the child abandoned in health facilities; the child who committed deeds provided for by the criminal law and which is not criminally liable.

With regard to the child who committed an act provided for by the criminal law, the specialized literature (Udroiu, 2022, pp. 955-957) states that „minors who have not reached the age of 14 at the time of the crime are not criminally liable (...), minors who have reached the age of 14, but did not reach the age of 16 at the time of the commission of the crime, are criminally liable only if it is proven through a medico-legal psychiatric examination that they committed the act with discernment (...), minors who have reached the age of 16 on the date of the crime are criminally liable."

The provisions of art. 55 of Law no. 272/2004 on the protection and promotion of children's rights provide that special protection is granted to the child until the acquisition of full exercise capacity, i.e. until reaching the age of 18. After acquiring full exercise capacity, at the express request of the young person and with the condition of continuing their studies only once in each form of full-time education, the law provided for the possibility of granting special protection throughout the duration of the continuation of studies, but without exceeding the age of 26 years. In the situation where there is a risk of social exclusion, and the young person has acquired full exercise capacity and, at the same time, has benefited from a special protection measure and cannot complete his studies and does not have the possibility of returning to the family environment, he benefits upon request on a period of up to 2 years of special protection for the purpose of his integration into society. This is not an absolute right, which cannot be waived under any circumstances. Article 55 of Law no. 272/2004 on the protection and promotion of children's rights, however, provides for the loss of this right in the situation where the young person was offered a job or a home at least twice, and he refused them or lost them for imputable reasons.

The special protection measures instituted according to the law are carried out based on the individualized protection plan, which is undertaken in accordance with the requirements imposed by the Ministry of Labor and Social Justice. In accordance with the provisions of art 58 para. 1 of Law no. 272/2004 on the protection and promotion of children's rights „the General Directorate of Social Assistance and Child Protection has the obligation to draw up the individualized protection plan, within 30 days after receiving the request to institute a special protection measure or immediately after the director of the general directorate of social assistance and child protection ordered the emergency placement." The objective of the individualized plan drawn up by the Directorate in accordance

with the legal provisions is to reintegrate the child into the family environment, and in the situation where this is no longer possible, to proceed to the adoption procedure.

The first measure of special protection regulated by the legislation in force is that of placement, which consists of placing the child with a person or family, a maternal assistant and, last but not least, placing the child in a residential service (art. 62 par. 1 of Law 272/2004 on the protection and promotion of children's rights).

The person or family that receives a child in foster care must cumulatively fulfill two fundamental conditions, established by art 62 par. 2 of the aforementioned law. These two conditions refer to the fact that the person or family must be domiciled in Romania and, at the same time, the person or family must be evaluated by the General Directorate of Social Assistance and Child Protection with regard to the material situation, but also with regard to moral guarantees.

The legislation in force (art. 63, law 272/2004) imposes the obligation that for the entire duration of the special protection measure of placement, the child's domicile is, as the case may be, with the person, the family, the maternal assistant or the residential type service that has it in care.

In the situation where the child has not reached the age of 2 years, the legislator provided that the measure of placement can be ordered only with regard to the extended family or to the substitute family (art. 64 par. 1 of law 272/2004 on the protection and promotion of children's rights).

If a child suffers from serious deficiencies and needs special care in specialized residential type services, there is a derogation and in this situation and the placement measure of the child who has not reached the age of 2 can be

ordered in a residential type service (art. 64 paragraph 2 of law 272/2004 on the protection and promotion of children's rights).

Article 64 para. 3 of law 272/2004 provides that when establishing the placement measure, as a special protection measure, there should always be kept into sight the child's placement, with priority, with the extended family or the substitute family and, at the same time, keeping the siblings together and, not lastly, facilitating the parents' exercise of the right to visit the child and maintain contact with him.

At the level of the General Directorate of Social Assistance and the Protection of Children's Rights, a commission for child protection is set up, which has, among other duties, the one regarding the establishment of placement measures, when there is the consent of the parents, in the situation where the child who cannot be left in the care of the parents for reasons not attributable to them, but also in the situation where the child has committed an act provided for by the criminal law and is not criminally responsible because he has not reached the age of 14 (art. 65 paragraph 1 of law 272/2004 on the protection and promotion of children's rights).

In the current regulations, in the situation in which there is no consent of the parents or, as the case may be, of one of the parents, at the request of the General Directorate of Social Assistance and the Protection of the Rights of the Child, the court is the one to rule on the measure of placement in the situations mentioned above (art. 65 paragraph 2 of law 272/2004 on the protection and promotion of children's rights).

Also, in accordance with the provisions of art. 65 paragraph 2, the placement measure is determined by the court at the request of the Directorate, if it is necessary to replace the emergency placement ordered by the Directorate, in the following situations: the child whose parents are deceased, unknown, lapsed

from the exercise of parental rights or whose the punishment of the prohibition of parental rights was applied to, placed under prohibition, declared judicially dead or missing, when guardianship could not be established; the child found or the child abandoned in the health facilities; the child who committed an act provided by the criminal law.

In accordance with art. 66 paragraph 2 of law 272/2004, „parental rights and obligations towards the child are maintained throughout the placement measure ordered by the court in the case of the child provided for in art. 60 lit. b) and e), when there is no consent for the institution of this measure of the parents or, as the case may be, of one of the parents, if in order to respect the best interests of the child, the court does not order otherwise, depending on the circumstances of the case" and according to art. 66 paragraph 3 of law no. 272/2004, „parental rights and obligations towards the child throughout the placement measure ordered by the court in the situation of the child provided for in article 60 letter a), as well as in the situation of the child provided for in art. 60 letters c) and d) are exercised by the director of the General directorate of social assistance and child protection."

The second measure of special protection regulated by law, that of emergency placement, is ordered in accordance with the provisions of art. 68 of law 272/2004 in the following special situations: when the child is abused, neglected or subjected to any form of violence or when the child is found or abandoned in health facilities.

Also, another case provided by the legislation in force is the one in which the child whose sole legal guardian or both have been detained, arrested, hospitalized or in the situation where, for any other reason, they cannot exercise their parental rights and obligations regarding the child.

As in the case of the measure of special protection of placement, emergency placement, as a temporary measure, consists of placing the child with a person or family, a foster carer or a residential type service licensed under the law.

The family or person who receives a child in emergency foster care must cumulatively meet the same conditions as in the case of fostering a child. Thus, the conditions for the person or family to be domiciled in Romania and, last but not least, to meet the moral and financial guarantees remain valid. Article 63 of law no. 272/2004 regarding the protection and promotion of the rights of the child provides that, „for the entire duration of the placement, the child's domicile is, as the case may be, with the person, family, maternal assistant or residential service that takes care of him."

The measure of emergency placement will consider the placement of the child with the extended family or with the substitute family, keeping the siblings together, but also the possibility for the parents to visit the child and keep in touch (art. 64 paragraph 3 of law 272/2004 on the protection and promotion of children's rights).

Article 68 para. 5 provides that, „for the entire duration of the emergency placement, the exercise of parental rights is suspended by law, until the court decides on the maintenance or replacement of this measure and on the exercise of parental rights. During the period of suspension, the parental rights and obligations regarding the child are exercised and fulfilled, respectively, by the person, the family, the maternal assistant or the head of the residential service who received the child in emergency foster care, and those regarding the child's assets are exercised and, respectively, fulfilled by the director of the general directorate of social assistance and child protection."

The last special protection measure provided by the legislation in force is that of specialized supervision.

In accordance with the provisions of art. 71 paragraph 2 of law no. 272/2004 on the protection and promotion of children's rights, the measure of specialized supervision is ordered by the Child protection commission in the event that the child has committed a criminal act and is not criminally liable and there is, of course, the consent of the parents or the legal representative, and in the situation where there is no such agreement, but the measure of supervision is ordered by the court.

The legislator provided that the monitoring of the application of these special protection measures be the responsibility of the General Directorate of Social Assistance and Child Protection. Thus, in accordance with the provisions of art. 72 para. 1., the circumstances that were the basis for the establishment of special protection measures, ordered by the child protection commission or the court, must be verified quarterly by the general direction of social assistance and child protection."

At the same time, private entities also have an important role in monitoring the application of special protection measures, so that „in addition to the General Directorate of Social Assistance and Child Protection, there is an authorized private body that fulfills the same role as the Directorate, in the sense of analyzing the way in which the special protection measures are implemented and of verifying the manner in which the child is taken care of. Both the General Directorate of Social Assistance and Child Protection, as well as the authorized private body, draw up reports on the evolution of the physical, mental, spiritual, moral or social development of the child, as well as on the way it is cared for. Based on the reports drawn up, the General Directorate of Social Assistance and

Child Protection informs the child protection committee or the court if the measure needs to be modified or terminated" (Nicolescu, 2019, pp. 71).

Article 74 of law no. 272/2004 provides that „upon the termination of special protection measures by reintegrating the child into his family, the public social assistance service, organized at the level of municipalities and cities, the persons with social assistance attributions from the specialized apparatus of the mayor, as well as the general direction of social assistance and child protection, in the case of the sectors of the municipality of Bucharest, from the domicile or, as the case may be, from the residence of the parents, have the obligation to follow the evolution of the child's development, as well as the way in which the parents exercise their rights and fulfill their obligations regarding to the child. For this purpose, they draw up monthly reports for a period of at least 6 months."

The Commission for the Protection of Children's Rights and the court have the legal obligation to act in order to apply special protection measures, but there should not be forgotten the private bodies that are legal entities under private law that work in accordance with the law interdependently with the General Directorate of Social Assistance and Protection the child. In accordance with the law in force „private bodies that organize and develop services to prevent the separation of the child from his family, as well as other services for the special protection of the child deprived, temporarily or permanently, of the protection of his parents, have the obligation to notify the General directorate of social assistance and child protection on the date of their actual operation and to allow the department's specialists access to the premises where the services are provided" (art. 126, Law no. 272/2004 on the protection and promotion of children's rights).

In conclusion, all these special protection services regulated by the legislation in force have as their purpose the reintegration of the child into the

family, and in the situation where this is no longer possible, the adoption procedure is carried out.

References

Convenția Europeană a Drepturilor Copilului.

Legea nr. 272/2004 privind protecția și promovarea drepturilor copilului.

Nicolescu, A. (2019) *Asistența și protecția drepturilor copilului*. Ediția a II-a revizuită. Craiova: Editura Sitech.

Nicu, A. (2013) *Politici educaționale. Repere teoretice și pragmatice*. Cluj-Napoca: Editura ASCR.

Udroiu, A. (2022) *Sinteze de drept penal. Partea generală*. Volumul II. Ediția 3 revizuită și adăugită. București: Editura C.H. Beck.