

GENERAL PRINCIPLES FOR ENSURING COMPLIANCE WITH CHILDREN'S RIGHTS

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Abstract. Health of a society is illustrated by how they protect and promote the rights of members who need special attention - children. Family is the environment that protects and supports the child at the highest degree, but if its work is not protected by a legal regulation, the levers necessary to ensure stability and balance to this protection are missing. On the other hand it is possible that the very nucleus supposed to protect the child – the family, is actually detrimental to the child, in which circumstance, it is the duty of the state to protect the child, through the institutions entitled. In Romania, the frame law regulating protection and promotion of child rights is Law 272/2004, a modern law that was drawn up taking into account the UN Convention on the Rights of the Child, but in close relation with Law 273/2004, which establishes the juridical regime of adoption, considering the requirements of the Hague Convention on child protection and cooperation in the matter of international adoption. The overriding principle is that of respecting the superior interest of the child, all the others being special tints of promoting this interest. These principles are: a) respecting and promoting with priority the superior interest of the child; b) equal opportunities and non-discrimination; c) making parents responsible concerning the exercise of rights and the fulfillment of parental obligations; d) parental primordial responsibility regarding observance and guarantee of child rights, e) decentralization of child protection services, multi-sectorial intervention and partnership between public institutions and authorized private organisms; f) ensuring individualized care personalized for each child; g) respecting the dignity of the child; h) hearing and considering the child's opinion, making allowance for the child's age and maturity level; i) ensuring stability and continuity in child's care,

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upbringing and education, taking into account his/her ethnic, religious, cultural and linguistic background when applying a protection measure, j) celerity in making any decision concerning the child; k) ensuring protection against abuse and exploitation of child, l) interpretation of each legal norm concerning the child's rights in correlation with the system of regulations on the matter. Child protection must be implemented in the actual context of a specific society, considering the practices and the tradition of child upbringing, the norms and values attached to this process, social policies, regulatory and institutional framework of child rights protection.

Keywords: principles, guarantee, superior interest of the child, parent accountability, non-discrimination, equal opportunities, dignity, care.

Principles on children's rights

Art. 6 of Law 272/2004 lays down the following principles for respecting and guaranteeing the rights of the child:

- a) respecting and promoting with priority of the best interests of the child;
- b) equality of chances and non-discrimination;
- c) empowering parents with regard to exercising rights and discharge of parental obligations;
- d) the primacy of parental responsibility with regard to the observance and safeguarding of child rights;
- e) decentralization of child protection services, multisectoral intervention and partnership between public institutions and private bodies authorized;
- f) providing an individualized and personalized care for every child;
- g) respect for the dignity of the child;
- h) hearing the child's opinion and consideration of view, taking into account the age and degree of maturity;
- i) ensure stability and continuity in the care, upbringing and education of the child, taking into account his ethnic origin, religious, cultural and linguistic, in case of taking a measure of protection;
- j) rapidity in making decision concerning the child;
- k) ensuring the protection against child abuse and exploitation;
- l) the interpretation of legal norms relating to the rights of the child in conjunction with the rules in this matter.

A) Respect for and promotion of the best interests of the child

The principle of the best interest of the child is regulated around the world. In art. 3 paragraph 1 of the UN Convention on the rights of the child, pointed out that

"in all actions concerning children undertaken by social welfare institutions, whether public or private, of the courts, administrative authorities or legislative bodies, the child's interests will prevail" (The UN Convention on the rights of the child, ratified through Law No. 18/1990).

Respect for and promotion with priority of the best interests of the child is the most important principle that underlies the specifying and produces the other.

This principle has a primordial character, but also general, covering both patrimonial rights and non-patrimonial ones. It is true that the patrimonial rights of the child are covered rather scantily in law, the settlement of all remaining family code, but non-patrimonial rights are protected in particular by the law. The patrimonials of the parents and the children don't amalgamate being distinctly private. Parents, as representatives of the child are not empowered to obtain a profit that the result of their minor child's heritage, their task being to protect children's belongings.

The rules to which they are subject regarding the obligations of parents, tutors are not completely identical. Thus, according to article 137 paragraph 2, of the Family Code, "the tutor who commits abuse, serious negligence or acts that make it unworthy, will be removed from the Trustees, as well as the tutor who meets the layout tasks, while a parent who commits an abuse or neglect in connection with the heritage of its obligation to side, cannot be removed from duties. A penalty that can be applied to the parent is only the forfeiture of parental rights, which intervenes when the sanction failure to comply with the obligations relating to the care of the minor's personal side. "

The principle refers to all children, both in and out of wedlock, adopted children, to those who were placed under guardianship and those who find themselves in special situations. It is the basic principle around which revolve the other principles and which represents the structure that develops the whole edifice of parental care. In this way the legislature enacts an important legal guarantee intended to prevent the diversion of parental care from its purpose and its use by parents in their own interest and to ensure the effective protection of the child's interests against possible abuses of the parents (Bacaci, Dumitrache & Hageanu, 2006, p. 280).

In studies, the authors have made reference also to the concept of the interest of the child, analyzing the spirit of the law (Ionașcu et al., 1980, pp. 173-174). It was shown that the legislator, using the notion of interest of the child, had a dual purpose: on the one hand, child protection corresponds to a social interest, which is reflected by the way it is raised and educated, and on the other hand, the interest of the minor through the prism of a personal, concrete, which is different from case to case and that must be assessed and reported on social interest always, but in the spirit, and the limits of the law.

B) Equal opportunities and non-discrimination

Article 6, point b, provides that: "Are guaranteed to all children without discrimination, regardless of race, color, sex, language, religion, political or other

opinion, national or ethnic origin". This principle shall be entered on line launched by the United Nations on the rights of the child, the Romanian legislator trying to cover the entire range of directives and principles launched internationally, taking over from article 1 of the International Convention on the Elimination of all forms of racial discrimination, but also in art. 1, of the Convention on the Elimination of all forms of discrimination against women, which was adopted in our country by Decree nr. 342, 1981 (Official Gazette No. 94 of 24 November 1981).

A significant attention is given to the possibility of development and assimilation of the child to education in the spirit of religious minority, national, ethnic or linguistic evidence of which, having the right to practice their own religion, and to use their own language in common with other members of the community, and the existence of a body to supervise the exercise of the rights provided for in article 27 paragraph 1 of the Act. This body is called the National Council for combating discrimination (art. 27 para. 2 of the L. 272/2004).

The legislator's attention turns also to the disabled child. Special attention needed by a disabled child determined the legislator to stipulate expressly in art. 46 of the law: "a child with a disability has the right to education, rehabilitation, compensation, rehabilitation and integration, tailored to their own possibilities for the development of his personality.

Special care must ensure the development of physically, mentally, spiritually, morally or socially handicapped children. Special care consists in using the adequate help of the situation of the child and his parents or, as the case may be, of those to whom it is entrusted the child and is granted free of charge, whenever possible, to facilitate the effective and non-discriminatory access of children with disabilities to education, training, health services, rehabilitation, employment, training for employment, recreational activities, and to any other activities to allow them complete social integration and development of their personality. The European Court of Human Rights, pursuant to art. 14 of the European Convention on human rights, States that there are two cumulative criteria: the existence of discriminatory treatment of the difference of treatment in the exercise of their rights and the absence of objective and reasonable justifications of such differences of treatment (Emese, 2006, p. 326).

C) Empowering parents with respect to exercising parental rights and obligations

The Law stipulates that the minor has the right to benefit from social welfare and insurance depending on the resources and the situation in which they are located and in the maintenance of which is found (Law 272/2004 art. 45 para 1), and the parents have the obligation to ask the competent authorities to grant these benefits. Empowering parents consists in informing them about the rights you have children and how to obtain them.

D) The primacy of parental responsibility with regard to the observance and safeguarding of children's rights.

Responsibility is evenly split between the two parents, the parental rights and duties are the same in relation to both the father and mother of the child, whether in marriage or out of wedlock. Empowering parents relate both to ensure a climate conducive to their development and education, and protect their heritage, the involvement of parents in all "decisions, actions and measures regarding child care, and to support the growth, development, training and education in the family" (article 2, paragraphs 1 and 4, Law No. 272/2004).

E) Decentralization of child protection services, multisectorial intervention and partnership between public institutions and private bodies authorized;

Qualifications of the child protection services shall be governed by article 5. 106 of the Law, such a) monitors and analyses the situation of children in administrative-territorial unit, as well as respect for the rights of children, while ensuring the collection and synthesis of data and information; b) carries out the function of prevention of child separation from the family; c) identifies and evaluates situations which require the provision of services and/or benefits for prevention of child separation from the family; d) prepare documentation required for rendering services and/or benefits and give such services and/or benefits, according to the law; e) provides advice and information for families with dependent children on their rights and obligations on the rights of the child and of the services available locally; f) ensure and follow the implementation of the measures of prevention and control of consumption of alcohol and drugs, to prevent and combat domestic violence, as well as delinquent behavior; g) visiting regularly at home families and children receiving services and benefits; h) put forward proposals to the Mayor, where it is necessary to take a measure of special protection under the law; i) follow the developments in child development and how his parents exercising their rights and fulfill their obligations with respect to the child who has received a measure of special protection and was reinstated in his family; j) cooperates with the General Directorate of social assistance and child protection in child protection and transmit it all the data and information requested in this area (Law 272/2004, Official Gazette No. 553/2004). In the sectors of Bucharest, the powers referred to in paragraph (1) shall be exercised by the General Directorate of social assistance and child protection.

Can create, organize, and develop services for prevention of child separation from the family and by private bodies accredited and legally established, or they can set up by them and family services or residential, but only on the basis of a license issued by the national authority for protection of children's rights (art. 113-114).

F) Providing an individualized and personalized care for each child

When the child is developing normally in the presence of his family, this principle is obviously palpable. Only when deviations from normality family frame the principle is underline. Whether we speak of children deprived of parental care, in

part because this parental needs refilling with a firm, fast and adequate measures to be taken for the protection of children which advertises an additional care must be tailored to the specific case and to which it refers. It was shown that in the case of a child witnessed can highlight three stages: determining exactly) condition, actually; (b) identification of the optimal modality); (c) monitoring of the evolution of the situation) assisted child (Emese, 2006).

Special situations have children with disabilities. According to article 46 of the law, they are entitled to special care, adapted to their needs, education, rehabilitation, compensation, rehabilitation and integration, tailored to their own possibilities, in order to develop their personalities. Care must ensure the development of physical, mental, spiritual, moral or social, and to provide appropriate assistance to parents or those who are God's children with disabilities. Specialized bodies of Central and local administration shall be obliged to initiate programmes and provide the necessary resources for the development of services for meeting the needs of children with disabilities and their families.

G) Respect for the dignity of the child;

The legislature does not define the notion of dignity, but it appeared in literature and in art. 28 of the Act that a child shall not be subjected to physical punishments or other humiliating or degrading treatments. In the jurisprudence of the European Court of Human Rights showed that to be considered degrading humiliation and ignominy, which must reach a certain level of seriousness and advertising. In most cases that have been submitted to the settlement, the Court restrained the coexistence of inhuman, degrading, demeaning ones, showing that it is inhuman treatment to which a person causing intentional physical or mental suffering by a certain intensity, and degrading treatment is the one who humbles himself in coarse mode, in another person's face or pushes it to act against his conscience (or the European Court of Human Rights, 2001).

Art. 22 of law 272/2004 provides that: "the child has the right to protect his public image and his private life, private or family life", and in another paragraph it is shown that the participation of children aged up to 14 years in a public debate in the context of audiovisual programmes can only be made with the written consent of the parents or the appropriate, of another legal representative.

And the child with disabilities enjoy the same protection needs of the education, training, health services, rehabilitation, assistance provided under such conditions as to ensure dignity and to promote the autonomy and active participation in the community life (art. 46).

H) Hearing the child's opinion and consideration thereof, having regard to the age and degree of maturity;

It was noted that this principle has coverage of both qualitative and quantitative. The quantitative dimension is the lack of a ban on a specific age group, while the quality of getting, as far as possible your personal circumstances, an opinion expressed by the child, knowingly (Emese, 2006, p. 334).

In the case of *Sommerfeld v. Germany* (European Court of Human Rights, 2003) it was noted that the competent German courts had reasonable grounds to decide for the purposes of refusal concerning rights of access under the father's child, aged 13 years, expressed clearly and repeatedly its willingness to fail to meet his father, a decision to the contrary, likely to cause the child emotional and mental imbalance is not in its interest.

According to article 23 of the law, parents or other legal representatives of the child, people who have children in placement, as well as persons who, by the nature of the function, promote and ensure compliance with the rights of the child, have the obligation to provide them with information, explanations and tips, depending on the age and the degree of understanding of children, as well as to allow them to express their views, ideas and opinions.

I) To ensure stability and continuity in the care and upbringing of the child, taking into account his ethnic origin, religious, cultural and linguistic, if taking a measure of protection;

The principle refers to the situation where there is a need of protection measures, when starting from the premise of stability is necessary to ensure continuity of care, child rearing and education. Through measures of protection means, placement, guardianship emergency placement and supervision and adoption. The role of this principle is to protect the child from emotional-affective disorders. Maintaining stability after taking one of the measures referred to above, is the primary concern. In this situation there are also provisions of Law 272/2004, which concerns the child in foster care and that it can be adopted. It is recommended that in the article. 26. 2, in order to ensure that the requirements of stability and continuity, the person or the family to which the child has been placed may be designated as adopter. The same idea of the stability Law 272/2004 that "in determining the placement measure, emergency placement, as well as in the case of adoption will follow keeping siblings together - art. 60, paragraph (2), lit. (b).

J) Expediently in the taking of any decision concerning the child;

Expediency principle encompasses administrative matters and legal ones, the rationale being that the passage of time does not affect in any way the relations between parents and children. It appeared in a case (against Romania and Hungary Monory), that the slowness of the procedure and the inability of the authorities to take the provisional measures, have led to the strengthening of the child's relationship with one of the parties, of a parent at the expense of the other.

In terms of procedural causes concerning children resolve urgently, with the attendance of the child's legal representative, the General Directorate of Social Assistance and Child Protection, and with the participation of the Prosecutor. Court deadlines may not be more than 10 days, and the decision of the Court is final and enforceable. Time limit for recourse is 10 days. The provisions of Law 272/2004 concerning the procedure for the resolution of cases concerning special protection measures for the child to be completed properly with the provisions of the Code of civil procedure.

In the case of emergency placement, if you oppose the resistance on the part of representatives of the natural or legal persons who provide care or protection of children, the General Directorate of Social Assistance and Child Protection will refer the matter to the Court and would require the issuance of a Presidential Ordinance to place the child to a person, family, foster parent, or in a residential type service, licensed under the law (article 97 para. 3 of Law 272/2004).

K) Protection against child abuse and exploitation;

This principle is dubbed in the contents of the Law 272/2004 of an entire chapter VI, as provided in article 85, paragraph. 1, that any child has "the right to be protected against any form of violence, abuse, mistreatment or neglect", but also against economic exploitation, drug use, or other forms of trafficking, as well as against all forms of exploitation.

The legislator defines what is meant by child abuse, namely "any voluntary action of a person who is in a relationship of responsibility, trust or authority towards it, which endangers life, developing physical, mental, spiritual, moral or social, personal integrity, physical or mental health of the child", but it also defines child neglect which consists of the "voluntary or involuntary omission of a person who is responsible for the growth, care, education, child, to take any measure subject to this responsibility, which is life-threatening, the development of physical, mental, spiritual, moral or social, personal integrity, physical or mental health of the child".

One of the most popular phenomena is, unfortunately, violence in the family, which by reason of the place in which it causes get to be known to a lesser extent or not at all and that leaves traces even deep physical and mental, so improving the matter was imposed by itself.

L) The interpretation of legal norms relating to the rights of the child in conjunction with the rules in this matter.

The rules governing the rights of the child enshrined by Law 272/2004 can be assembled only in conjunction with other provisions of national law (family code, Law No. 273/2004, The Code of Civil Procedure, etc.), but in view of the primacy of international regulations to which Romania is a party (UN Convention on the Rights of the Child, the European Convention for the Protection of Fundamental Rights and Freedoms, The European Social Charter, the International Accord for Civil and Political Rights, etc.).

In the case between intern and international basic human rights to which Romania is a party, there is a disparity; the international laws have priority, except where the Constitution or national laws contain provisions which are more favourable (article 20 para 2 of the Constitution).

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