

# SPECIAL ACTIONS FOR THE PROTECTION OF CHILDREN'S RIGHTS IN ROMANIA

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## **Abstract:**

*The Convention on the Rights of the Child”, adopted by the UNO General Assembly on November 20, 1989, constitutes a fundamental document by which the concern about the future generations becomes a legal instrument, and the idea of child protection becomes a principle of the domestic legislations of different states.*

*In order to continue the process of adapting modern legislation to international conventions in the child protection field, to reconsider the impact of economic transition on children, and to take some adequate protection actions, to promote research in the field of child abuse and neglect, to continuously improve national legislations on adoption, to increase the role of local public authorities in the field of child and family protection, as well as to improve the justice system for minors, Romania ratified the Convention on the Rights of the Child by Law no.18/1990, published in the Official Journal no.109 of September 28, 1990.*

**Key words:** children's rights, protection, authorities.

The protection of minors is guaranteed in Romania through laws that transpose the latest issues in international law into national legislation, and intensive efforts are made to concretely apply the regulations. As provided for by the Constitution of Romania at art.49 – Protection of children and young people - “children and young people shall enjoy special protection and assistance in the pursuit of their rights”. Thus, according to specific legislation, special protection materializes in the following actions:

*a).. Special protection of the minor, of the child temporarily or permanently deprived of parental care.* – is a first action regulated by Law no.272/2004 in Chapter 3.

According to art.39 of Law no.272/2004, any child who is, temporarily or permanently, deprived of his/her parents' care, or who, for the protection of his/her interests, cannot be left in their care has the right to **alternative protection**. Alternative protection includes, besides instituting guardianship and adoption, **special protection actions** provided for by law. When choosing one of these solutions, the competent authority will consider the necessity to ensure continuity

of the child's education, as well as his/her ethnic, religious, cultural, and linguistic origin.<sup>1</sup>

As far as the special protection actions are concerned, we specify that special protection represents the “*ensemble of actions, works, and services designed for the care and development of a child who is, temporarily or permanently, deprived of his/her parents' care, or who cannot be left in their care, if we are to protect his/her interests.*”<sup>2</sup>

According to Law no.272/2004, social protection will last until the child has acquired full capacity, with the following exceptions: art.51 paragraphs 2 and 3 specify that “at the young person's request, expressed after acquiring full capacity, if he/she continues his/her studies in a full-time educational form, special protection will be provided, under legal conditions, during the entire period while he/she continues his/her studies, but not exceeding the age of 26. A young person who has acquired full capacity and has benefited from a special protection action, but who does not continue his/her studies and cannot return to his/her own family, since he/she faces the risk of social exclusion, will benefit from special protection, on request, for a period of maximum 2 years, for the purpose of facilitating his/her social inclusion. In case it can be proven that the young person was offered a job and/or a place to live, and he/she successively refused them or lost them due to his/her own fault, these provisions are no longer applicable.”

The special protection actions are set and applied to a child according to an individualized protection plan, and can be decided, according to the above-mentioned law, for the following minor categories:

- A child whose parents are deceased, unknown, have lost their parental rights, have been denied their parental rights, are under interdict, legally declared dead or missing, when guardianship could not be instituted;
- A child who cannot be left in his/her parents' care not due to their fault, if we are to protect his/her interests;
- A child who has been abused or neglected;
- A child who has been found or abandoned by his/her mother in medical facilities;
- A child who has committed a criminal offence and cannot be held liable according to criminal law.

The special protection actions for children provided for by valid Romanian laws are the following:

- 1) *Placement*
- 2) *Emergency placement*
- 3) *Specialized supervision*

**1) Child placement constitutes a temporary special protection action, which can be decided, under legal condition, as applicable, for:**

- A person or family
- A foster parent (maternal assistant)

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<sup>1</sup> M. Tomescu – “Dreptul familiei. Protecția copilului” (“Family Law. Child Protection”), Ed.All (All Publishing House), Bucharest, 2005, page 229

<sup>2</sup> M.Tomescu – op cit, page 230

- A residential service.

The parents' rights and obligations towards the child are maintained during the entire period of the placement decided by the child protection board. The parents who have lost their parental rights, as well as those who have been denied their parental rights keep the right to consent to their child's adoption.

**2) Emergency placement** is a temporary special protection action, which is established for an abused or neglected child, as well as for a child who has been found or abandoned in medical facilities. Emergency placement can be decided for:

-- A person or family

-- A foster parent

-- A residential service.

During the entire period of the emergency placement, the exercise of parental rights is legally suspended, until a court of law has decided either to maintain or replace this action, and on the exercise of the parental rights. During the suspension period, the parental rights and obligations towards the child are exercised or fulfilled by the person, family, foster parent, or the head of the residential service with whom the child was placed under emergency, and the rights regarding the child's assets are exercised by the president of the county council.

**3) Specialized supervision** is decided under the conditions of the above-mentioned law for a child who has committed a criminal offence and cannot be held liable according to criminal law. When the minor's parents or legal representative consent, this action will be decided by the child protection board, and when they do not, by the court of law.<sup>3</sup>

**b)..Protection of the refugee children and child protection in case of armed conflict.**- The Convention on the Rights of the Child provide for the right of the refugee children and the children who request asylum to protection, and adequate humanitarian assistance, including finding family members or the main person in whose care he/she has legally or customary previously been. Attention should be given in the future to the fact that refugee children who request asylum "need special protection and assistance".

"*The Refugee Convention*" (1951) gives the international definition of refugees. The defining conditions mainly refer to both children and adults, and are as follows:

--- The refugees should be outside the borders of their country of citizenship (or should have no citizenship) due to a well-founded fear that in their country they would be persecuted for reasons connected to religion, nationality, race, affiliation to a social group, or due to their political opinions, and

--- The refugees should not be able or wish to return to their country of origin.

The children and adults who have a refugee status cannot be obligated to return to their country of origin, and cannot be sent to another country that could obligate them to return.<sup>4</sup>

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<sup>3</sup> idem, page 235

<sup>4</sup> idem, page 368

The refugee children are one of the most vulnerable groups in the world, because of the major possibility that they would become victims of sexual abuse, or be recruited for military purposes. Regardless of the pressure on the host state, the legal and moral obligation to protect these children is indisputable.

In Romania, according to valid laws, the children who request a refugee status, as well as those who have acquired such a status benefit from adequate protection and humanitarian assistance for the fulfillment of their rights. These children benefit from one of the protection forms provided for by Law no.122/2006 on asylum in Romania.

According to art.73 and the next of Law no.272/2004, in case a child who requests a refugee status is not accompanied by his/her parents or another legal representative, his/her interests during the procedure for the granting of the refugee status are defended by the social care and child protection general board that has administrative-territorial jurisdiction over the territorial body of the Ministry of Home Affairs and Administrative Reform with which the request has been submitted. Until a final and irrevocable solution to the request for a refugee status is given, the respective children will live in a residential service home. In case the request is denied, the court of law will decide the placement of the child with a special protection service. The placement action will last until the child has returned to his/her parents' country of residence, or to the country in which other family members who are willing to take care of the child have been identified.

*The Convention on the Rights of the Child* requests the states to comply with, and also fulfill the following obligations:

- a)-To comply and ensure compliance with international humanitarian laws that are applicable in case of armed conflicts;
- b)-To take all feasible actions to guarantee that people under 15 years of age do not participate directly in the hostilities;
- c)-Not to recruit people under 15 in the armed forces;
- d)-To give priority to the older people when recruiting any people between 15 and 18;
- e)-To take all actions to ensure the protection and care of children affected by an armed conflict.<sup>5</sup>

The Child Protection Committee has underlined that states should take actions to ensure the fulfillment of the rights of all the children under their jurisdiction during armed conflicts.

In our country, the state institutions take the necessary actions to develop special mechanisms meant to ensure the monitoring of the actions implemented for the protection of the rights of the child in case of armed conflicts. State institutions have the obligation to initiate and implement strategies and programs, including at the family and community level, to ensure the demobilization of child soldiers and,

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<sup>5</sup> “Manual pentru implementarea Convenției cu privire la Drepturile Copilului” (“A Handbook for the Implementation of the Convention on the Rights of the Child”) – paper drawn up for UNICEF by Rachel Hodgkin and Peter Newell, Revised edition, Editura Vanemonde (Vanemonde Publishing House), Bucharest, 2004, page 679

also to remedy the physical and psychological effects of conflicts on the children, and to promote their social reinsertion.

***c)..Protection of the child who has committed a criminal offence and cannot be held liable according to criminal law.-*** In all the actions that regard minors, either implemented by social care institutions, courts of law, administrative authorities, or legislative institutions, the child's higher interests should be given priority. The legal promotion and regulation of a distinct punishment regime, of some special rules on criminal prosecution and judgment were performed by considering the particularities of human development stages.<sup>6</sup>

The requirement of setting a minimal age at which a person can be held liable according to criminal law is also provided for by international documents. Thus, article 4 of the "***Beijing Rules***" (United Nations Resolution no.40/33 of November 29, 1985) specifies that in the legal systems that acknowledge the concept of the age of criminal liability of minors, the beginning of this age will not be set too low, taking into consideration emotional, mental, and intellectual maturity.

Art.99 of the Romanian Criminal Code provides for the limits of criminal liability, as follows:

- a) The minor who is not 14 years old cannot be held liable according to criminal law
- b) The minor between 14 and 16 years of age can be held liable according to criminal law if it is proven that he/she has discrimination
- c) The minor who is 16 years old can be held liable according to criminal law, since his/her discrimination is presumed.

The legislator expressly set the age limit beginning with which the minor can be held liable according to criminal law. The intention was for the minor to be physically and psychologically developed enough to understand the consequences of his/her actions. Art.99 of the Criminal Code provides for three age categories, as follows:

---*Under 14 years of age* – when the minor cannot be held liable according to criminal law, an absolute presumption of the lack of discrimination that cannot be dismissed regardless of the minor's physical and psychological development stage;

---*The minors between 14 and 16* – when they cannot be held liable according to criminal law unless it is proven that they had discrimination when they committed the offence. Consequently, this category of minors benefit from a relative presumption of the lack of discrimination, a presumption that can be dismissed. In order to protect these two categories of minors, art.50 of the Criminal Code provides for minority as a reason for the removal of the criminal character of the offence.

---*The minors who are 16 years old*, for whom the legislator expressly mentioned that they can be held liable according to criminal law.

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<sup>6</sup> M. Coca-Cozma, C. M.Crăciunescu, L. V.Lefterache (colab.) – "Justiția pentru minori" ("Justice for Minors"), Ed.Uiversul Juridic (Universul Juridic Publishing House), Bucharest, 2003, page 60

According to art.80 paragraph 1 of Law no.272/2004, “in the case of a child who has committed a criminal offence and cannot be held liable according to criminal law, at the suggestion of the social care and child protection board that has administrative-territorial jurisdiction over the child, one of the actions provided for by art.55 letters a) and c) of the law will be taken” (i.e. placement and specialized supervision). When deciding on one of these actions, the Child Protection Board and the court will consider:

- The conditions that favored the committing of the offence
- The degree of social danger of the offence
- The environment in which the child has grown up and lived
- The risk that the child would commit another criminal offence
- Any other elements that characterize the child’s situation.

We specify that the specialized supervision action consists of keeping the child in his/her family, provided that the child fulfills some obligations, such as:

- ▶ Attending school
- ▶ Using some day care services
- ▶ Receiving some medical treatment, counseling, or psychotherapy
- ▶ Forbidding access to some places, or contact with certain people.

In case the criminal offence committed by a child who cannot be held liable according to criminal law presents a high degree of social danger, as well as in the case in which a child for whom the actions provided for by art.81 continues to commit criminal offences, the child protection board or, as applicable, the court of law will decide the child’s placement with a specialized residential service for a definite period of time.

During the implementation of the actions intended for the children who commit criminal offences and cannot be held liable according to criminal law, specialized services will be ensured to assist the children in the social reinsertion process.

**d)..Child protection from exploitation.** – Article 19 of the Convention requests the child’s protection from all forms of physical or mental violence”, as long as he/she is in the care of his/her parents or other people. The states have the obligation to take a wide range of (legislative, administrative, social, and educational) actions to protect children from all forms of violence. Paragraph 2 establishes possible protective actions<sup>7</sup>, acknowledging the fact that social and educational actions, and especially the provision of adequate support to the children and their families, are relevant to the child’s protection from violence, abuse, and exploitation.

Law no.272/2004 regulates the child’s right to be protected from any forms of violence, abuse, maltreatment, and neglect. According to the provisions of art.85 paragraph 2, any natural person or legal entity, as well as the child may inform the authorities that are legally competent to take adequate actions to protect the child

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<sup>7</sup> Developing some social programs that would offer the support necessary to the child and the people in whose care he/she is; teaching other forms of prevention, identification, reporting, investigation, treatment, and checking of the cases of child maltreatment.

from any forms of violence, including sexual violence, harm or physical or mental abuse, maltreatment or exploitation, abandonment or neglect. In such cases, public authorities and private institutions have the obligation to take all the adequate actions to facilitate physical and psychological readjustment, and the social reinsertion of any child who has been a victim of any form of neglect, exploitation or abuse, torture, or cruel, inhuman or degrading punishment or treatment.

**e)..Child protection from economic exploitation.** Article 32 of the UNO Convention on the Rights of the Child protects children from economic exploitation, and from work that could be dangerous or harmful to their physical, mental, spiritual, moral, or social health or development. This article requests states to adopt legislative, administrative, social, and educational actions to ensure its implementation, and especially to provide for:

- A minimal age, or minimal age limits for employment
- Adequate regulations regarding working time, and employment conditions
- Adequate punishments in order to ensure an actual application of the above-mentioned article.

According to the Bureau of Statistics of the International Labour Organization, at least 120 million children, between 5 and 14 years of age, work full time. ILO shows that many children still live in a slavery system in many regions of the world, and considers that priority should therefore be given to the resources used against the most intolerable of the children's work forms, such as slavery, coercion by debts, children's prostitution, and work in dangerous trades or sectors, as well as against work performed by very young children. ILO Convention no.138 provides that "all the necessary actions, including the setting of adequate punishments" should be taken by competent authorities to ensure the actual application of the provisions. The committee pointed out to the states that child protection from economic exploitation should be transposed in detail into the national legislation.

Within work legislation of our country, art.13 of the Work Code shows that a natural person acquires work capacity at the age of 16. He/she may also conclude a work agreement in the capacity as employee at 15 years of age, but only by his/her parents' or legal representatives' consent, and for activities that are adequate to his/her physical development, skills, and knowledge, if in this way his/her health, development, and professional training are not in danger. Art.13 paragraph 3 of the Work Code expressly forbids the employment of people under 15 years of age, while paragraph 5 of the same article specifies that employment on difficult, harmful, or dangerous positions can only take place after the age of 18.

Art.15 also forbids the conclusion of individual work agreements for the performance of illegal or immoral activities, since they will be null and void.

According to art.109 paragraph 2 of the Work Code, the employees under 18 will work 6 hours a day, and 30 hours a week.

Other bans provided for by the Work Code for young people under 18 years of age are specified by art.121 of the Work Code – "young people under 18 years

of age cannot perform overtime work”; art.125 of the Work Code – “young people under 18 years of age cannot perform night work”.

Art.130 of the Work Code provides that “young people under 18 years of age benefit from a lunch break of at least 30 minutes, in case the daily working time exceeds 4 hours and a half.

As far as annual leave is concerned, art.142 of the Work Code shows that “the employees who work under difficult, dangerous, or harmful conditions, the blind, other disabled people, and young people under 18 benefit from an additional leave of at least 3 working days”.

Besides this short presentation of the main provisions on the employment of minors, we specify that they enjoy all the rights and provisions of any employee, with the legal exceptions and restrictions.

By giving special attention to children and young people under 18 years of age, Law no.272/2004 – the general law on the matter – protects children from exploitation. They cannot be coerced to perform work that involves potential risk, or that may compromise their education, or do harm to their health, or physical, mental, spiritual, moral, or social development. Any practice by which a child is given away by one or both his/her parents, or his/her legal representative, for payment or not, for the purpose of the child’s exploitation or work is forbidden. In the cases in which school-aged children skip school, while performing work and infringing legal provisions, schools have the obligation to inform the public social care service immediately. In such cases, the public social care service, together with the county school boards, and the other competent public institutions have the obligation to take actions with a view to the children’s school reinsertion.

**f)..Child protection from drug consumption.** The states that ratify the Convention on the Rights of the Child have the obligation to take all the necessary actions to protect the children from illegal drug and psychotropic substance consumption, as they are defined by the relevant international instruments, as well as to prevent the utilization of children in drug production or trafficking. At present, the increasing levels of consumption with children and young people are alarming all over the world, while consumption threatens both their development, and economic prosperity and social order in all the countries. This problem currently constitutes a priority on most of the political agendas, requiring special attention.<sup>8</sup>

In Romania, the legislation on the matter provides that a number of institutions<sup>9</sup> should take adequate actions to:

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<sup>8</sup> “Manual pentru implementarea Convenției cu privire la Drepturile Copilului” (“A Handbook for the Implementation of the Convention on the Rights of the Child”) – paper drawn up for UNICEF by Rachel Hodgkin and Peter Newell, Revised edition, Editura Vanemonde (Vanemonde Publishing House), Bucharest, 2004, page 599

<sup>9</sup> The National Anti-Drug Agency in cooperation with the National Authority for the Protection of Children’s Rights, and, as applicable, other specialized authorities or bodies of the central public administration.



- Prevent the utilization of children in the illegal production or trafficking of such substances;
- Make the public and especially children aware of these issues, including through the educational system, and, as applicable, by introducing this subject in the school curricula;
- Support the children and their families, by counseling and guidance – confidential, if necessary, but also by drawing up policies and strategies that would guarantee the physical and psychological rehabilitation, and the social reinsertion of drug-addicted children, including by developing alternative intervention methods to the traditional psychiatric institutions for this purpose;
- Additionally develop systems for the collection of some actual data on the occurrence of drug consumption by children, as well as on their involvement in illegal drug production and trafficking; permanently assess such cases, the made progress, the encountered difficulties, and the objectives suggested for the future, respectively;
- Develop a public information system that would reduce tolerance regarding drug consumption, and help with the recognition of the first symptoms of drug consumption, especially by children.

The institutions provided for by law will ensure that the children’s opinions are taken into consideration when drawing up anti-drug strategies.

**g)..*Child protection from abuse or neglect.*** According to Law no.272/2004 “*child abuse*” means any voluntary action of a person who is in a responsibility, trust, or authority relation with a child, action that endangers the child’s life, physical, mental, spiritual, moral, or social development, body integrity, physical or psychological health.

“*Child neglect*” means the voluntary or involuntary omission by a person who is responsible for bringing up, caring for, or educating a child of taking any action within that responsibility, which endangers the child’s life, physical, mental, spiritual, moral, or social development, body integrity, physical or psychological health.

Physical punishments in any form, as well as depriving the child of his/her rights, which endanger the child’s life, physical, mental, spiritual, moral, or social development, body integrity, physical or psychological health, both within the family, and within any institution that provides child protection, care, and education services are forbidden.

In order to provide special protection to an abused or neglected child, the social care and child protection general board has the obligation to:

- Verify and resolve all the information regarding abuse and neglect cases, including those coming from foster parents;
- Ensure the provision of the services provided for by Law no.272/2004 – day care services, family services, and residential services – specialized for the needs of the children who have been victims of abuse or neglect, and their families.

In case the abuse or neglect was committed by people who, according to a legal work relation or other type of relation, were providing the child's protection, bringing up, care, or education, the employers have the obligation to inform the criminal prosecution authorities immediately, and to decide the separation of the respective person from the children in his/her care.

***h)..Protection from kidnapping or any forms of trafficking.*** “The states will take all the necessary national, bilateral and multilateral actions to prevent child kidnapping, selling, and trafficking, for any purpose and in any form”. Article 35 of the Convention provides for double protection for children: the main forms of child trafficking are discussed in different articles, but this article also provides for global actions regarding kidnapping, selling, or trafficking for “any purpose and in any form”. Article 35 constitutes a safety instrument that guarantees child protection from kidnapping or buying for any purpose.

Romania ratified the Facultative Protocol to the Convention on the Rights of the Child, related to the sale of children, child prostitution, and the utilization of children in pornography, signed in New York on September 6, 2000, by Law no.470 of September 20, 2001. According to these international acts and documents, the states will forbid the sale of children, child prostitution, and the utilization of children in pornography by their national legislations, ensuring that such activities are always punished by the criminal law of each state, whether they are performed domestically or internationally, individually or in an organized manner, as well as by any extradition treaty between states.

The states will take all the actions necessary for international cooperation by multilateral, regional, and bilateral agreements, for the purpose of preventing, identifying, investigating, and punishing the people responsible for child kidnapping, selling, prostitution, pornography, and pedophile tourism.

In accordance with international provisions and recommendations, the Romanian Criminal Code provides for a series of offences whose victims are children, and whose punishment has been hardened by a series of subsequent amendments and additions to the Criminal Code. Thus, according to art.197 paragraph 3, rape of a minor under 15 years of age is punishable by imprisonment from 10 to 25 years, and the denial of some rights; if the victim has died or committed suicide, the punishment is imprisonment from 15 to 25 years, and the denial of some rights. Art.198 of the Criminal Code punishes sexual intercourse with a minor; art.199 punishes seduction (with the meaning it has in criminal law); art.201 provides for and punishes the offence of sexual perversion, and art.202 sexual corruption. Other offences provided for by criminal law on the matter are: maltreatment of minors, prostitution, procurement, forced transfer of children belonging to a community or group to another community or another group, etc.

In our country, Section 4 of Law no.272/2004 regulates child protection from kidnapping or any forms of trafficking. The Ministry of Home Affairs and Administrative Reform and the National Authority for the Protection of Children's Rights, in cooperation with the Ministry of Education, Research and Youth will take the necessary steps to adopt all the legislative, administrative, and educational

actions designed to ensure actual protection from any forms of domestic or international child trafficking, for any purpose or in any form, including by his/her own parents. For this purpose, the above-mentioned authorities have a responsibility to draw up a national strategy for the prevention and control of this phenomenon, including an internal mechanism for the coordination and monitoring of the performed activities.

*i)..Child protection from other forms of exploitation.* The Convention on the Rights of the Child specifies at article 36 that “states will protect the children from any other forms of exploitation that are harmful to any aspect of their welfare”. This article has been introduced in order to ensure the acknowledgement of the children’s “social” exploitation, as well as their sexual and economic exploitation.

The forms of exploitation that have not been approached by other articles include the exploitation of highly endowed children, child exploitation by mass-media, and child exploitation by researchers, or for medical purposes or scientific experiments.<sup>10</sup>

Art.99 of Law no.272/2004 regulates child protection from any forms of exploitation. Thus, public institutions and authorities, according to their responsibilities, adopt specific regulations, and apply adequate actions to prevent:

- Illegal child transfer and non-returning
- Conclusion of domestic or international adoptions, for other purposes than the child’s higher interest
- Sexual exploitation and sexual violence
- Child kidnapping and trafficking for any purpose and in any form
- Child involvement in armed conflicts
- Forced development of the children’s talents to the detriment of their harmonious physical and mental development
- Child exploitation by mass-media
- Child exploitation for scientific research, or experiments.

Minor or child protection represents a package of protective, assistance and support actions planned by the state, and applied by its specialized bodies with the help of social factors – such as NGOs, families, etc. – in order to ensure decent living for the human being before majority, which consists of harmonious development, safety, and normal physical and moral integrity.

The protection of children and young people is a permanent responsibility of national and local public authorities, ensuring their free participation in the country’s political, social, economic, cultural, and sports life, regardless of race, sex, language, or religion.

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<sup>10</sup> “Manual..”, page 643

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