

FROM LEGAL REGULATIONS AND THEORIES TO SOCIAL AND ECONOMIC REALITIES ON THE CASE OF CHILD LABOR IN ROMANIA

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Abstract

International law literature distinguishes between different categories of children used as labor force by the abusive character of the work and by the degree of risk to which children are exposed. Convention 138 of the International Labour Organisation (ILO) establishes the worst forms of child labor (slavery, forced recruitment, prostitution, trafficking, the practice of forced illegal activities and risk exposure) gradually until the light work, therefore not affecting education, and permitted after age 12. The fundamental rights of the child are often an elusive goal in individual cases or in communities where poverty families push children to work at an early age. Around the world, about a quarter of children less than 15 years old have the labor activities as their principal occupation. In this study, the tension between the legal frame and social reality is emphasized by exemplifying with several studies and statistics on child labor (exploitation of the child) in Romania. To analyze the phenomenon in all its dimensions, we must understand the social context of family, cultural-values and politico-economic background of working children. Then there are several kinds of child labor (domestic help, product sales, various occasional jobs, and even beggary) covering a wide range of behavior of adults towards children: from neglect and abuse to ill-treatment and exploitation. Finally, the paper outlines a series of potential solutions for reducing the phenomenon of working children.

Key words: *abuse, child labor, children's rights, education, exploitation by work, poverty*

JEL Classification: [K 33]

1. Introduction: Main aspects regarding childhood, children rights and children's labor

As a generic term, "childhood" is something quite difficult to be categorically established. A general definition of childhood can be: "certain period of life in which a human being is seen as a child, as defined by the cultural, social and economic aspects of that period" (Frones, 2001: 148, quoted in Corsaro, 2008).

One of the basic issues related to childhood and child status, problems with important legal implications, is what sets the age limit up to which a person is declared "child". The upper limit of the 'child' status is often assumed (though not always) the minimum age of legal responsibility. From a social perspective, to be a child constituted the legal document that gives this status (as a minor). *Children Right Convention* defines "child" as "every human being below the age of 18 years unless under the law applicable to the child, the adulthood status is attained earlier".

Because it is strongly influenced by social-cultural determinants, childhood is a social construct that varies from one historical era to another, from one society or culture to another (Corsaro, 2008; Myers, 2001). By this angle, we can speak of

“childhoods”. In this respect, B. Goldson (1997) establishes some “structural conditions”¹ affecting the way in which childhood is experienced. Going forward, other authors have identified several explanatory anchors on sociological analysis of children and childhood: i). Childhood should be understood as a cultural construct (...) distinctive toward biological immaturity, being neither a natural feature or one of universal human groups, but as a structural and cultural element; ii). Childhood is a variable of social analysis that cannot be dissociated from other variables such as class, gender, ethnicity, etc.; iii). Social and cultural comparative studies demonstrate the existence of various childhoods, not a unique or universal phenomenon; iv). Children's social relationships and their cultures must stand alone from adult perspectives and concerns; v). Children should be regarded as dynamic actors in the construction of their own lives, that of others and the society in which they live (Jenks, 2005: 50-51).

An area of particular interest to legislators and various representatives of civil society in democracies are represented by the *children's rights*. A number of theoretical perspectives circumscribed childhood in various lights of moral, psychological, sociological, economic and legal concepts. D.W. Archard (2004) incorporate in his work on the *rights and childhood* relations some of the main interrogations on children's rights (types and socio-moral positions of these rights): if the minors have rights, are they the same as adults rights, are there more rights than the adults ones, these children's rights are properly treated? The author, summarizing the ideas expressed in the literature, presents the main views on this topic: i) rights are elections protected by law; ii) to have rights, a person must be able first to exercise choice, and children do not have this capability; iii) therefore, children have no rights, adults being those empowered to protect their interests; iv) there is a reciprocal relationship between rights and obligations; v) children have rights.

A balanced perspective on children's rights is that they *should have certain rights and freedoms*, but they should not benefit of all of them, because they don't have the ability to choose, being unable to compare and to exercise their will as assumed mode, the latter appearing spontaneously, without a reasonable balance of the consequences. In the same vein, there is a certain incompatibility between the content and status of child rights (e.g. granting the legitimacy of opinion to persons in infancy and who cannot speak, can't express herself explicitly).

Although these questioning seems relevant and should be taken into account, there is un-denying the legitimacy of children's enjoyment of rights. Thus, it was proposed (Archard, 2004) to define two categories of rights: *rights to exercise the freedoms* (the right to free vote, the free practice of religion, the right to opinions, etc.) and *physical security and social rights* (right to life, safety and health).

If the state's law (with few exceptions) stipulates the rights of children to protection from all forms of violence, medical assistance, education, etc.,

¹ Social class (rich kids – spoiled, poor children - suffering), gender (girls kids, boys kids), race, ethnicity (major, minor), disability (healthy (regular) children, children with disabilities) etc.

theoretical debates and international struggles on policies focuses most frequently on the rights to exercise the various freedoms (vote choice, person entitled to be custodian/guardian of the child, etc.). The disagreement related to the granting of children's rights in the exercise of freedom let in the background, the accountability question: to what extent children has discernment for an fair opinion and how, to what extent to grant this right does not affect the adult position itself? The justifications put forward by opponents of children's rights is the fact that, unlike adults, children are not qualified to have rights. Another reason offered argues that granting rights of children proves itself some misunderstandings of the definition of childhood, children, and relations between them and adults (*idem*, 2004).

As a stage of development and life, childhood presupposed a dependence on adults, there imposing itself a protective system where the basic rights of children (physical and social security) are provided by adults. Going forward, it had discussed the restrictive policies that require the idea of responsibility of children for their own actions (such as lowering the minimum age for incarceration), but simultaneously gives the right to vote, the legitimacy of the capacity to exercise the will.

International jurisdiction fit *child's labors* (categories of activities) by their abusive nature and degree of risk to which minors are exposed. Convention 138 of the International Labor Organization ranks children chores from the worst forms (slavery, forced recruitment, prostitution, trafficking, the practice of forced illegal activities and risk exposure) to light work that does not affect education, and permitted after 12 years of age. "Child labor" is a limited concept in relation to "economically active children" (which excludes those older than 12 years and working a few hours a week approved light work and those over 15 years whose chores are mild). Thus, it can be considered that the boundary between abusive and non-abusive work is dependent not only on the type of employment, but also on the type of relationship established between the child and the employer, for example. Different forms of abuse and exploitation can thus manifest in employee-child relations: the employer could consider the child chore to be un-risky or "light", but in practice it can be hard and risky. Considering these aspects, the definition of work should be designed in a more comprehensive manner, to include more specific elements involved in an employment relationship. Thus it could show that although work does not belong to those considered dangerous (drug trafficking, prostitution, mining, agricultural work with harmful chemicals), it can be risky for the child, through the relationship with the employer. Another issue is the reduced years of schooling for that child, by engaging him in the fieldwork, which is a risk to economic and social security once he will reach the adulthood.

2. Theoretical perspectives related to child labor

Although child labor was a reality in the Western world yet before the advent of industrialization in the first decade of the nineteenth century, this

phenomenon in the West was established in force, marking *exploitation of children through work*. At the same time, it is already largely recognized the value of education (most valuable asset) and the *importance of professionalisation* (Marshall, 1920, quoted in Corsaro, 2008). The author signal chain effects of education in the early stages of industrialization: “any change that offers greater revenue opportunities bred to develop their skills of workers of a generation, will increase the moral and material benefits that they can give to their children” (Marshall, 1920: 468, quoted in Corsaro, 2008). In this century, education tends to be considered a form of capital investment, being legitimated like physical capital (gross work). Although still not appear a moral movement to eliminate child labor in the period of industrialization, the balancing force of attraction exerted by education are already highly valued. The institutionalization of education (and economically advantageous in terms of new trade union movement) will more clearly circumscribe the place and role of children in Western society.

This raises the idea of *educated citizen as a source of wealth*. In the nineteenth century, J. Stuart Mill bring forward the problem of positive consequences of education on society, claiming that a parent who does not educate his own child cause a breach of his duty not only to children but also to “community members in general, who are at risk to face the negative consequences of a lack of education, due to ignorance of their fellows” (Stuart Mill, 1970: 319, quoted in Haralambos and Holborn, 2013). Institutional forms of education organized by the state authority will bring to the forefront the idea that first education (not work) is what has given children. With this turning point that followed the era of industrialization, theoretical perspectives focused on the idea that early work deprives society of the benefits of educated citizens.

Social democratic thinking and leftist movements. The social-democratic perspective assume that education system fails to equalize the chances of the lower classes children with those of middle classes. The relationship between poverty of the families and school failure of children from the lower classes was an argument for left representatives (social - democrats) to support assisting children at risk of school dropout as a real need, which the state has to respond. Unequal access to education and educational opportunities are a result of social inequality (the class differences) – which is the conflictualist paradigm theorized by Karl Marx). Precarious situation not only reduces the level of education of children, but pushes them to work early, usually physical and underpaid, creating a category of poor adults who will perpetuate material insecurity and educational precariousness in the next generations.

Social justice to support disadvantaged groups implies the need of social policies provided by the state in order to reduce inequalities generated by the free economy: positive discrimination measures, subsidized educational services, lending and redistribution of resources.

Liberal thinking and ideological right. The liberal also claims that the school brings undeniable contribution to the reduction of social inequalities. Modern societies with free economy are sorts of meritocratic kind of society,

flexible, open to social mobility, determination, perseverance and talent. From this angle, child labor is not necessarily a bad thing, if we are to grow professionally from an early age. Compared to leftist perspective, the liberal thinking sees equality as equal access to resources, fairness in opportunities to access various tools, institutions, and facilities in the main idea of supporting citizen to progress. What liberal perspective brings more is the individual choice, the responsibility. State provides, but the individual can take advantage or not, according to its free will and capabilities. The liberal vision was criticized by Marxist sociologists who believe that social inequalities are a major impediment in the achieving of liberal ideal, without state intervening through structural protectionist measures. (Haralambos and Holborn, 2013: 81).

According to *human capital theory*, education involves not only formal training but his extention to more types of education. Theorists of this approach are held to the policies by which the labor is prohibited under certain ages, while it is vital for survival (Myers, 2001). In this sense, child labor come as a result of the poor economy and underdevelopment of the state, and the solution to end this phenomenon is the elimination of poverty and the causes that generate it (*idem*). Analyzing the relationship between child labor, education and incomes throughout life, it can be circumscribed human capital, which is a product of the individual, including education, skills and abilities on which he acts in his profession.

An advantage of the human capital perspective is that it made reconciliation between left and right perspectives, reconfiguring attitude towards working children. From the status of victims or illegal workers, children become potential employees, contributing to economic development, and from the investment in them can bring both social and individual advantages, consistent with their training in the labor market.

Interrogation is whether elimination of child labor automatically brings a higher level of education. Studies unanimously indicate an association between low education and high rates of employment in children (Statistical Information and Monitoring Program on Child Labor, 2002; International Labor Organization, 1992 – quoted in Bequele and Boyden, 1998). Therefore, it is clear the positive role of the school in the social development and make child labor a major impediment on such large social benefit, underlining the idea that child labor must be substituted by education. But the means by which this can be achieves are disputed.

A number of studies on the relationship between education and child labor have led to several facets of this relationship. It seems that it is mediated by several factors, among which highlights the structural ones (related to social system), but also by those related to mentality and aspirations of families and communities).

The high costs of schooling are often cited as the reason for early work engagement. Campaign “Stop Child Labor” which supported one agenda to eradicate child labor in front of the European Parliament in 2005 said the problem consists mainly in “bureaucratic obstacles” that impede access to economic and social disadvantaged children to attend mainstream schools. Issue of documents indicating

residence and regulations related to the age of school enrolment, transportation problem and costs of the schooling makes impossible the education goal for some families. Economic precariousness and lack of community relations prevent marginalized and poor families to borrow to invest in education of their children.

In Western countries, which works on political programs of liberal, education (especially regarding higher education level) works according to the criteria of competitive economy, and the system of loans for education is a way to overcome the financial impediments alleged by marketisation of education (Jenson and Fraser, 2006).

The value of education, its desirability and relevance to society is another issue to be considered. Parents are the ones who put the accents and they are tributaries to flowing values in society (Siddiqi and Patrinos, 2004²; Corsaro, 2008). How these values are perceived by the parents (e.g. educational advantages, their attitudes towards school and aspirations for children's future) determine the decisions they will take on work-education equation. Some specialists (Jenson and Fraser, 2006) argue that parents from poor social class does not calculate long-term benefits of education, not appreciate education, instead consider efficient and value for their children to go to work, detrimental to schooling, although they might miss the incomes from children's work. Other analysts (Siddiqi and Patrinos, 2004) argue that parents from lower social classes want the same benefits for their children as the parents from the higher classes, wanting also to invest in education. The idea that emerges is the *relevance of school education*, this issue being related to relevance of the social models of a successful life, but also to social policies and capacity to promote the value of education and reducing child labor.

3. Child labor: statistics

The most accurate estimates of child labor are provided by the International Labor Organization (ILO). But these statistics have obvious limits: no recorded data on child labor in developed countries, not on less socially visible chores in terms of child labor, the numbers do not reflect the children's work in informal sectors.

However, the statistics estimates are worrying: for 2000, ILO (2002) mention that over 185 million children (under 15 years) appear as employed in economically activities. And in 2005, of all the world's children under 15 years, 20% were constantly working, daily. (*idem*). For the same year, it was estimated that 171 million children work in hazardous conditions or were put at risk at work performed by them. Children working in hazardous conditions constitute the majority of workers in total and 55% of children aged under 12 years who work, do so in conditions that involve risks (ILO, 2002).

² See their work, *Child labor: Issues, Causes, and Interventions*, working paper available at: siteresources.worldbank.org/EDUCATION/Resources.

Table 1. Children involved in economic activities, in illegal work and hazardous work (worldwide) ³

Age group	Number of economically active children	Number of working children	Number of children involved in risk labor activities
5-14 yrs old	210.800.000	186.300.000	111.300.000
15-17 yrs old	140.900.000	59.200.000	59.200.000

In addition to the number of children who work risky is advancing the figure of 8.4 million children involved in other “worst forms of child labor” (ILO Convention 182/1999) and 1.2 million children were trafficked worldwide. By the same estimates, 15 years ago were 5.7 million children working in forms of slavery or forced labor, 1.2 million of them were trafficked (bought or sold), 1.8 million involved in prostitution, pornography, 0.6 million in illegal activities, and 0.3 million in armed conflict (ILO, 2002).

After 10 years, in 2012, globally, it is estimated that 265 million children were working, but the economic crisis has decreased the number of working children (from 16.7% in 2012 to 19.3% in 2008). However, child labor remains a concern for many authorities and national / international institutions. Although for Romania we have a lack of statistics showing the trends, there are clear evidence who indicate that in rural areas are more child laborers than in urban areas (agriculture, housework and livestock). Statistics can be combined with the much higher number of rural children leaving school.

Statistical data on *economically active children in Romania* are incomplete and provide different figures. A 2004 report by the Ministry of Labor, Social Solidarity and Family, shows that of the approximately 5 million children, “about 900,000 are involved in economic activities. Over two thirds of the 900.000 performe such activities in rural households. Activities covered by the report are considered, in statistical terms, the “boundaries of production” of goods and services and include those conducted in households. Exception are the performed household services if they are produced by its members”. According to the same study, approximately 300.000 children (representing 6% of them) engage work with some frequency, receiving monetary compensation for their effort, most often illegally. According to international definitions, they are “working children”. Instead, the National Statistics Institute (2003) estimated a much smaller number of economically active children in our country: 82.884 (as reported by parents) and 141.905 (as reported by children). *National Survey on Children Activities* (INS) assessed the degree of involvement of children in work based on questionnaires given regularly to parents and children. Possible explanations for the differences between the responses of parents and children can be given that parents are not fully aware of the activities of children nor declare a behavior considered undesirable or the children hiding to their parents the work

³ International Programme on the Elimination of Child Labor (IPEC); Statistical Information and Monitoring Programme on Child Labor, 2002.

they carry out (actually less plausible).

The study of World Vision Romania *Child Welfare in Rural Areas – 2012* shows that the average time spent at work by children from rural areas in Romania was two hours, but 13 percent of the minor's children interviewed said they work at least four hours per day.

Regarding the worst forms of child labor, a study on abused and neglected children in the family conducted by the National Authority for Child Protection and Adoption – ANPDCA (research conducted on a non-representative sample at national level) shows that “one of 10 children felt they were exploited by parents being forced to work, to beg, to look after for their younger siblings. The study also shows that 13% of parents of the sample responded that they prevented children from attending school (Daphne Notebooks, 2004: 223).

According to the data centralized ANPDCA, in 2013 were 260 reported cases of exploitation of the child labor, 217 cases less than in 2008.

A textbook prepared by the International Labor Organization states: “In Romania, about 6% of children were found working more than 6 hours per day (representing 240,000 children between the ages of 5 to 17 years). The main types of work have been domestic service, agriculture, begging, transport, loading and unloading of the goods” (ILO, 2004: 36). Statistical data collected on child labor in Romania (INS, 2003; Save the Children Romania, 2002, 2005⁴; Ghinăru, 2004) showed that most child laborers are involved in agricultural activities, which, although seasonal, involve productive activities throughout the year. Most child laborers live in rural areas where the incidence of poverty is more than double that of the cities (INS, 2003).

Child poverty as defined by organization Save the Children (2000) includes several conditions: insufficient household resources to cover the children material needs, families and communities inability to care for and protect them, and a lack of education or disease.

But child labor is not confined to rural areas and are not always related to poverty. In the main cities of Romania, authorities began to notice that some parents use the talent of children, to make money. In terms of time spent in working, most economically active children in rural place about 3 hours in household work even out of agricultural season. During autumn work, many of them spend the entire day or 8 hours on acre / field (State, 2001; Ghinăru, 2004). Street children have been identified as being involved in work, in addition to prostitution. In Romania, street children are considered to be the largest group of children engaged in the *worst forms of child labor* (Ghinăru, 2004).

Especially because of poverty and ignorance of parents, there are cases where children come to work as the adults do, and the few cases where there are complaints. In the social centers across the country, there are hundreds of children who have come under state protection after being exploited. The phenomenon of child labor affects a significant number of children, but this phenomenon is

⁴ <http://www.salvaticopiii.ro/România/resurse/rapoarte.html>, last accessed: 9 March 2017.

difficult to be monitored, given that the use of child labor in the household and is often seen in rural areas, as a matter of course and just a few reported as abuse.

4. Legislative frame

Under international law, anyone under the age of 18 years are considered child. The children account a half of the population of developing countries. The European Union has about 100 million children. EU policies and legislation directly affects children's lives. All EU member states are parties to the *Convention on the Children's Rights*, subordinated to international law on human rights, with clear obligations to promote, protect and respect the rights of every child. The Lisbon Treaty makes an explicit objective of promoting child rights and foreign affairs of the EU and the EU Charter of Fundamental Rights states that the child's best interests is a primary consideration in all EU actions.

However, in the EU, a quarter of children live in poverty. Children are annually a quarter of new asylum seekers. 250.000 children are reported missing every year (one to two minutes). About 800.000 children have one parent in prison. In Europe, more than 1 million children are institutionalized⁵.

In 2002, International Labor Organization established on June 12 as World Day Against Child Labor, to raise awareness of the gravity of involving children in activities which are actually forms of exploitation.

Romania has adopted a comprehensive legislative framework to protect children from economic exploitation and from hard work (ratification of international conventions – ILO-IPEC Program, quoted in Grigorescu, 2004 –, national legislation on children's rights and specific legislation, including provisions in Labor Code⁶) and a National Steering Committee to prevent and combat child labor, and also the Intersectorial County teams coordinated by the General Directorates of Social Work and Child Protection, by which prerogatives appear the children protection from economic exploitation.

According to the National Agency for the Protection of Abused Children, the National Steering Committee for Preventing and Combating Child Labor serves as a coordinating and monitoring agenda in order to prevent and combat child labor and does not intervene directly in cases of exploited of children by work; instead, its main responsibilities are: prioritizing this issue to policies and programs, including areas and sectors which have developed programs-action and ensure inter-ministerial collaboration.

According to Romanian Labor Code, “the individual becomes able to work at the age of 16 yrs. old and may conclude a contract of employment as an employee at the age of 15 yrs. old, with the consent of parents or legal guardians for activities suited to development physical skills and knowledge, if that does not jeopardize their health, development and training. The employment of persons

⁵ UNICEF, *Manifestul pentru drepturile copiilor*, <http://www.unicef.ro/wp-content/uploads/Manifestul-pentru-Drepturile-Copilului.pdf>, last accessed: 9 March, 2017.

⁶ <http://www.dorinm.3x.ro/work/legislatie/CodulMuncii1972.html>, last accessed: 8 March, 2017.

under the age of 15 yrs. old is prohibited”, as determined by this code. Beyond the provisions of the Labor Code, the Labor Inspectorate⁷ also recalls the provisions of Article 127 of Law 187/2012, according to which “the employment of a minor child at non-compliance with legal age or using him for the provision of activities in violation of the legal provisions relating to the employment of minors child is a crime punishable by imprisonment from three months to two years or by fine”.

The Child Helpline (116111) has reported 177 cases of child labor in 2013. Studies indicate that the main causes of the exploitation of child labor in our country are: poverty, single parents, parents working abroad who financially support children left in Romania and girls who have left the family home and chose to live with intimate partners. The most cases were reported to Child Helpline in several underdeveloped counties as Teleorman, Maramureș, Olt, Ilfov, Prahova and Constanța.

According to experts, among the lack of recognition’s causes of child labor as a form of abuse, the most important seems to be the lack of public education to report such cases. More than gross physical labor, possible cases of exploitation or abuse represent the engagement of the children in activities involving financial benefits of cultural and artistic activities. In February 2015, the Romanian government adopted a decree which regulated the provision of children’s activities in several domains: cultural, artistic, sports, advertising and modeling. The decree concerns that the number of hours in which these activities are provided are defined by age, the employing agency to be checked, to inform municipality that wants to carry out such work, to made a contract between the parent and the agency, and both the parent and the agency to know clearly in what time frame the child can do the work, aiming that the child will not be affected on sleep patterns, dining program, school program.

5. Conclusions

The relationship between social realities and legislation is, especially for children's rights, a struggling one.

On the first hand, poverty leads to child labor. According to a study conducted by UNICEF Romania⁸, approximately 600 million children worldwide live in poverty, and future projections are critical: by 2050 almost 70% of the world’s children will live in poor and vulnerable countries. Children constitute essential entities for development, but at the same time, they are disproportionately affected by poverty, emergencies and conflicts. Building an inclusive, stable, democratic and prosperous society start with children’s rights. Child labor is covered by international law on human rights, in particular the UN *Convention on the Children’s Rights*.

⁷ www.inspectmun.ro/problematika%20eliminarii%20muncii%20copilului.doc, last accessed: 6 March 2017.

⁸ <http://www.unicef.ro/publicatii/starea-copiilor-lumii-2016>, last accessed: 9 March, 2017.

On the other hand, as the liberal thought and researches shown, the relationship between poverty and child labor is not always straightforward (State, 2001) – only a small fraction (3% - NIS 2003) of children working in Romania do it for survival – so must be involved in discussion the non-economical factors implied on this phenomenon.

In this respect, it's obvious a need of an insight who goes beyond mere statistics, focused on perspectives of the values in relation to the work of families and children themselves. There are several classifications and legal and moral connotations on child labor. Proposed by UNICEF and ILO, the labour activities' classification is carried out according to the "seriousness forms of work" and "according to the areas of work" (the classic quantitative data collection by statistical institutes). Each of these modes has strengths and weaknesses. Given that there is a certain degree of acceptability of agricultural work, compared to those in other areas (work in constructions, work in mines), the first assumption implied is that in Romania the majority of children who work do so in areas with low degrees of risk and does not affect their welfare and education.

Thus, we go all over the idea that we have reframed and nuanced the concepts of "light work", "work of children", "the worst forms of child labor" (ILO, 2004 – quoted in Grigorescu, 2004; Labor Code). It can be raised the phenomenon of *structural ignoring*, in which child labor are ignored by the system, especially when they belong to social marginalised groups.

Statistics on child labor phenomenon in Eastern Europe (Romania) indicates a lesser degree compared to the poorest areas of the world, but not exhibit the voluntary, optionally nature of those encountered in developed countries (World Vision Romania, 2014⁹). The problem is that child labor in Romania is not, in most cases, a voluntary behavior (a wanted chance to make pocket money), but a lifestyle, a form of children exploitation by adults, with long-term negative effects on their psychosocial development and on social functioning as a whole. Legislation should be improved in order to estimate medium-term and long-term risks to children and society, not only to penalize these illegal acts once they appear as registered. And from this point of view, it can be emerged the idea that we have important steps going to be made on different social and legal domains in Romania.

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