

ENSURING THE RIGHT OF MOLDOVAN CHILDREN TO BE RAISED AND EDUCATED IN THE FAMILY: LEGISLATIVE AND PRACTICAL ISSUES

*Mariana IANACHEVICI**
*Maria ORLOV***

Abstract

Children deprived of their family environment exist in all societies. In Moldova during the Soviet era the phenomenon was strictly controlled by the state through specific instruments, which were characteristic to the time.

The independence (1991) and the transition to a democratic system of governance brought about modernization of the regulatory framework and of the instruments used to ensure respect for children's rights, including the right to grow and be educated in a family. At the same time, new social phenomena appeared which prevented the realization of these rights such as: parents migration for work abroad which generated a new type of child abandonment - children left behind and everything which results from it as vagrancy, drugs consumption, involvement in criminal acts; poverty (Moldova has the lowest standard of living in Europe) which causes separation from the family at an early age; a poor budget, which limits the ability of authorities to ensure effective protection of children without parental care, etc.

The European course, which was stated by our country, imposes new rigors of ensuring children's rights through the standards and principles the EU and other international bodies concerned with ensuring of the rights of the child.

Key Words: *rights of the child, family, child protection, child abandonment, family-child separation*

JEL Classification: [K36]

I. Introduction

The Republic of Moldova, as a state of rule of law, undertook to protect human rights, in general, and children's rights, in particular, both through constitutional provisions and by joining and signing most international treaties in this field.

The Constitution of the Republic of Moldova (Parliament of the Republic of Moldova, 1994) guarantees to the children of the Republic of Moldova the right to education (art. 35), health (art. 36), safe and healthy environment (art. 10, 24, 44 and 49), justice (art. 20 and 25) social assistance (art. 47 and 50). In addition, art.

* PhD. Candidate, Executive Director, The Association for Child and Family Empowerment "AVE Copiii".

** Associate Professor, PhD., Legal and Political Research Institute of the Academy of Sciences, President of the Institute of Administrative Sciences of Moldova.

50 and 51 of the Constitution make direct reference to the rights of persons with disabilities, including children in this situation.

The constitutional provisions concerning the protection of children's fundamental rights are supported and regulated in details by the Law on the Rights of the Child (Parliament of the Republic of Moldova, 1994).

The Republic of Moldova is also part to the key international treaties on human rights ratified in the early '90s of the last century, shortly after it became independent. These include: Convention on the Rights of the Child (CRC) in 1993; Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) in 1994; Convention on the Rights of Persons with Disabilities (CRPD) in 2010.

Although the legislative body of the Republic of Moldova has fulfilled its mission by adopting sufficient and adequate regulations for the protection of children's rights, the state institutions that are to fulfill these tasks do not cope with the issues and challenges continuously generated by the society.

Moreover, the social and economic rights of Moldovans have been affected by the financial-banking crises of the last decade both at global and national level and by the regional political instability, which negatively influenced the capacity of state institutions and civil society to effectively foster and protect the rights of the child.

2. Institutions assigned with the task of protecting the child's rights in the Republic of Moldova

The protection of the rights of the child is a multi-agency and cross-cutting process. Historically, it was delegated or subordinated to the education sector mainly because this system covers a large number of children.

After the independence, the reforms implemented in the Republic of Moldova have also aimed at child protection focusing on children at risk. Important clarifications on the roles and responsibilities of local and central authorities have been made in two stages: the first stage – in 2007, when all duties of guardianship authority were transferred from the Ministry of Education to the Ministry of Labor, Social Protection and Family and the second stage – in 2014, when the Law no. 140/2013 (Parliament of the Republic of Moldova, 2013) on the Special Protection of Children at Risk and Children Separated from their Parents came into force. This law defined, for the first time, the central child protection authority (the Ministry of Labor, Social Protection and Family), as well as the local (mayors of villages and cities) and the territorial (Social Assistance and Family Protection Departments / Municipal Department for Child Rights Protection in Chişinău) guardianship authorities. This law also makes important clarifications in terms of the duties of local, territorial guardianship authorities and of the central child protection authority with regard to the procedures, mandate,

terms, etc., as well as the liability for non-compliance. The Law no.140/2013 also introduces a new position at the 1st level of the local public authority – the specialist in child rights protection. However, this position has not found its utility in the system yet, because of the lack of money.

In the context of primary, secondary and tertiary prevention of the separation of children from their parents, including through abandonment and with a view to enforce the rights of children to grow and be raised in a family, a significant role is played by the local Multidisciplinary Team, the Local Council for Child Rights Protection and a number of collegial structures, including the Commission for the Protection of the Child in Difficulty (Government of the Republic of Moldova, 2016), or of the Territorial Multidisciplinary Teams within the National Referral System (Government of the Republic of Moldova, 2014). All of these are aimed at the complex examination of cases and identification of inter-agency solutions.

The deficit of inter-agency coordination in child rights protection is also addressed at the level of central public authorities. An example is the National Council for Child Rights Protection (http://www.cnpdc.gov.md/ro/advanced-page-type/membrii-consiliului_2017) chaired by the Prime Minister and consisting of ministers and vice-ministers, representatives of the General Prosecutor's Office, civil society, trade unions, Academy of Science, international organizations and UN Agencies, as well as the Ombudsman for children's rights.

An important role in fostering and independently monitoring the child's rights is played by the Ombudsman for Children's Rights that exists in the Republic of Moldova since 2008. Although the Ombudsman is intensely supported by UNICEF and other UN Agencies, as well as by the civil society, this institution has not been fully and continuously working. Moreover, the election of the person holding this position is as political as any other election or appointment in the supreme state authorities. The process of the last two years is a good example in this regard, when the election procedures and the terms for identifying the best candidate have not been observed. Thus, the Decision of the Parliament no. 140 of July 3, 2015 on Appointing the Ombudsman for Children's Rights was declared unconstitutional (Constitutional Court of the Republic of Moldova, 2015) by the Constitutional Court, having as *amicus curiae* the Alliance of NGOs Active in Child and Family Social Protection that produced the necessary reasons (APSCF, 2015) concerning the importance of electing a new Ombudsman for Children's Rights that will meet at least the requirements set out in art. 6(d) of the Law on the Ombudsman (Parliament of the Republic of Moldova, 2014) – work experience of at least 10 years and renowned activity in the field of protecting and fostering human rights.

Equally important in making decisions that directly or indirectly affect any child is child participation in decision-making. A number of participation models have been developed in the recent years in the Republic of Moldova: starting with

collective participation models, e.g. in the school life – such as the Pupils' Boards, or sector participation, like the National Advisory Board of Children within the Ministry of Labor, Social Protection and Family. Because of the lack of experience and coordination of activities, these democratic tools of involving children and youth in the social life faces multiple difficulties and no results can be seen yet. However, a model that brings results seems to be the Reflection Group created by the Center for Information and Documentation on Children's Rights (<http://drepturilecopilului.md/index.php/en/> 2017), which, within 2008 - 2016 developed in a participatory method and presented to the UN Committee for the Rights of the Child two Reports (Gavriliuc, CRIC, 2008; 2016) on how rights of the child are enforced in the Republic of Moldova in children's view.

A special role in child rights protection in the Republic of Moldova is played by civil society. The civil society organizations (CSOs) working in the field of children's rights are mostly located in the capital of the country. About 70-75% of their activities are funded by external donors, as part of projects, in most cases. The so-called 2% Law that allows individuals to direct 2% of their income tax to non-profit organizations of public utility has come into effect on January 1, 2017 and it is premature to assess its effectiveness.

About 90 CSOs concerned with children's destiny have created a national coalition – the Alliance of NGOs Active in Child and Family Social Protection (ACFSP). Its members manage projects of different size, including modeling social services that are sometimes co-funded by the local public administration. Although the coalition is numerous, its involvement in advocacy actions or in the active monitoring of the enforcement of state policies at local, regional or national level is modest (APSCF and ChildPact, 2016).

A special subject without sustainable solutions, which is a serious concern for the local and international community is the enforcement of human rights (including children's rights) in the Transnistrian region of the Republic of Moldova (Racz, 2016). The *de facto* administration of the region has accepted the humanitarian and social support of the EU, but boycotted Moldova's aspirations to join the EU and promoted the integration in the Eurasian Union. At the same time, the *de facto* administration of the region has adopted an action plan as a result of publication of the UN Report on Human Rights in the region (Hammarberg, 2013). However, the child protection system in the region has a completely different structure and is far from being able to address children's rights from the perspective of the UN CRC, including non-discrimination, best interest, right to life and subsistence and participation.

3. Factors generating situations of risk among children

The Child Protection Index in the Republic of Moldova (<http://www.childprotectionindex.org/dashboard> 2017) indicates for 2013 the value of 0.52 out of 1

possible, the lowest score being assigned to the dimensions Capacity of the Child Protection System (0.35) and Accountability (0.36), and the highest score was given to Law and Policy (0.77) followed by Services (0.55) and Coordination (0.48). The effort of implementing Law and Policy is equally modest – 0.35, which means that, although existent and, possibly, not bad at all, the Law and Policy dimension is not fully implemented, consequently it is possible that not all children receive the adequate and necessary protection. This means there is a risk that the most vulnerable children, e.g. the children separated from their parents or at risk of separation are the most affected because of the lack or shortage of protection measures.

The separation from parents is a problem affecting all countries in the region, which is still topical given the level of poverty and its impact – for instance, parents' migration.

The research conducted by Magdalena Sepúlveda Carmona the results of which were introduced in a special UN report on extreme poverty and human rights, published on February 13, 2015, indicated that about 28.2% of Moldovan children lived below the poverty threshold, while child poverty in rural areas where two thirds of children live is three times higher than in urban areas.

Poverty and unemployment have generated migration abroad to find higher and safer income sources. According to the official statistics, over 330,000 Moldovan citizens either work or are looking for a job abroad (Center for Demographic Research, 2014), but the unofficial estimates indicate a figure of about one million (Gassmann et al, 2013).

Children whose parents work abroad are mainly raised by their grandparents or other relatives. In 2012, two thirds (63%) of children aged 0 – 17 were estimated to live with both biological parents, 22% - with their mother and 4% - with their father. 1 in 10 children grows without one parent (National Public Health Center of MoH of the Republic of Moldova and UNICEF, 2014) and one of the main reasons is international migration. It has been estimated that 21% of children under 18 (about 150,000 children) have at least one biological parent abroad, and 5% of them (about 35,000 children) have both biological parents abroad (Yanovich, 2015).

The effects of this phenomenon of parents' migration are different and have positive and negative aspects. The transfer of remittances and the availability of additional resources enable the families to invest more in children's education and health and to meet their daily problems without problems. On the other hand, parents' absence erodes the family structure and relations, affecting the social and psychological development of left behind children (HelpAge, 2010). Such separation encourages a supplier-consumer relationship between the left behind child and the migrant parent, especially, if the parent is the mother. At the same time, many left behind children assume multiple chores, which reduces their time for education and play and affects their relations with the peers (Salah and

UNICEF, 2008). This increases the danger of risky behavior determined by the emotional impact on children. Moreover, the absence of parents influences the development of the child's personality and may result in the growth of the inferiority complex (Vremis et al, 2012).

4. Protection of children separated from their parents

In the last 5 years, the statistics of children without parental care in Moldova show a light growth from 3483 new cases in 2012 to 4448 new cases in 2016. At the end of 2016, the guardianship authorities had 16,334 children without parental care in their records.

The main reason (60.5% in 2016) why children are left without parental care is the migration of the only or both parents abroad. It should be noted that this figure is not a complete reflection of reality since the above mentioned Law no.140 assigns the status "child without parental care on a temporary basis" or "child without parental care on a permanent basis" only to children who are found to be in one of the following situations: children are victims of violence; children are neglected; children practice vagrancy, begging, prostitution; children are left without care and oversight by their parents because of parents' absence from home for unknown reasons; children's parents have deceased; children live on the streets, ran away or were chased away from home; children's parents refuse to fulfill their parental duties of growing and taking care of children; children have been abandoned by parents; a judicial measure is issued with respect to one of the child's parents (temporary protection, kinship care) (Parliament of the Republic of Moldova, 2013). Thus, not all left behind children fit in these situations, because they are looked after by relatives, family friends, neighbors or other people and, although this measure is far from providing legal protection, children are in a family environment that is, in most cases, a safe one. On the other hand, the absence of a legal representative endangers the protection of the interests of left behind children in the social relations: in the education, healthcare, social assistance and protection, justice and other settings. The specialized literature mentions a number of decisions of the European Court of Human Rights regarding the compulsory legal assistance needed by minors (Iovanas, 2008). To this end, Law no. 140/2013 stipulates that, after the assessment of such cases, if the findings do not indicate threats, then the guardianship authority must only appoint the carer as guardian of the child, which gives them the powers of legal representative. However, this generates two problems:

1) from the procedural perspective, the appointment of a guardian requires the future guardian to prepare a file, which comprises, among others, a health component. It is the preparation of the file that requires a lot of time and money (usually, the referrals from the family doctor to the specialized doctors take time and some investigations are charged as are all the travels from the community to the district capital). It is obvious that not all carers have the money to cover these expenses;

2) from the procedural perspective, the appointment of kinship care on a child requires the consent of the only or both parents who are abroad. In practice, it is difficult to receive such consent, because these cases are usually identified when the parents are already gone abroad. In most cases, their stay in the receiving country is not legal and they cannot make the necessary legal declarations.

Consequently, although the legal and regulatory framework on the protection of left behind children is complex, its implementation is hampered and, as a result, the left behind children are left with no protection or legal status.

Other reasons why children are left without parental care are the separation of children from parents because parents neglect their parental duties or commit abuse and violence against their children. In 2016, these situations made up 25% of all newly registered cases of children without parental care. The other 15% of cases are mainly caused by death of the only/both parents (8%) and other minor reasons (parents have lost their legal capacity, died or were declared missing, etc.).

Given the above mentioned, the challenge of the child protection system are children who need alternative care. Although the massive reform of the residential care system carried out in 2007-2012 has reduced by 80% (from 11500 to a little more than 1700 children) the number of children from this system of care, every year almost 7% of children without parental care are still referred to residential institutions.

The system of preventing child institutionalization (Government of the Republic of Moldova, 2016) that is in place throughout the country produces its expected outcomes. Statistics show, for instance, that the protection measure applied to about 59% of children without parental care every year is the reintegration in the extended family although formal kinship care is not always established even in such cases - i.e. the responsibility of legal representation is not delegated to one of the *de facto* carers. It is also important that in about 13% of new cases of children without parental care, the reintegration in the biological family is used as a measure, which means important work with the family. In the other 21% of cases, children are placed in family-type alternative services that have two forms in the Republic of Moldova: foster care (Government of the Republic of Moldova, 2014) and family-type home (Parliament of the Republic of Moldova, 2000).

Although, from the perspective of the UN Guidelines for the Alternative Care of Children (UN, 2010), the statistics on the protection measures applied to children without parental care in the Republic of Moldova have a nice appearance, from the procedural point of view they do not meet the requirements approved by the UN Assembly on February 24, 2010. First of all, measures to prevent the separation from the family, i.e. to support the family, are inexistent or very limited. Second, there are districts in Moldova that haven't or have very few family-type alternative services, which keeps fostering the placement in residential care as a form of care. The following critical aspect is the lack of

programs and services for adolescents who annually leave the alternative care system, both family-type and institutional. These children are usually unprepared for independent life (outside the institution) and, in most cases, are victims of circumstances. Since they can easily be manipulated, they are victims of different situations such as: trafficking or drug use, sexual or labor exploitation, prostitution, etc.

Conclusions and recommendations

In conclusion, based on the above mentioned, the Republic of Moldova still has a lot to do to implement all the provisions of the UN Convention on the Rights of the Child. To this end, it is necessary to implement inter-agency and inter-professional intervention measures at all levels of public administration to prevent the separation from parents, including through abandonment, especially, because of parents' poverty and migration.

Children without parental care require special attention, because they have the same right as the other children to know their parents and to grow and be raised by them if the situation is in the child's best interest.

The harm of separation from parents, including through abandonment and the placement in residential care has been demonstrated by various researches conducted in the last 10-15 years, so that the alternative care services, especially, the family-type ones, must eliminate the residential care system throughout the country, with no exceptions.

The periodic review of children's placement to provide the most adequate care that would correspond to the family environment as much as possible are necessary in the whole country. This procedure is important to prevent children from staying too long outside the family and from leaving residential care at the age of 18 without the necessary preparation and skills for independent life.

The child protection specialists, decision makers within the local public authorities of the I and II levels, as well as within the central public authorities are people who, beside a clear and express mandate, must hold the skills required by their position and the actions they must conduct for better child protection. To this end, the basic training, both provided in universities and upon employment, as well as the in-service training must clearly correspond to the image and requirements of the profession and of the job and the curricula must be reviewed whenever necessary.

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