

## FAMILY TYPE CHILD PROTECTION IN ROMANIA. LEGISLATIVE DEVELOPMENTS

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**Abstract:** *The paper focuses on the most important steps taken by Romania in the legislative evolution in the field of children's rights protection. For this reason, we have divided the periods of legislative development into 5, namely: before 1989, the period 1990-1991, the period 1992-1996, 1997-2003 and 2004 until now. The stage before 1989 is characterized by a strong centralization of the responsibility for the protection of "certain categories of minors" by the state (Law no. 3/1970), the lack of resources and the failure to effectively offer protection. The next stage is one of emergency measures, followed by the first real steps towards a society focused on respecting children's rights. A notable evolution in the protection of children outside the biological family was the development of the foster care service, together with Government Emergency Order no. 26/1997. The real progress is Child Law no. 272 of 2004 with its subsequent amendments as well as other elements of legislation intended to facilitate its application.*

**Keywords:** child protection, family care, children's rights, maternal assistance, legislative evolution

### 1. Introduction

Concern for the child's well-being has been manifested and reflected in legislation differently, over time, in Romania. We can study this aspect in a systematic way by phasing the analyzed periods as follows: before 1989, then in the following period when a quick repair was attempted, of the crisis intervention type, in order to be able to lay the foundations for the reconstruction of the system - 1990-1991 -, the stage of transition, of some important but uncoordinated changes - 1992-1996 -, the stage of fundamental changes, of consolidating an adequate legislative base, called by Greenwell (2002: 2) "of real changes" in the protection of children's rights - 1997-2003 -, and the period 2004 to the present, of continuous improvements.

Since 2004, with the appearance of Child's Law, we can talk about a coordinated development, correlated internally and internationally, in the direction of promotion and guarantee by the state of all children's rights, as they are provided in the UN Convention of 1989. The study of the legislative evolution from the perspective of protection of children's rights was carried out and eloquently scored, for the period before 1989 and until 1999, in the volume *Protecția copilului. Dileme, concepții și metode* (Roth-Szamoskozi, 1999: 27-41), which proposed a phasing of the reform that would include the period 1990-1991, that of rapid changes, which the author, citing Elena Zamfir, calls it a period of the reparative regulations (Roth-Szamoskozi, 1999: 28), 1992-1996, when a series of regulations appear that focus mainly on material support for children, 1997 being the year of the beginning of the 3rd stage, a stage marked by "judicial reform of child protection" (Roth-Szamoskozi, 1999: 36).

### 2. Before 1989

Before 1989, the Romanian state promoted a pro-natalist policy, reinforced by Decree 770 of 1.10.1966, which led not only to the growth of the country's population in general, but also to an increase in the number of families who could no longer properly care for children, causing a high rate of admissions to residential centers. In this context, was published Law 3 of 1970 regarding the protection regime for certain categories of minors, in the Official

Gazette no. 28 of March 28, 1970. This law remained in force from May 12, 1970 until June 11, 1997, when it was revoked and replaced by Emergency Ordinance no. 26/1997. In the statement of reasons to Law no. 3/1970 was stated that the state is the one responsible for the protection of children who cannot be cared for in their own family. For this, the document states, an important role is played by the Executive Committees of the Popular Councils which, through the guardianship authority, supervise the way children are raised and educated, supporting those who need special protection from the state. Article 2 of Law no. 3/1970 referred to the measure of family placement, specifying that it could be instituted with a family or a person who met the "necessary moral, material and sanitary conditions" (art. 2 para. 1, Law 3/1970). Next, it is specified that the measure can only be taken with the consent of the parent or guardian and that it can be ordered by the County Popular Councils through the social assistance body. The foster family was entitled, according to this law, to receive a maintenance allowance for the minor, the amount of which was established by a decision of the Council of Ministers. The children for whom the placement measure could not be instituted, but did not have the necessary and sufficient conditions to grow up in their own family, were directed to cradles and children's homes subordinated to the Ministry of Health, respectively Labor.

Starting with December 1989, Decree no. 770/1966 was no longer applicable, thus it was removed one of the causes of the high number of children protected by the state in cradles and children's homes.

### **3. From 1990 to 1991**

The first major attempt of the child protection system, after 1989, was to build the foundations of a child protection system that would meet international standards of child rights protection capable of addressing the major problems facing the system at that time and making towards the transition from the protection of the rights of the child in the narrow sense to the protection of the child in the broad sense (see the definition of the child protection system in the narrow sense and in the broad sense according to Thoburn apud Roth-Szamoskozi, 1999: 17) in a decentralized manner. This involved shifting the focus, previously almost exclusively, from the situation of children deprived of parental protection and admitted to large residential centers, to all children who, at some point, became vulnerable and needed protection, through measures of a higher degree decentralization. Romania was among the first European countries to ratify, in September 1990, the Convention on the Rights of the Child, a convention adopted by the United Nations General Assembly on November 20, 1989.

Law no. 18 of September 27, 1990, stated in the preamble, among other things, that the family is recognized as a "natural environment intended for the growth and well-being of all its members and, in particular, children" (Law 18/1990).

To overcome the crisis, Romania accepted significant international aid coming especially from important international non-governmental organizations such as Mediciens Sans Frontieres, World Vision International, International Red Cross, Save the Children International, SOS Children's Villages International etc. Gradually, they built their bases of action in Romania by establishing national and, later, even local branches. For example, SOS Satele Copiilor Romania was established on November 26, 1990, with distribution in 3 counties. World Vision Romania has been operating for over 30 years in our country since 1990, getting involved in supporting an impressive number of children in difficulty (over 24,000 cases in 6 counties in Romania, according to the information on the official WV Romania website <https://worldvision.ro>).

Regulations regarding the rights and protection of the child were included in the Romanian Constitution of 1991 which stipulated the right to life and to physical and mental integrity (chap. 2 art. 22), freedom of expression (chap. 2 art. 30), the right to education (chap. 2 art. 32) the right to health protection (chap. 2 art. 33), for all citizens of the country, without

discrimination and a decent standard of living (chap. 2 art. 43). Article 44 (chap. 2) emphasizes the equality of rights of children outside of marriage and those of marriage. An important role in the evolution of the regulations regarding the rights and special protection of the child is played by Article 45 (chap. 2) *Protection of children and young people*, in which the right of children and young people to a special regime of protection and assistance, to allowances of state, aids for sick or disabled children as well as other forms of social protection were stipulated. Any form of exploitation of minors is explicitly prohibited by law.

#### **4. From 1992 to 1996**

The period 1992-1996 is characterized by an accumulation of legislative measures aimed at addressing the problems in the child protection system after the first wave of crisis interventions, which assumed the emergency of some necessary laws, the modification of others and a massive infusion of material, financial, logistical, and training aid in the field. The year 1994 is the one of the professional debuts of the first graduates in the social work specialization after its abolition in 1969. Since it was found that these first measures were not nearly enough to reduce the number of children in cradles and children's homes, it was necessary to rethink the legislation in a more profound way even if, until 1997, the steps taken were only necessary fragments in a process that needed to be much larger. The appearance of Law no. 11/1990 with the amendments from Law no. 48/1991 regarding adoption and the numerous adoptions - both national and international - approved over time, the repeal of Decree no. 770/1966 and the first forms of organization of childcare alternatives in smaller residential centers (see, e.g., SOS Children's Villages) failed to visibly decrease the number of children who were protected in large residential centers. This is because the number of admissions to residential centers did not decrease in the short period after 1989 (even though abortions were legalized, and the number of unwanted pregnancies decreased). The continued pauperization of the population because of the transition crisis from the centralized to the market economy is becoming another source of causes for child abandonment. Added to this is a growing number of families established and reconstituted through cohabitation, single-parent families resulting from separation or divorce, susceptible to poverty more than typical families. This was complemented by greater freedom regarding the management of sexual life of adolescents and young people, without a minimum of relevant informational support from the perspective of sexual education.

To regulate the status of children abandoned in state institutions, the state adopted Law no. 47/1993 regarding the judicial declaration of child abandonment. This allowed not only the establishment of temporary protection measures for children in the protection system, but also of permanent ones.

Also in 1993, the National Committee for Child Protection was created by Decision no. 103, which stipulated, in article no. 4, the main attributions. This stage represents progress in the coordination of the necessary measures for the protection of the rights of the child because the Committee became responsible for the elaboration and proposal of strategies and legislation in the field, as well as for the coordination and supervision of all concrete measures and actions needed to be taken.

This period of legislative changes also included the issue of cross-country adoptions from the perspective of aligning Romanian legislative measures with international legislation on adoptions, thus, it was published in the Official Gazette no. 298 of October 21, 1994, Law no. 84/1994 for the ratification of the Convention on the protection of children and cooperation in the matter of international adoption, concluded in The Hague on May 29, 1993.

Government Decision no. 1.150/1996 regarding the operation of social services for child protection, published in the Official Gazette of Romania, Part I, no. 299 of November 21, 1996, refers to the organization of social services for child protection in the structure of county councils and local councils of the sectors of Bucharest.

All these changes aimed at improving child protection measures left, for the most part, unresolved the problem of the large number of children institutionalized in large residential centers and did not cover the guarantee by the state of all the rights of the child, as they were assumed by signing, in 1990, of the UN Convention on the Rights of the Child.

### **5. From 1997 to 2003**

The real reform was glimpsed only in 1997, with the emergence of Emergency Ordinances no. 25 and 26 which brought regulations that were the basis of modern legislation on the issue of adoption and the protection of children's rights. Emergency ordinance no. 25/1997 would be approved, the following year, by Parliament as Law no. 87/1998, and Emergency Ordinance no. 26/1997, as Law no. 108/1998.

Emergency ordinance no. 26/1997 on the protection of children in difficulty brings to the fore, for the first time, the idea of protecting children in difficulty - unlike Law 3/1970 which had been in force until that date, and which regulated the situation of the protection of "certain categories of minors" (Law 3/1970). Through this ordinance, although the notion of ill-treatment did not appear explicitly, the concept of a child in difficulty was defined, thus using an internationally agreed terminology (Roth-Szamoskozi, 1999, p. 37). Also important is the fact that Government Emergency Ordinance no. 26/1997 (GEO no. 26/1997) stated that the responsibility for the well-being of the child is, first, of the local community of which the said child is a part, with the state having a distal role, supporting, and guaranteeing the application of legal norms.

GEO no. 26/1997 - published in the Official Gazette no. 120/12.06.1997 -, provided for the establishment of the Child Protection Commission and the Specialized Public Service (SPS) for child protection, specifying their duties. In order to respect the best interests of the child, the normative act stipulates a series of legal measures that can be taken in the case of a child in difficulty, as follows: entrusting the child to a family or a person, the specialized public service or an authorized private body, entrusting in order to adoption, placement with a family or person or within SPS, as well as emergency placement (art.7, GEO no. 26/1997).

Of major importance for the beginning of the profession of professional maternal assistant are art. 8 (2) in which it is specified that at the level of the Child Protection Commission it can be decided "to entrust the child to a family or a person who consents to it and who presents the material conditions and moral guarantees necessary for the harmonious development of the child", art. 23 para. (3) from Government Emergency Ordinance no. 26/1997 which introduces the notion of a professional maternal assistant and his need to certify as a professional - an aspect subsequently provided for in Decision no. 217 of 1998 as well as art. 25 which stipulates the obligation of local public administration authorities to act for the identification, training, and evaluation of a territorial network of professional foster carers.

Another normative act relevant for 1997 is Decision no. 205 of May 19, 1997, regarding the organization of local public administration authorities in the field of child rights protection, which provides for the establishment of the County Directorates for the protection of children's rights, as well as their structure and attributions. Among the services that are established within the Directorates is the Service for supporting family-type alternatives.

Important, here, is the provision regarding the attributions of the Directorates according to which they should support "family-type alternatives to residential-type child protection" (art. 6, letter g, Gov. Decision no. 205/1997) and try to identify some permanent solutions for children. It is the moment when the state explicitly includes in a normative text the recognition of the superiority of childcare in the family compared to the residential environment. It also provides for the identification, evaluation, training and support of families or individuals to create a network of professional protective families at the county level, according to art. 6, letter j of Decision no. 205/1997, thus indicating the general framework for establishing the network of future professional foster carers.

Decision no. 217 of 1998 regarding the conditions for obtaining the attestation, the attestation procedures and the status of the professional maternal assistant establish the details of the selection, attestation and employment of the care person so that they can be included in a formal work framework at the level of the County Directorate for the protection of children's rights or at the level of a private body authorized in the field of child protection.

Law no. 108/1998 for the approval of the Government Emergency Ordinance no. 26/1997 regarding the protection of the child in difficulty, adopted on May 11, 1998, marked an important legislative leap that was the platform for launching, in 2004, the Children's Law. It is the first regulation with legal status that addresses the child's right to protection from the state after Law no. 3/1970. GEO no. 26/1997 warrant, on the part of the state, the protection of the child's rights and support offered to the local community that has the obligation to protect the child in difficulty. An important aspect of this law is the regulation of the transfer mode of cradles and children's homes as well as the centers for receiving minors, which operated until that moment according to Law no. 3/1970, and their reorganization into placement centers and child reception centers within specialized public services.

The next important step in the legislative evolution was the Government Emergency Ordinance no. 192/1999 for the establishment of the National Agency for the Protection of Children's Rights (NAPCR) which structures with a higher degree of coherence the work organized on a national level for child protection. Government Decision no. 260/2000, published in the Official Gazette no. 171/21.04.2000, aimed the approval of programs of national interest in the field of the protection of the rights of children in difficulty and emphasizes the importance of maternal assistance activity, stating the need to decrease the number of children included in the residential care system protection and shifting the emphasis towards family-type alternatives, with funding from the budget of the National Agency for the Protection of Children's Rights and the budgets of county councils.

The year 2001 is marked by the request of the Adrian Năstase Government, addressed to the Romanian Parliament, to adopt a moratorium on international adoptions for one year, a request influenced by the country report presented in the European Parliament where attention was drawn to the negligent treatment of this aspect by the authorities of the state. As a result of the action taken, international adoptions were suspended in October 2001, which put some level of pressure on domestic families and residential alternatives.

Another element of progress in 2001 is the Government's Emergency Ordinance no. 12/2001 which provided for the establishment of the National Authority for Child Protection and Adoption. This GEO was approved and amended by Law no. 252/2001 and art. 9 para. (3) from Government Decision no. 770/2003 with reference to the organization and operation of the National Authority for Child Protection and Adoption. Thus, the coordination of the entire activity, on a national level, of the protection of children's rights rests with this new authority, recognized under the acronym NACPA, which receives additional powers compared to the National Agency for the Protection of Children's Rights – NAPCR. In art.1(4) of the GEO no. 12/2001, it was stipulated that this new authority is responsible for the application of policies and the development of strategies in the field of the protection of children in difficulty and those with disabilities, but also in the field of adoption, thus taking over the powers of the NAPCR. Decision no. 539 of June 7, 2001, specifies the government strategy in the field of child protection in difficulty for the period 2001-2004 as well as the operational plan for the implementation of this strategy.

Because the incidence of ill treatment applied to children did not indicate, over time, a decrease in the phenomenon, Ministerial Order no. 177 of 2003 which provided minimum standards for the child telephone, the counseling center for the abused, neglected and exploited child, as well as mandatory minimum standards for the community resource center for the prevention of child abuse, neglect and exploitation, provides important resources in protecting and promoting children's rights at the level of local communities. In 2003, the

Computerized Child Tracking and Monitoring System, CCTMS, was created. (Stănciulescu, Grigoraș, Teșliuc and Pop, 2016).

The conditions and procedures for attestation and the status of the professional maternal assistant are reformulated by Government Decision no. 679/2003 published in the Official Gazette no. 423/23.06.2003. Order no. 35/2003 established minimum standards necessary to ensure the protection of the child at the professional maternal assistant and offered a guide for the implementation of these standards, supplementing Gov. Decision no. 679/2003, regarding the attestation of the professional maternal assistant. The large time gap between the two elements of approved legislation - attestation conditions and procedures, respectively professional standards -, the first government decision for maternal assistant attestation being Gov. Decision no. 217/1998, illustrates the inertia that persists at the macro level in the field of child protection. From GEO no. 217/1998, which allowed professional parents to be certified, 3 years passed until the establishment of the National Authority for Child Protection and Adoption and another 2 years until professional standards were drawn up. Practically, from the profession's outline to the establishment of its standards, it took 5 years in which the trials and failures of the system were paid with repercussions on the children's well-being. These elements of legislation in the field of child protection at maternal assistant were supplemented by Order no. 137/2003, published in the Official Gazette no. 702/7.10.2003, which concerned the curriculum of professional training courses for professional foster carers. Law no. 326/2003 is also important, establishing the rights of children and young people in specialized public services for child protection, of mothers protected in foster care centers, as well as those of children in placements with professional foster care assistants. This was later supplemented and amended by Law no. 111/2004 and Law no. 257/2013.

## **6. From 2004 to present days**

The most important elements of recent legislation are Law no. 272 and Law no. 273 of 2004, regarding child protection - Law no. 272/2004 being also known as the Child's Law -, respectively Law no. 273/2004 regarding the regulation of national and international adoptions. It is important to mention here the fact that the legislator gives a higher degree of importance to family placement measures compared to residential ones, this aspect being also emphasized by the prohibition of the placement of children under 3 years old in the residential system, once the foundations of the family placement system were laid to the professional maternal assistant. Also, this year, Government Decision no. 1434/2004 regarding the attributions and the framework Regulation for organization and operation of the General Directorate of Social Assistance and Child Protection (GDSACP).

In 2004, the European Commission issued a warning to Romania to stop the export of children in the form of international adoptions, otherwise risking the blocking of EU accession and the suspension of support funds. This results in the adoption law being amended in June and international adoptions banned. Prime Minister Adrian Năstase and French Prime Minister Jean-Pierre Raffarin establish the need to set up an international commission that includes EU experts, assigned to evaluate cases of adoption outside the country.

In 2005, the National Authority for Child Protection and Adoption (NACPA) was transformed into the National Authority for the Protection of Children's Rights (NAPCR), with the extension of its mandate in the field of protection and promotion of the rights of all children in Romania (Recomandările Comitetului ONU pentru Drepturile Copilului. A 51 sesiune, 2009: 2). According to the observations of the UN Committee on the Rights of the Child (2009: 3), some of the recommendations have not been fully implemented, one of them being the one regarding the development of the Child Monitoring and Tracking Information System (CMTIS) in a way unitary throughout the country.

Government Decision no. 1058/2005 approved the National Action Plan for the application of legislation in the field of child rights protection, and Government Decision

860/2008 provided for the National Strategy in the field of child rights protection for the period 2008-2013. The need for clarification regarding the implementation of the 2004 Children's Law was answered, in 2006, by the Manual regarding the implementation of Law no. 272/2004, manual made by NACPR with the support of UNICEF.

Decision no. 49 of January 19, 2011, establishes the framework methodology regarding prevention and intervention in the multidisciplinary team, in cases of violence against children, respectively the role of professionals in preventing and reporting them. In the absence of notification, even though the ill-treatment is established, the GDSACP employee or the teaching staff, who hold the status of civil servants and have the obligation "to notify the criminal investigation bodies about the act that is related to their service", are liable for "committing the crime of omission to report", an act provided for and sanctioned by art. 267 of the Criminal Code (Law no. 287/2009). We believe that this legislative provision is, on the one hand, little known by those who, by virtue of their profession, interact with children, on the other hand, its application/lack of application may be one of the reasons why reporting seems to be at the assessments of the adult who notices the problem. It would be interesting to know how many such situations have come to the attention of the legislator over time, since the inclusion of this provision in Law no. 286/2009. Also, any natural or legal person has the obligation to immediately notify the authorities if they become aware of the commission of an act that endangers the life or causes the death of a child, otherwise being liable for committing the same crime of failure to report (art. 267 Criminal Code), that is considered a particular form of non-reporting. Employers of child protection institutions have the obligation, by art. 102 of Law no. 272/2004, to notify the criminal investigation bodies and order the removal of the employee who committed any form of violence against the child, otherwise they are also liable to sanctions. Incidents such as bodily injury or accidents suffered by protected children must be reported in writing, according to the Standards of Order 21/2004 (XXI, 6), within a maximum of 24 hours after the occurrence of the event. The children themselves can report the violation of their rights, see Law no. 272/2004, art. 34 (Călian, 2019: 25). The changes from 2013, by Law no. 257/2013, on Law no. 272/2004 provide for sanctions for failure to report suspicions of ill-treatment, but they were not followed by the development of clear institutional procedures that establish a hierarchy of reporting responsibilities at the level of all institutions involved (hospitals, schools, etc.). For professionals working in the field of child rights protection, provisions are stipulated regarding responsibility and how reporting is done. This aspect of the law's evolution sets some benchmarks for responsibilities and avenues for resolving suspected maltreatment, including for highly publicized cases of foster care abuse and neglect. The year 2012 is marked by the fact that Romania amends the Law on Adoptions and resumes international adoptions based, however, on very restrictive criteria. Decision no. 299/2014 regarding the organization and functioning of the National Authority for the Protection of Children's Rights and Adoption, published in the Official Gazette no. 289 of April 18, 2014, reorganizes National Authority for the Protection of the Family and the Rights of the Child.

At the end of 2014, the National Strategy for the protection and promotion of children's rights for the period 2014 - 2020 and the Operational Plan for its implementation were adopted by Government Decision no. 1113 of December 12, 2014. In 2016, the policy regarding the resumption of international adoptions is continued by the Dacian Cioloș Government, Law no. 273/2004 undergoing repeated updates. The organization and operation of the Child Protection Commission is reanalyzed, and its new operating formula is published in the Official Gazette, Part I no. 596 of July 25, 2017, by Decision no. 502/2017.

Law no. 257/2013 for the amendment and completion of Law no. 272/2004, with its republication in the Official Gazette no. 159 of March 5, 2014, defines the best interest of the child, stating that it is limited to "the child's right to normal physical and moral development, socio-affective balance and family life" (art. 2, paragraph 11, L257/2013). In the case of children abandoned in maternity, for which art. 11, paragraph 7 provided that after the

registration of the birth, SPS is obliged to send to the GDSACP the act of registration of the child's birth, it is modified by specifying the deadline of 24 hours for carrying out this step. For the situation of children abandoned in maternity hospitals for whom the parents have not taken steps to register the birth, the obligation of the local SPS to take this step is stipulated (in art. 111). The same law introduces changes regarding the purpose of the service plan, so that, in art. 35, paragraph 4 states that it aims to "prevent abuse, neglect, exploitation and any form of violence against the child or the separation of the child from his family", different from the previous form where only the role of preventing the separation of the child from his parents was specified. Art. 54 is also amended, and a deadline provided by law is introduced, so that the GDSACP has the obligation to draw up the individualized protection plan (IPP) within 30 days after receiving the request for the establishment of a special protection measure or immediately after the director of the GDSACP ordered emergency placement. Prior to this change, it was specified that the GDSACP should carry out the PIP as soon as it received the request to institute the measure, without establishing a maximum time for this.

An interesting aspect, contained in the legislative amendment, which comes to make parents responsible for the efforts to raise and support their own children, is that for the parents of children for whom a special protection measure has been instituted, not only a contribution amount can be established for their maintenance but also, when this aspect is not feasible, the obligation of the able-bodied parent to perform 20-40 hours of work of local interest, monthly for each child, during the application of the special protection measure, within the city of the domicile or residence (art. 63, paragraph 4). Article 64, paragraph 11 introduces necessary and important additional clarifications with reference to the situation of children whose legal guardians are in the situation of being "detained, arrested, interned" or "cannot exercise their parental rights and obligations". Article 64, paragraph 12 explains the roles and obligations of public institutions in the cases provided for in paragraph 11, respectively the fact that the institution "which decided or ordered one of the measures provided for in paragraph (11) which led to a minor being left without parental protection or who, as the case may be, receives or hosts a person whom he knows is the sole legal guardian of a child" must inform the GDSACP responsible for the city to which the child belongs about his situation and his legal guardian.

Another important aspect of the legislative amendment brought by Law no. 257/2013 was the amendment of Article 64, paragraph 3 of Law no. 272/2004, namely the fact that, during the emergency placement of the child, the rights, and obligations regarding the administration of the child's assets pass from the responsibility of the president of the county council to the responsibility of the DGSASPC director. In article 66, paragraph 1 of the same law, the deadline for notifying the court regarding the measure of emergency relief is changed from 5 days to 48 hours. The amendment of Article 70 implies the extension of the period for monitoring the situation of the child reintegrated into the family, at the end of the placement, from 3 months to 6 months.

Law no. 52 of March 30, 2016, for the amendment and completion of Law no. 272/2004 brings additional clarifications regarding the situation in which the child who is domiciled with one of the parents is housed with the other parent or with other family members or persons with whom the child has developed attachment relationships.

The year 2018 is marked by the appearance of Law no. 9/2018 for the amendment and completion of Law no. 35/1997 regarding the organization and operation of the People's Advocate institution, which provides for the appointment of a Child Advocate for the Defense, Protection and Promotion of Children's Rights. Prior to that, the Deputy Ombudsman had duties also in the sphere of protection and promotion of children's rights, a position held only starting in 2007. Until that time, the Ombudsman received referrals from any citizen, adult, or child. Law no. 9/2018 gives the child the status of an equal member of society, at least from the perspective of the right to petition towards this state institution. Still, its visibility and, in this way, its real degree of accessibility remains problematic.



Law no. 286/2018 for the amendment of Law 272/2004 contained additional clarifications related to how the child's personal ties with family members, other than those at the child's home, can be established/maintained. Thus, in article 18 (1), where it is specified that the child's personal relationships can be maintained by hosting him with a family member with whom he does not normally live, it also provides that this measure can be decided either with the supervision of the hosting, or without it, an aspect that constitutes an element of novelty. Paragraphs (5) and (6) are added to the same article 18 of the law. Paragraph (5) refers to situations where the child's interaction with one of the parents negatively affects the relationship with the other parent, so he can request SPS to monitor the child's personal relationships for 6 months. In paragraph (6) it is specified what this monitoring activity consists of. These aspects, which come to regulate more precisely the rights of the parent/family members with whom the child who is domiciled with one of the parents does not live, are complemented by the clarifications of article 20 regarding the return of the child to the parent with whom he is domiciled, from the parent/ the relative who hosts him temporarily. An element of legislative change of major importance is the one contained in Article 64 which prohibits the placement of the child in any residential form of protection under the age of 7, except for the one dependent on permanent specialized care. This aspect puts increased pressure on the foster care system, which needs to be urgently expanded so that it can host a significantly larger number of children. Article 128 of the same law (Law 286/2018) provides for the modified amount of the monthly placement allowance calculated to be worth 1.20 RSI (reference social indicator). Article 129 provides for updated financial support measures, granted to children and young people for whom a special protection measure has been established.

A year of clear demarcation compared to the previous support policies for children who, for various reasons, cannot grow up in their own family, was 2019, when Romania discussed Draft Law no. 457/2019, respectively Law no. 318/2019, for the amendment and completion of Law no. 272/2004 on the closure of foster care centers for children, our country proposing to close all large residential centers by December 31, 2020. A first step in this direction was to stop any new entries in these centers, simultaneously with the reorientation of children to smaller residential centers or in the family placement system, including to the professional maternal assistant. Obviously, the measure was applied differently in different regions of the country because the modernization of the child protection system was at different stages, in different counties. In 2019 in Cluj County, for example, there was no large residential center for which the issue of its closure and the inclusion of children in other forms of protection could be raised. For the preparation of this deinstitutionalization measure, in January 2019, was issued Order no. 26/2019 regarding the approval of the Minimum Quality Standards for family-type social services intended for children in the special protection system, published in the Official Gazette no. 103 bis of February 11, 2019, followed by Order no. 81/2019 regarding the approval of minimum quality standards for maternity centers.

In August 2020, the consolidation of Law 272/2004 is carried out, which is based on its version republished in the Official Gazette, Part I no. 159 of March 5, 2014, including the amendments brought by the following acts: GEO 65/2014; Law 131/2014; Law 52/2016; Law 286/2018; GEO 30/2020; Law 45/2020. Law no. 191 of June 28, 2022, for the amendment of Law 272/2004, published in the Official Gazette no. 652 of June 30, 2022, includes asylum seekers among the categories of children who benefit from this law (art. 3, letter b). An important change is the one that occurred in the definition of the extended family, a change found in art. 4, lit. c, which specifies that this refers to relatives up to the 3rd degree (as opposed to the previous definition which assumed relatives up to the 4th degree inclusive), a fact that eases the work of evaluating the existing resources within the extended family when it is necessary to establish a special protective measure for a child in difficulty. The same change was made to the definition of the substitute family, which will include relatives up to the 3rd degree (art. 4, letter d).

Consistent with the other clarifications contained in Law 272/2004, which assume that protective measures for the child who has reached the age of 14 can only be taken with his consent, it is introduced, in art. 17, a new paragraph, para. 6, where it is specified that the schedule of personal relations, in the case of the child who has reached the age of 14, is established only with his consent. If he refuses to express his consent, this program of personal relations can only be established by the court (art. 17, paragraph 6). Article 21, at para. 1, lit. d, introduces relevant aspects for the methods of evaluation and proof in court of the ill-treatment applied to the minor, stating that the history regarding the violence of the parents on the child "can be proven through medico-legal certificates, evaluation reports made by the social worker or expert reports, psychological examination of the minor, listening to the minor in the council chamber, corroborated with any other evidence provided by law" (art. 21, paragraph 1, letter d), aspects that were missing from the previous form of Law 272/2004. In article 41, para. 2, which specifies the obligation of SPS to inform the GDSACP regarding the finding or suspicion of ill-treatment applied to the minor, the phrase "to notify immediately" is replaced by the specification "to notify within 24 hours" (art. 41, paragraph 2) fact that leaves no room for interpretation of the legal term for the approach in question. A new paragraph is inserted in Article 55, para. 4, which states that young people who leave the special protection system can express their agreement regarding the subsequent monitoring of their situation by the GDSACP. Another important provision is the one introduced by a new article, 55<sup>1</sup>, which specifies the obligation of the GDSACP to take steps to prepare young people for independent life one year before they leave the protection system.

Article 62, para. 2, which makes clarifications regarding family placement, is completed with the specification: "The person or family can also receive in foster care a child whose domicile is in another administrative-territorial unit", specifying the fact that the measure must follow the child's interest, a relevant aspect and for placement services with the maternal assistant. Of great importance is the new element introduced by Article 64, paragraph 2, which specifies that the exception to the prohibition of placement of children under 7 no longer applies to all children under 7 years that require permanent specialized care, but only for those between 3 and 7 years old, respectively: "the placement in a residential type service can be ordered for the child aged between 3 and 7 years old, for whom it cannot be insured empowerment/rehabilitation in other types of services" (Law 191/2022, art. 62, paragraph 2). This amendment, like the previous one, which provided for the increase of the age limit from 2 years to 7 years for children who can be placed in a residential environment, puts pressure on the network of foster carers who are supposed to be ready to receive a larger number of children, an aspect that deserves to be analyzed.

According to the amendments made by Law 191/2022, article 67<sup>1</sup> is introduced, which refers to the protection of data relative to the foster family, prohibiting the Child Protection Commission from disclosing to natural parents' data "regarding the address, income, property owned, medical or psychological condition" of them (art. 67<sup>1</sup>, Law 191/2022). Article 74 of Law 191/2022 regulates the monitoring of the situation of children for whom a special protection measure was previously taken, which ends when the child is reintegrated into the family. Regardless of whether it is a residential placement or a family placement (e.g., with a professional foster care worker), upon termination of this measure, the social worker is obliged to monitor, through evaluations and quarterly reports, the evolution of the child in the family for a period of two years. Articles 76 and 78 bring additional clarifications for children seeking asylum, as well as for those who are beneficiaries of international protection in Romania. Relevant here is the fact that also for these categories of children, the measure of family placement is also provided (art. 78, par. 1).

## **7. Conclusions**

The essential legislative elements, which concern family placement and placement with the professional maternal assistant from 1989 until now are the Emergency Ordinance

no. 26/1997, Law no. 108/1998, Law no. 272/2004 as well as the government decisions regarding the attestation of the professional maternal assistant and the ministerial orders regarding the training program of the maternal assistant.

During that time, there was no consistent concern for preventing separation. For the time being, there has been a shift from residential type care (large residential centers) to care in family-type centers and in substitute families. The prevention of separation should be mainly achieved through services provided, but at this moment the focus in assisting families falls on the provision of benefits rather than services. Another reality is that the protection of the child in difficulty is not sufficiently based on prevention in general and preventing the separation of the child from the family, an important part of the measures being the protection of the child outside the biological family.

However, progress has been made in that the GDSACP's have established a few child and family counseling centers, community resource centers that should balance the emphasis on preventing child separation and, implicitly, on prevention of abuse and neglect.

Residential centers, even small ones, often do not give children the chance to form a secure attachment to an adult, the identification of a positive attachment figure being relevant for the balanced emotional development of the child and adolescent, as well as for prevention or early detection of the bad treatments applied to children. Overall, from 1990 till present, there were made important steps to define and refine child protection in Romania.

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