

Professionals' Perception Regarding the Impact of the Sanction of Deprivation of Parental Rights

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Abstract:

The sanction of deprivation of parental rights is not a viable solution every time, especially since its alternatives are limited. Protecting the best interests of the minor requires multidisciplinary intervention when reasons are identified that require sanctioning the parent's disinterested attitude in taking care of their own child, or more seriously, when direct or indirect violence is generated against him. Administrative bodies work together with judicial bodies in order to assess the need for such a sanction. The present study aims to identify the perception of those working in the two institutions mentioned on the efficiency and results of such procedures.

Keywords: deprivation of parental rights, judicial procedure, professional opinion

Introduction

The present research uses documentary analysis to understand the evolution of the legal framework, with specific reference to the entities involved in this regard, the qualitative method of semi-structured interviews to obtain subjective data and a focus group with specialists involved in such a process.

The proposed general objective aimed at analyzing the views of professionals in the field and their implications on children whose parents have been sanctioned with the loss of parental rights, and the specific objectives established were: identifying the main socio-legal causes that lead to the loss of parental rights; describing the judicial procedure for the loss of rights and the role of the institutions involved, investigating the perceptions of professionals (social workers, lawyers, judges, psychologists) on the effectiveness of the measure, highlighting the psychosocial effects of the sanction on children whose parents have been deprived of their rights.

The target population of the research is made up of specialists directly involved in the procedures for the loss of parental rights. The sample is non-probabilistic, purposive, and the selection was made based on the availability and professional experience of the subjects. It includes twenty social workers from three social assistance departments and fourteen public social assistance services existing at the level of Argeș County, in terms of the applied questionnaire. A focus group was also conducted with five judges from the juvenile and family section of the Pitești Court, five lawyers specializing in family law from Argeș County and five psychologists from Pitești involved in the assessment and counseling of minors.

We will begin this process by going through the documentary analysis determined by the third specific objective. For this, we will analyze the specific applicable legislation.

Literature review- analysis of the procedure

Parental authority represents the totality of those rights and duties that parents must exercise towards their children. At first glance, lexically, the term parental authority may lead us to the idea that the parent only has rights over his or her child, but we are dealing with an obligatory relationship together with the rights of the parties and the obligations assumed by them. (Ploscă, 2020). The notion concerns, on the one hand, the minor's assets, and on the other hand, his or her person. The decisions made by parents regarding their own children must be in accordance with their age and development. In the event that certain disagreements arise between parents regarding decisions regarding minors, the guardianship court will be called upon to decide according to the best interests of the child.

The fact that the parent has the right to take care of the child does not mean that he or she also has the right to order disciplinary measures against him or her, especially those of a physical nature. Certain rights of the child are censurable by parents under certain conditions and up to a given moment - the right to adhere to a religious cult, the right to choose one's religion. (Dobre, 2011).

On the other hand, the obligation of the parents to fulfill their maintenance obligation remains their responsibility until the child reaches the age of eighteen, or if he is continuing his studies until the completion of them, but without exceeding the age of twenty-six.

From a patrimonial perspective, it must be remembered that the assets of the minor and those of his parents are not confused, despite their obligation to administer the child's assets. After reaching the age of fourteen, the minor exercises his patrimonial rights and obligations alone, but only with the consent of the parents or, as the case may be, of the guardianship court.

The exercise of parental authority can be achieved in various ways. As a rule, parents exercise their specific rights and obligations equally and together. When a series of well-founded reasons appear, the sanction of loss of parental rights may be considered. This is subsumed under the idea of endangering the life, health or development of the child and can be identified when we are dealing with: - ill-treatment applied to the minor, - consumption of alcohol or psychotropic substances, - abusive behavior, - serious negligence in fulfilling parental obligations, - serious violation of the best interests of the child. All the details related to the content of the sanction and the way in which the court procedure is carried out in stages are described in art. 508, 509, 512 of the Civil Code.

We can also discuss another hypothesis in which a restriction of the exercise of parental rights occurs when the parent is temporarily objectively unable to fulfill the obligations specific to parental authority, such as poor health, detention or prolonged departure abroad. Unlike forfeiture, in this case we do not base such a measure on the identification of a fault on the part of the parent. At the same time, this solution is reversible (Banciu, 2018). The obligation to delegate the duty to take care of the child's upbringing and education, if the parent goes to work abroad, is often not fulfilled, although the rule is established by art. 104,105 of law no. 272/2004. Failure to comply with this obligation constitutes a misdemeanor, but unfortunately this way of generating a certain pressure on the parent in question does not actually solve the situations identified in society. (Cătărău, 2019).

The application of the sanction may be absolute, in the sense that it imposes the prohibition of the exercise of all parental rights, or limited to some of them. It may also extend to all children born at the time of the court decision or may be limited only to certain minors whose parents have been sanctioned. From a temporal point of view, the deprivation of parental rights will have effects until the time when the causes for which it was established have been removed. Here we can talk about the procedure for revoking this sanction. (Chirică, 2017).

Likewise, the depravation of parental rights does not prevent the establishment of personal relationships with the minor, if the principle of the best interests of the minor is not violated. This does not relieve the sanctioned parent of the general obligation to contribute to the costs of raising and educating the minor. If such an interpretation were given to this situation, it would mean creating an advantage for the parent in question, given that he violates legal obligations that had to be fulfilled. The depravation does not always require an illicit, direct action by the parent thus sanctioned against the child, which may lead to the minor being considered a secondary victim, the victimizing trauma occurring mediated over him. (Badea Butoi, et al., 2019). With the limitation of parental rights, it is necessary to establish a substitute for parental authority, this procedure leading to the establishment of guardianship. Given that the loss of parental rights is a sanction by legal nature, the occurrence of its effects does not in any way affect the obligation of the parent concerned to fulfill his legal obligation of maintenance (regardless of whether it is provided in kind or through monetary equivalent). (Mitrache, 2020).

Given Romania's membership of the European Union, we must not forget that there is a community legislation on the social pillar, through which the manner in which the state will ensure, on a substitutive basis, child care is established, when atypical situations arise within the family of the minor in question. (Olteanu, 2021).

Judicial formalism, including in legal matters related to ensuring the best interests of the child, therefore also in the event of the loss of parental rights of one of both parents, will be compensated by the prior provision of social information and counseling, therapy and mediation services for parents, even if they are the cause of such an intervention. (Pătrașcu, 2014). This support has its limits, determined among other things by SPAS (public social assistance services) that are poorly or not at all developed, especially in rural areas, but also by the lack of qualified social assistance personnel, most of the time without specialized studies (Buzducea, 2009).

Method

The semi-structured questionnaire addressed to the social workers included in the study contained both open-ended questions, multiple-choice questions and an evaluation grid.

The relevant items it contained are the following:

- Can you specify what are the most common reasons for the referral for the loss of parental rights?
 - Are there sufficient institutional resources to prevent cases of parental risk?
 - Is there intervention in the community to eliminate the risk of applying such a sanction? What is the result?
 - Is the proportionality of the measure to the factual situation respected? Is the intervention prompt and efficient?

- Can you name alternatives to the sanction of loss of parental rights?
- Are there administrative and judicial barriers in collaborating with the courts?
 - Is the judicial casework influenced by the way in which psycho-social investigations are prepared?
 - Evaluate on a scale from 1 to 5 the effectiveness of the measure in the protection and development of the child.
 - Post-factum, is there a significant success rate for revoking such a measure?
 - Is there psycho-emotional trauma after applying the sanction only for the child or for the parents as well? What would be the positioning on a scale from 1 to 5?

The questionnaire has the role of collecting standardized data that can be compared, but also opens space for the free expression of professional opinion.

Discussions

The results of the questionnaire applied to social workers reveal the following percentage, compared to the total number of respondents:

95% of respondents believe that domestic violence and serious negligence are the primary reasons for ordering such a sanction;

80% complain about the lack of real interdisciplinary collaboration and a coherent prevention system;

85% believe that the lack of community involvement becomes an aggravating factor;

90% believe that the measure of deprivation of parental rights is justified only in extreme cases, the appearance of the fact does not always lead to the ordering of a judicious measure;

90% consider the deprivation of parental rights as a last resort, but applied in the absence of real alternatives

55% indicate that the courts are too rigorous and request additions or details in carrying out the psychosocial investigation, in order to make a decision;

95% believe that the foundation of the reason for reaching the analyzed sanction is found in the professional way of drafting the psychosocial investigation;

80% believe that 3 is the score of the effectiveness of the measure of deprivation of parental rights in the indicated scalar interval;

70% believe that the reintegration of the parent is rarely possible without interventions from professionals, necessary support that has a continuity character

100% indicate that the minor whose parent has been deprived of rights is affected to the maximum, the scalar score being in this case 5, and 85% believe that the sanctioned parent is affected at a level 3, in the same scalar interval.

On the other hand, in the aforementioned focus group, which was attended by legal professionals involved in the judicial procedure, as well as psychologists who deal with the management of the problems of minors in such situations, the following main ideas were determined:

The magistrates have seen the need for evidence to highlight that the sanctionable parent generates a major danger to the child. At the same time, they have limits in correlating the sanction with the factual situation determined by the gaps in the psycho-social investigations administered by specialized social assistance services. Last but not least, the limits of legislative solutions do not allow a

correspondence between the situations reflected in practice and the measure of forfeiture. A wider range of solutions would create the premises for much more judicious solutions. Sometimes the sanction appears too harsh, but it is taken because there is no other reserve, other times this can be considered insufficient.

The other legal professionals, the lawyers, have claimed that the procedure is cumbersome, with long deadlines that prejudice the efficiency of the solution. It ends up prolonging the state of risk for the minor unjustifiably. At the same time, the lack of correct information, of popularizing the way in which this institution of sanctioning parental authority works, leads to confusion most of the time. Some of the sanctioned parents do not know that the measure can be reversed and what are the necessary conditions in this regard, when revocation is under discussion.

Psychologists involved in the research have noted the trauma that occurs at the level of the child deprived of interaction with one (or in certain cases with both parents), but have emphasized the importance of such a solution in most such cases. Managing such situations is possible only if adequate counseling is provided, with a continuous nature after the application of the sanction.

The results of free discussions between specialists lead to the idea that most magistrates indicated a strong emotional pressure when deliberating in such cases. Lawyers confirm that the normative acts incident in such situations are clear, but the interpretation of the courts is variable, which determines different solutions and requires future interventions to unify the practice in this matter. Psychology specialists believe that support must be dedicated not only to the main target, the minor, but also to the sanctioned parent. Even the restoration of relations between the two parents must be monitored through post-measure psychological interventions, including in the case of the parents. All of this converges towards the good of the child, on whom the effects of the sanction of loss of parental rights are reflected - the lack of affection from the sanctioned parent and the feeling of abandonment.

Conclusions

The interpretation of the results leads to a series of conclusions, as follows: the deprivation of parental rights is a last attempt to restore the normality of the minor's life. However, the sanction is not applied in a timely manner, the lateness of the application being able to have serious negative effects - violence of various types that could thus be eliminated. The motivation for the admission of such a request is most often postponed by the judicial bodies precisely because of the need to capture the repetitive nature of the non-compliant behavior on the part of the sanctionable parent. The evidence is often difficult to administer, recently the reasons for domestic violence can however be more easily proven thanks to another distinct procedure for them and which has been well adjusted, with tangible effects in practice.

The jurisprudence in this matter is not uniform, which causes dissatisfaction. The interaction between public social assistance services and courts can be improved, especially since not all of these structures, especially those in rural areas, have lawyers to help the social workers who collect data from the field in order to prepare the psychosocial investigation.

The loss of parental rights constitutes a separation of the minor from the sanctioned parent, but without taking the necessary correlative measures of

psychological counseling, it will be devoid of content. The best interest of the child should not be interpreted strictly legally, since in these situations it must be evaluated on an emotional level. We recall here a new element in judicial practice, namely the first final court decision issued at the level of the Bucharest District 1 Court, respectively the Bucharest Tribunal, whereby the reason for parental alienation was translated as psychological abuse and, as a consequence, the sanction of loss of parental rights was applied to the parent who generated such an effect. A proposal for the future is also included regarding the competencies that can be assigned to specialists who will carry out their activity in what is defined as emergency social assistance, especially since the starting point was created by the amendment made in this regard to the framework law no. 292/2011 on the national social work system. A rapid primary intervention within the framework of emergency social assistance will be able to prevent much better the occurrence of cases that today generate the application of the sanction of loss of parental rights.

Limits

The small number of subjects is a serious limitation, but it is difficult to include all specialists in such a research, especially since those involved in judicial proceedings are more reserved and less available. However, the representativeness of the conclusions is ensured since the number of magistrates, lawyers and psychologists involved in such proceedings is small. Regarding the questionnaire, the included subjects were chosen, using as the main criterion their experience in the profession, which ensures the consistency of the answers given.

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