

LEX FERENDE MEASURES REGARDING MINOR CHILD PROTECTION IN ROMANIA

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Abstract: *Paradoxically, according to the legislation in force, the consent is mandatory even when the parental rights of the parents were terminated, what empties of content the very institution of parental rights termination and the efficiency of imposing such a measure in practice. Consequently, in cases when the parent displays obvious lack of interest, bad-faith and no intent of caring for the child, lex ferenda legal provisions should be in place such as to allow imposing adoption without parental consent.*

Key words: *child, right, parents, adoption.*

1. Introduction

As the concept of family environment includes not only parents, but also other legal representatives (e.g. grandparents or other relatives) as well as foster caregivers, the minors falling into the category of „children deprived of a family environment” are those living in placement centres.

Children living in such placement centres, in the care of the state often remain institutionalized without the possibility of being adopted.

This situation arises, because in accordance with the present legislation (see the attached document), the parents, even if their parental rights have been terminated, have to consent to the adoption.

Further, a child from a placement centre who is not visited by the parents cannot be adopted, and in cases when the child’s life is in danger, the Directorate for Child Protection has not the authority to remove

the child from the abusive environment immediately, unless the parent/s sign a relevant statement, which often is difficult to obtain.

2. Present legislative situation.

The Romanian legislation has tried to respect the international regulations regarding the protection of children: The Universal Declaration of Human Rights, the Convention regarding the Rights of Child, adopted by the General Gathering of the United States Organisation in the 20th of November 1989 and ratified by the Law no.18/1990, the Convention of the European Council regarding the Fight against the Traffic of Human Beings, adopted in the 3rd of May 2005 and opened for signing in the 16th of May 2005. Romania signed this convention at Warsaw in the same day and ratified it by the Law no.300/2006.

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Other international rules regarding the children rights have been the following: the optional Protocol to the Convention regarding the selling of children, the children's prostitution and the infantile pornography, signed in New York in the 6th of September 2000 and ratified by Law no.470/2001; the United States Convention against organized transnational crime; the protocol regarding the prevention, the abolition and the punishment of the traffic of human beings, especially women and children, additional to the United Nations Convention against the organized transnational crime; the Protocol against the illegal traffic of immigrants, additional to the United States Convention against transnational organized crime, adopted at New York in the 15th of November 2000 and ratified by Romania by the Law no.565/2002.

3. *Lex ferende* measures regarding minor child protection in Romania

According to art.11 of *Law no. 273/2004 regarding the judicial regime of adoptions*, the persons *required to consent to adoptions* are:

- a) birth parents, or, as the case may be the legal guardian of a child whose birth parents are either deceased, unknown, declared dead, missing or were denied custody, as provided by law;
- b) any child over the age of 10;
- c) the adopting persons or, as the case may be, the adopting family.

Not valid is any consent given in exchange for the promise of or for a rendered service, regardless of its nature or whether this service precedes or is subsequent to the consent.

According to art.12 par. (1) of *Law no. 273/2004 regarding the judicial regime of adoptions, the birth parents of the child* need to consent to the adoption. In the case

of a child being adopted also by the spouse of the adopting person, consent has to be given by the spouse who already is the adoptive parent of the child.

Further, according to art.12 par. (2) of the same act, a parent or parents whose parental rights were terminated or who were penalized by interdiction of exercising their parental right, ***maintain the right of consenting to the adoption of the child***, while the consent of the legal representative is mandatory. If only one of the birth parents is deceased, unknown, missing, legally declared dead or missing, as well as if, regardless of the cause, cannot express her or his will, the consent of the other parent is sufficient.

The consent of the child's birth parents is not required if both are in any of the above stipulated situations, as well as in the case of an adoption as provided by art. 5 par. (3).

Exceptionally the court can overrule, the refusal to consent to the adoption of the birth parents or, as the case may be, of the legal guardian, if it is proved, by any type of evidence, that their refusal to consent to the adoption is abusive, and if the court deems that the adoption is in the best interest of the child, also taking into consideration the child's position expressed according to art. 11 par. (1) - b), such decision requiring an explicit motivation in this regard.

The consent of the birth parents or, as the case may be, of the legal guardian is given in front of the court that rules on the request for initiation of the adoption procedure. The consent of the birth parents or, as the case may be, of the legal guardian can be given only after a 60-day term from the child's birth as recorded in the birth certificate. The birth parent or, as the case may be, the legal guardian may revoke their consent within 30 days from legally expressing it.

Consequently, in cases when the parent displays obvious lack of interest, bad-faith and no intent of caring for the child, *lex ferenda* legal provisions should be in place such as to allow imposing adoption without parental consent.

Paradoxically, according to the legislation in force, such consent is mandatory even when the parental rights of the parents were terminated, what empties of content the very institution of parental rights termination and the efficiency of imposing such a measure in practice.

There are cases when an intervention executed by the Directorate for Child Protection comes too late, if postponed until the court rules consequently to a presidential ordinance. The celerity of solving this issue could be ensured by creating several specialized courts. At present the only specialized court is The Tribunal for Minors and Family of Braşov.

Another aspect is that of the impossibility of recruiting foster parents given the frozen vacancies.

Hence the number of foster parents is insufficient in relation to the number of children waiting for foster placement. Deblocking of foster parent posts would represent a guarantee for ensuring a family environment to the minors.

Although not an object of the study, it is noteworthy that children coming of age (at the age of 18) who are not enrolled for full-time education have to leave the placement centres, thus being removed from state protection. The insufficient financing of the so-called „protected workshops” has led to their absence at national level.

In conclusion the following measures are proposed:

1) simplification of the adoption procedure (see the attached document) such as to effectively ensure a family environment to the child. The principle of

priority of the child’s best interest over the parents’ interests will thus be enforced;

Consequently to a modification of art. 22 par. (1)- a) of *Law no. 273/2004 regarding the judicial regime of adoption* – modification in force since 07 April 2012, the individual protection plan concludes in internal adoption, if a year after imposing the measure of special protection the child’s birth parents and its relatives to the fourth degree cannot be located or do not cooperate with the authorities in view of undertaking the child’s reintegration or integration within the family.

The term of one year is, however, very long, considering that imposing the measure of protection via a court takes almost one year, and initiation of the adoption procedure in court takes another year – during which time the child grows and identifying families willing to adopt becomes increasingly difficult.

It needs be pointed out that the parents or the relatives have to undertake visible steps for the reintegration of the child and their actual possibilities of taking the child home have to be correctly evaluated, as many parents only declare, but do not materialize their intention of reintegrating the child. While many such parents do not take their child home or do not have a place where reintegration is possible, they do not renounce or sign statements of consent to the adoption of the child.

2) the possibility granted by law to the Directorate for Child Protection to intervene immediately and temporarily when the minor’s life is endangered, even prior to a court ruling based on a presidential ordinance;

3) financing for the creation of centres for adults, offering support to institutionalized children that have come of age;

4) continued training of the persons specialized in working with and attending to the issues of institutionalized children, and ensuring the necessary financing.

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References

1. Law no. 272/2004 regarding Protection and Promotion of Children's' Rights, as subsequently modified.
2. Law no. 273/2004 regarding the Regime of Adoptions, as subsequently modified.
3. Law no. 47/2006 regarding the National System of Social Assistance.
4. Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20 November 1989, ratified by *Law no. 18/1990*, republished, as subsequently modified.
5. Law no. 448/2006 regarding Protection and Promotion of the Rights of Disabled Persons, republished.