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The Institutions of Public Administration of Child's Protection of the Republic of Moldova

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The Institutions of Public Administration of Child's Protection of the Republic of Moldova

Andrei SMOCHINĂ¹, Tatiana FOCȘA^{2*}

Abstract

The state has a fundamental responsibility towards the destiny of every citizen, especially towards the children that represent the future of the country. The state contribution to the activity of child protection is manifested by guaranteeing the functioning of institutions, services and public or private structures which are responsible for child care and protection. Social protection of people in general and of children in particular represents the key-element of the social reforms and the main direction of the state social policy. As social activity, the public administration fulfills the general interest expressed within the law, accordingly being the activity that organizes and enforces the law till the concrete material fact. The public authorities intervene every time when the child's development, safety or physical and moral integrity are endangered. The research issue consists in determining the institutions of public administration of child's protection and analyzing the competences of these institutions regulated in the European acts, in the normative acts of the Republic of Moldova and in many other acts that are subordinated to the law. The analysis of the national judicial practice shows that in all cases which are related directly or indirectly to the best interest of the child, the presence of the guardianship authority is mandatory. The best interest of the child is the principle that represents the supreme concern in the judicial and extrajudicial procedures with children involvement. Thus, all regulations approved in the field of respecting and promoting the child's rights, as well as any legal act issued or, according to case, concluded within the mentioned field are subordinated with priority to the principle of the best interest of the child. Thus, by the given investigation, the authors tend to reveal which of public authorities is involved in the protection of child's rights, as well as to analyze the practices of the European states regarding the subject under discussion.

Keywords: *institution; state administration; protection; safety; child; best interest.*

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1. Introduction

At the universal international level, the protection of the child rights had a long way including two stages: the declaratory stage – debuting with the adoption in 1924 of the Declaration of Child's Rights, and the conventional stage – marked by the Convention of the United Nations Organization regarding the child's rights of 1989 and its two Optional Protocols of 2000. According to these acts the society and public authorities have the obligation to offer special care to children without family, as well as to those children that don't have means of subsistence [1, principle 6]. The States parties will supervise the institutions, services and foundations that are responsible for the protection and care of the children, to respect the standards established by the competent authorities, namely by those related to security and health, to number and qualification of their staff, as well as to the assurance of a competent supervision [2, pct. 3 art. 16].

Being inspired by the established values of the Convention regarding the child's rights of 1989, regional systems of protecting child's rights have developed, at the continental level as the African Charter on the rights and welfare of the child [3] that represents a copy of the Convention regarding the child's rights on the African continent. At the European plan, the Parliamentary Assembly of the Council of Europe adopted the European Convention regarding the exercise of the child's rights [4, pct. 3 art. 16]. The Convention text is based on the idea of promoting the child's rights: activities circumscribed to states' cooperation which is based on the interrelation between the elaboration of international standards and the implementation of these standards by checking, assisting and promoting them through the educational process and information dissemination.

The Republic of Moldova ratified the Convention regarding the child's rights on 12.12.1990. Since that moment, our Government should assure permanently that every child is enjoying all rights written in the Convention without any exception.

Obtaining the independence, the Republic of Moldova inherited a lacunars legislative system of regulating the relations between citizens and state regarding their protection. The country inherited a defected administrative system of protecting the children's rights. There are attempts to redress the given situation by the related structures. By adopting the Constitution of the Republic of Moldova and ratifying a series of international normative acts, the state took the fundamental responsibility towards the destiny of every citizen both in country and abroad, inclusively towards the children being the future of the country. The state gives a

special attention to all children especially to those in risky situations or lacked of parental care.

The state's participation in the activity of child's protection is manifested by guaranteeing the functioning of institutions, services and public structures that bear the responsibility for child's care and protection. The social protection of the child is the key-element of the social reforms and the main direction of social policy of supporting the people from last years. In order to reform the system of child's protection in the Republic of Moldova and it's adjusting to the European and international standards and engagements among which there is the adopting of the Strategy for the child protection for 2014-2020.

The goal of the research consists in determining the public administrative institutions of child's protection from the Republic of Moldova and the analysis of the European documents, normative documents of the Republic of Moldova regarding the competence of the state structures in the issue of child's protection.

The objectives emerged in order to accomplish the goal are:

- The presentation of public administrative institutions from the Republic of Moldova
- The analysis of national normative documents regarding the competence of the authorities of child's protection
- The analysis of the European normative framework on family and child protection

The research methodology: the given research is qualitative one based on interpretation. It was realized by analyzing the primary documents, normative acts (in force), as well as by analyzing the acts subordinated to the law of the Republic of Moldova.

2. Theoretical Background

In order to elucidate the topic of research, we analyzed a series of scientific works and articles from the country and from abroad on this subject, written by following well-known researchers in the domain under discussion: Prof. A. Iorgovan [5], Prof. C. Manda [6], Dr. L. Mărgineanu [7], Dr. A. Rapotan [8], Dr. S. Neacșu [9], Prof. V. Guțuleac [10], Prof. A. Ciucă [11], [12], [13] and others.

The university professors Antonie Iorgovan [5, p187], Corneliu Manda [6, p187], Victor Guțuleac [10, p284] consider that the public administration could be defined as the “ensemble of activities of the President, Government, central autonomous administrative authorities,

authorities of the structures subordinated to them by which, under the public power, the laws are accomplished, and public services are provided within the law. We consider that the public administration of the child's protection represents the structure subordinated to the Ministry of resort.

The author Mărgineanu L., in the work on the role of public administration in solving the problem of the children left without parental protection, mentions the fact that the main role in solving the problems of the child in difficulty belongs to the local administrative authorities and to the services of de-concentration of the ministries and other central structures of specialty within the area [7, p69]. This scientific work presents interest from the perspective of analysis of the categories of public authorities involved in child's protection without family. At the present moment, after the modification of the legislation in the domain of child's protection, it is realized by the central, territorial and local public authorities, i.e. the state involves the public institutions of all territorial administrative levels.

The researcher Rapotan A. [8, p32] emphasizes the role of the authorities of public administration regarding the solving of child's problems, which comes from the competence of respective public authorities in order to accomplish the administrative functions – of forecasting, organizing, conducting, coordinating and controlling. In conclusion the author mentions that even if the public administration is determined by the executive function, at a closer analysis, we could observe that it overcomes the activity of organizing the law enforcement and properly the law enforcement, because namely the public administration has the task to elaborate the projects of political decisions, the national policy regarding the child and family protection, the program of its implementation, etc. We agree with these statements. The system of the public administration is complex, having authorities and specialists from different social domains that ensure a systemic and individualized approach of the child in difficulty by means of specific methods and techniques.

According to the author Neacșu S. the assurance and respect of child's rights is realized by the convergent action of the institutions that have attributions in the given domain [9, p312]. We would like to mention that the state participation in the activity of child protection is manifested by guaranteeing the functioning of institutions, services and public or private organisms, which bear the responsibility for child care and protection taking into account the rights and obligations of his/her parents, of the guardian and other persons with responsibilities in the domain under discussion.

The professor Aurora Ciucă, in different articles, comes with an innovator approach to the peculiar issues regarding the best interest of the

child and the causes related to the private life and family in the jurisprudence of CEDO and CJUE as well as the European legal practices of protecting the interest of the unborn child vs. the right to the person's identity. The author mentions the importance of the European higher institutions of justice in assuring the respect of fundamental rights of the child [11, p5] [12, p8-9], [13, p44].

At the same time, analyzing the content of researches realized by prof. A. Ciucă, we find that the decisions adopted by CEDO could be different by those adopted by CJUE on the same categories of cases, especially the protection of the best interest of the child. This fact represents the individualized approach of the cases with child's involvement, as well as the larger or narrower interpretation of the European acts that invest the states-members with the rights to apply a special regimen to the families with children whose fundamental rights could be violated.

3. Argument of the paper

The authorities of the public administration of the child protection represents a system of public organs and institutions that realizes the activity of organizing and executing the law regarding the protection of child's rights and interests.

As a social activity, the public administration fulfills the general interest expressed by the law, being the activity that organizes and enforces the law till the concrete material fact. The public authorities come into stage every time when the development, security and physical or moral integrity of the child is endangered.

Once adopting the Strategy for child's protection on the period 2014-2020, the state intended to create some conditions favorable for the harmonious growing and development of the children, by consolidating the system of protection of the family and child focused mainly on the development of an integrated institutional framework for preventing the risk and difficult situations, the temporary intervention in the risk situations for families and children, the changing of perception and stereotypes regarding the methods of upbringing and educating the children, as well as the social inclusion of the vulnerable groups. In order to ensure a special legal framework to the institutions of public authorities of child's protection from the Republic of Moldova, the Organic Law regarding the special protection of the children in risk situations and the children separated of parents was adopted [14]. The given law determines the structure of the authorities of protecting the children in risk situations. Thus, according to the Law

provisions, the structure of the authorities protecting the children in risk situations is the following:

- The central authority for the child's protection – The Ministry of Labor, Social Protection and Family.
- The local guardianship authority – village halls and townhouses.
- The territorial guardianship authority - sections/directions of social work and family protection/ the municipal Direction for the child protection, Chișinău.

The Ministry of Labor, Social Protection and Family represent the central public institution habilitated to elaborate, promote and monitor the state policy in the domain of child's protection. The direction of policies of protection of family and child's rights has as goal to contribute to the improvement of the activity of the Ministry of Labor, Social Protection and Family by implementing the modern policy and procedure related to the domain under discussion. The direction is responsible of representing and promoting the family and child's interests at the national and international levels.

The mayors of villages and towns have the following attributions:

To assure:

- The reception and registration of the notifications regarding the child's rights violation, taking under control the cases of children in risk situations;
- The assessment of the families with children in risk situations and the children separated of parents;
- The planning and realization of the measures of informing the people regarding the child's rights;
- Taking the child from parents or persons that care for this child in case of an imminent danger for the child's life or health;
- The emergency placement of the children separated of parents;
- The establishment of the guardianship/curatorship on the children whose parents are gone abroad;
- In cooperation with territorial guardianship authority, undertaking necessary measures for preventing the separation of the child of the familial environment or for the (re) integration of the child in family;

To coordinate:

- The process of monitoring the situations of the families in risk situations and the children separated of parents;
- The process of analysis of the situation at the local level regarding the protection of the children in risk situations and the children separated

of parents; participation in the procedure of taking the child from parents;

To cooperate:

- With the territorial and central guardianship authorities regarding the protection of children in risk situations and children separated of parents, inclusively by mutual informing on problems of common interest;
- At the local level, with institutions, structures and services with attributions to the domain of child's protection;

The sections/direction of social work and family protection/the municipal direction for child's protection Chișinău – as structure of public institutions has the following attribution:

Assures:

- Support to the local guardianship authorities in the process of identification, evaluation and assistance of the children in risk situations and the children separated of parents; participation to this process in case of necessity;
- The reception, registration and communication, according to competence, of the notifications regarding the violation of child's rights;
- The planned placement of the children separated of parents;
- The establishment/recall of the statute of child left temporarily without parental protection or of child left without parental protection;
- Establishing the statute of adoptable child;
- Record of the children remained temporarily without parental protection and of the children left without parental protection being in planned placement;
- The representation of child's interests and rights at the trial court;

Undertakes:

- In collaboration with the local guardianship authority necessary actions to prevent the child separation from the familial environment or regarding his/her (re) integration in family;
- Measures of informing the people regarding the child's rights;

Collaborates:

- With the local, territorial and central guardianship authorities regarding the protection of the children in risk situations and the children separated of parents, inclusively by mutual informing on problems of common interest.

In order to ensure the special legal framework, the Organic Law was adopted regarding the special protection of the children in risk situations and children separated from parents [14], that determines the structure of the authorities of protecting the children in risk situations.

According to the art. 3 of the given Law, the structure of the authorities of protecting the child are the following:

The authority centered on the child protection – the Ministry of Labor, Social Protection and Family, empowered to elaborate, to promote, and to monitor the realization of the state policy in the domain of child protection.

The local guardianship authority – the mayor of villages (communes) and cities,

The territorial guardianship authority – the sections / directions of social work and protection of the family / the Municipal Direction for the child protection, Chisinau.

According to the attributions stipulated by law, the public administration of child protection by the form of administration represents an executive organ with a regulating form of administration that aims to create conditions necessary for the realization of “positive public administration” that assures the compliance of the citizens to the provisions of the legal norms of child protection by the state, stimulates their state of responsibility, ensures the state and citizens prosperity by developing a healthy society.

The basic goal of these authorities consists in creating the necessary order of administration to ensure the appropriate conditions for children upbringing and adequate care. The main functions are that of controlling and supervising the respect of national and European legislation in the given domain. Within this form of administration, the guardianship authorities defend the rights and freedom of the children and parents, examine the litigations appeared in the process of protecting, apply measures of making safe the child whose rights and interests are violated, and finally apply measures of constraining the persons that bear the responsibility of defending the child.

On 20.01.2016 the government adopted the Decision Nr 7 regarding the approval of the Regulation-framework related to the organization and functioning of the Commission for the protection of the child in difficulty and repealed the Decision Nr 1177 of 31.10.2007 [15]. According to the general Dispositions of the Regulation-framework, the Commission for the protection of the child in difficulty represents an organ authorized to issue the approval for the measures of familial support regarding the overcoming the risk situations and preventing the child separation from family, as well as the measures of protection of the child separated from parents. Thus, we

can highlight the applicative form of the Commission's administration that has as a goal the enforcement of legal provisions and other normative acts in certain situations. The form of administration of the Commission involves actions of establishing the factual circumstances of the circumstances that determines the risk situation of the child, the selection of the legal norm liable for application in the given case, the issue of the individual administrative document regarding the application of a legal norm – the approval and controlling the exercising of the issued decision. The commission of the protection of the child in difficulty is established within the authority of the local public administration of the second level.

In the context of establishment of cooperation between the Republic of Moldova and the European Union, and assuming the responsibility to adjust the autochthonous normative framework to the European regulations, the stipulations of the Strategy of child's protection and the legislative documents elaborated to support this strategy, sustain the provisions of a series of the European regulations. Thus, The Regulation (CE) of the Council Nr 2201/2003 of 27.11.2003 regarding the competence and enforcement of the Court orders in matrimonial matter and in the matter of parental responsibility includes provisions related to the competences of the states-members regarding the sanctions applied to the parents that don't accomplish the obligations. These duties are conceived according to the best interest of the child especially by the criteria of proximity. In this situation the empowered structures are the central authorities and the courts of the state-member where the child has his/her usual residence, except some cases of changing the residence of the child or as a result of an agreement concluded between the holders of parental responsibility.

The convention on the children protection and the cooperation in the matter of international adoption concluded at Haga on the 29th may, 1993, in force for the Republic of Moldova from 01.08.1998, comprises provisions regarding the central authorities of the state that will take, directly or by the contest of the public authorities, or some organs agreed accordingly in their states, all decisions for the permission of the international adoption. The process involves such actions as gathering, preserving and making the exchange of information regarding the child's situation and the future adoptive parents, to the extent necessary to adoption, as well as the realization of other procedural actions in order to improve/facilitate, follow and activate the adoption.

The Directive [2003/86/CE](#) of the Council of 22.09.2003 regarding the right to the family reintegration, aims to the establishment of common rules related to the right of family re-integration. The basic goal is to allow

the family members of people outside the European Union that have the residence legally on the territory of the European Union to join them in the country of the European Union where they have the residence. The objective is to protect the family unity and to facilitate the integration of peoples of the third countries.

The knowledge of the jurisprudence of the European Court of the Human Rights regarding the enforcement of the legislation of the family and child protection is a must. It is imposed because the state-parts could find the referential points and legal instruments, adequate and sufficient to assure the respect of the positive duties imposed upon them.

4. Arguments to support the thesis

The theoretical argumentation in researching the institutions of the public administration of child's protection from the Republic of Moldova is sustained by the work of Cebotari Valentina, PhD in Law, "Taking the child from parents – a sanction or a measure of protection of the minor?" The participation of the guardianship authority in such categories of cases is mandatory because it should present the results of the realized investigations that would confirm or infirm the situations of the child's security in the family. According to the author, the guardianship authority is a state organ required to supervise the children education in the family and their protection in cases when parents violate their rights. This action leads to the accomplishment of the principle according to which the processes of the rights exercising and fulfilling the parental obligations are made under the continuous guidance and control of the guardianship authority – an organ that represents the state as a passive subject of all citizens. It is the opinion that we are underlying and maintaining [16, p184].

As well, the PhD in Law, Oxana Miron states that the possibility of applying the convention of the international law on the territory of the Republic of Moldova has as result the legislative modification and the possibility to use a strictly determined procedure. Nevertheless, the domain of the children's rights in the Republic of Moldova is permanently in ascension. In order to get till the norms of the European states the country has to go through a difficult and lasting path beginning with the standardizing many laws and ratifying the present conventions: the Convention on the competence of the applicable law, acknowledgement, enforcement and cooperation regarding the parental responsibility and the measures of child protection, adopted on 19.11.1996, and the Convention regarding the international recovery of the separate maintenance and other

forms of family maintenance of 23.11.2007 [17 p188]. We consider the given point of view valid and relevant for the researched topic.

5. Arguments to argue the thesis

At the present moment, from our point of view, the legal regulation of the actions of administration of the public authorities of child's protection in the Republic of Moldova currently is not perfect, the juridical mechanism of these activities has many gaps, mainly in the procedural form of the given activities: the procedure of forming and activating of the institutions of child's protection, the procedure of subordinating and collaborating of the guardianship authorities at different levels, the procedure of establishing the system of the administrative organs of child's protection, the procedure of employing and dismissing from the system of public structures, the procedure of elaborating and disputing the decisions, the procedure of responsibility and legal liability of the guardianship authorities, etc. Namely, the administrative-legal regulation of the rights, obligations and limits of the specialists in child's protection domain, the competence of solving different litigations, the order of elaborating procedural documents, the order of solving the litigations appeared in relation with protecting the child's rights and interests are suffering.

Because of the lack of a state concept regarding the form of organization and functioning of the public authorities of child's protection, the lacunas of the legal regulation lead to the duplication of the competences and their failure by the competent organs.

6. Dismantling the arguments against

Despite the fact that there is a quite large unexplored area regarding the institutions of child's protection, we cannot deny the fact of existence of the given authorities and diminish the importance of the decisions and activities realized by them. The regulations of the competences of the guardianship authorities and their attributions are regulated apart from the Law regarding the special protection of the children in risk situations and of the children separated from parents and in other documents of regulating the family and child protection, as the Constitution of the Republic of Moldova, the Family Code, the Civil Code, the Law regarding the child's rights, the Law regarding the leaving and entering the Republic of Moldova, etc. All these give a peculiar importance to the guardianship authorities in solving the difficult or risk situations of children.

6. Conclusions

According to our research, we could conclude that the state, although with small steps, has realized some actions regarding the establishment of the authorities of child's protection. Namely these authorities have the mission to evaluate correctly all aspects related to development, welfare and future of the children. The attributions and competences of the public authorities of child's protection regulated by the law, contributes to the identification of the optimal solution for a child whose rights and interests are violated. At the same time the existent legislative framework requires a normative and jurisprudential systematization and adjusting to the European context which is a reach and extensive in experience of implication in and solving these categories of situations.

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