



IDENTIFYING LEGAL CHALLENGES IN THE APPLICATION OF CHILDREN'S RIGHTS IN THE MISSION OF THE SOCIAL DEPARTMENT OF PUBLIC ADMINISTRATION

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Abstract: *The identification of legal challenges in the implementation of children's rights by the social services department within public administration requires a thorough analysis of the legal framework, institutional competences, and administrative practice. As a specialized structure tasked with delivering social benefits and operating as a professional body within local municipalities, the department is responsible for ensuring the observance and enforcement of the rights of children, families, persons with disabilities, as well as other individuals, groups, or communities in situations of social need. Accordingly, the enforcement of children's rights, when considered in light of political, economic, cultural, and institutional factors, presents significant challenges in both administrative and legal processes. These challenges, in turn, create limitations in solving various specific and/or general cases involving children in Romania. The failure of Romanian administrative authorities to properly implement the fundamental principle underpinning all provisions of the UN Convention on the Rights of the Child has serious repercussions for society. Thus, our legal analysis concerning the implementation of administrative procedures is primarily shaped by and focused on the principle of the best interests of the child.*

Keywords: *social services; the best interests of the child; administrative procedures; long-term reglementation; rights and obligations*

Social services are provided and delivered by local public administration authorities, as well as by legal entities and non-governmental organizations, in accordance with the law. In order to standardize these services in terms of their

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delivery, the Romanian legislator sets forth the following fundamental principles, which are applied as appropriate:

- Equal opportunities and treatment, through equal participation, autonomy, and non-discriminatory activities for beneficiaries;
- Protection against abuse and exploitation;
- Social and community solidarity;
- Specialized assistance for individuals lacking legal capacity;
- Diversification of services based on needs assessments conducted at the beneficiary level – taking into account their opinion, requirements, and discernment – and the provision of individualized services;
- Promotion of the family-based model, guided by the best interests of the child and/or aimed at their integration into a family environment.

These principles must be mandatorily reflected in the provision of social services by the municipal departments, hereinafter referred to as Social Assistance Directorates, which, in our analysis, focus specifically on services provided to children and on ensuring their rights and freedoms as guaranteed by the state.

Among the social services provided for the protection of children's rights, the department ensures appropriate support for street children and families with or without children, through counseling, information, temporary shelter (by providing housing for defined periods), and access to food through the proper organization and operation of social canteens. In the case of underaged children – under the age of 18 without legally responsible representatives – some of these services are permanent. However, the department is required to take further steps to reintegrate the child into their family or, where this is not possible, to identify alternative solutions through which the child's rights and freedoms can be fully respected within the framework of state institutions.

These cases include children abandoned by their parents or families, children who are victims of domestic violence, orphans, children with disabilities, those without safe housing, children abandoned in neonatal hospital wards, and any other category of child whose rights are endangered or violated – regardless of the status of the person who is supposed to care for them.

Upon identifying any of the situations mentioned above, immediate action must be taken by the specialized municipal department, which is also obligated to inform

and maintain close cooperation with the County General Directorate of Social Assistance and Child Protection operating in each county.

The shared goal of these institutions in the protection and promotion of children's rights is to maintain the child within the family, preferably with their parents or at least within the extended family. When this is not possible, they must support the caregivers in raising and caring for the child through counseling, specialized services, information, and programs organized in accordance with the law.

Although the protection and promotion of children's rights represents a constitutional objective and, thus, a fundamental purpose of the Romanian state – as regulated by Law No. 272/2004 on the Protection and Promotion of Children's Rights – and despite the fact that Romania was among the first countries to ratify and assume the obligations of the Convention on the Rights of the Child (adopted through Law No. 18/1990, published in the Official Gazette No. 314 of June 13, 2001), the implementation of children's rights by local public authorities continues to face numerous legal challenges.

These challenges are further compounded by systemic and administrative issues that generate common difficulties nationwide, affecting all departments and Social Assistance Directorates operating within municipal governments. Among the most pressing issues are: insufficient allocated budgets, a lack of qualified personnel – many of whom have not received professional training – which in turn contributes to high staff turnover due to low wages.

Moreover, in a cascading effect, the lack of professional training leads to the misinterpretation of numerous procedures. This is exacerbated by the high volume of work in the departments, which spans multiple areas – not only child protection – thus overburdening staff and hindering the consistent and accurate application of child rights legislation.

It is also important to note that the inadequate collaboration between municipal departments and other institutions – such as the General Directorates of Social Assistance and Child Protection, the police, and county school inspectorates – poses a significant challenge. This inter-institutional cooperation is crucial, given the complexity of the cases and the inadequate infrastructure and logistical capacity of the Social Assistance Directorates (SADs). Without effective coordination, these departments are unable to adapt to the evolving needs of communities or to implement the necessary services in response to specific cases identified in practice.

In Romania, shocking cases emerge daily, revealing and confirming these systemic deficiencies. They give rise to structural problems that are difficult to manage at the local level, thus requiring coercive legislative intervention. Based on current analyses, I argue that such intervention must be significantly stricter and sustained over an extended period in order to reform and stabilize the social assistance system.

The stabilization of working methodologies within social assistance directorates must be prioritized, avoiding the constant and often unjustified changes that undermine institutional coherence, particularly with regard to collaboration between Social Assistance Directorates (SADs) and General Directorates of Social Assistance and Child Protection (GDSACPs).

A precise and unified understanding of the principle of the best interests of the child is also essential. This principle is currently approached and interpreted differently across various legal provisions, which in turn generates conflicting interpretations, procedures, and legal norms, thereby obstructing coherent and effective implementation.

Although the United Nations Convention on the Rights of the Child serves as a cornerstone for the approach to and legislation of the status, rights, and freedoms of children in Romania, its implementation faces certain challenges. These stem primarily from the fact that the Convention constitutes an international legal framework that is often vague, leading to ambiguities and, in some cases, gaps within domestic procedures and various normative acts. These inconsistencies arise both from differing formulations and from the specific contexts in which they are applied. Notably, the Convention outlines the principle of the best interests of the child without offering a precise definition, which results in natural variations in interpretation and implementation among ratifying states—variations shaped by subjective judgments and the particular cultural contexts of individual cases.

In parallel, Law No. 272/2004 on the Protection and Promotion of Children's Rights provides a more detailed definition of the best interests of the child, taking into account the child's physical, psychological, social, and cultural needs, as well as the child's opinion—offering significantly greater specificity than the United Nations Convention on the Rights of the Child.

Furthermore, contradictions persist across multiple branches of law, and naturally, our analysis identifies such inconsistencies, particularly due to discrepancies between criminal, civil, and even educational legislation. The most sensitive cases are those concerning family matters, such as divorce, adoption, domestic violence, determining the child's visitation schedule with parents, maintaining healthy

relationships with members of the extended family, school enrollment, or the appointment of guardianship or custodianship in specific situations. These cases fall under the jurisdiction of the courts; however, decisions are often based on assessments and social investigations carried out by social workers from local social assistance directorates (DAS). Misinterpretation, the personal bias of the social worker, a lack of proper understanding of the case, or outdated procedures and limited experience may lead to conflicts between the child's rights—particularly from the perspective of the best interests principle—and other applicable legal norms.

Another example can be found in situations where the local Social Assistance Directorate (DAS) seeks to intervene to protect a child's rights, but the parent opposes such intervention. This may lead to a conflict between the child's right to protection and the parent's right to respect for private and family life. This situation may give rise to a legal conflict between the child's right to protection—enshrined in both national legislation and Article 3 of the UN Convention on the Rights of the Child—and the parent's right to respect for private and family life, as guaranteed under Article 8 of the European Convention on Human Rights. In such cases, judicial and administrative authorities are required to balance these competing rights, taking into account the principle of the best interests of the child as a primary consideration, while ensuring that any limitation on parental rights is necessary, proportionate, and justified in a democratic society. The European Court of Human Rights has consistently held that while the state has a duty to protect children from harm, any interference with family life must be proportionate and justified. In *K. and T. v. Finland* (2001), the Court emphasized that the removal of a child from parental care constitutes a serious interference with Article 8 and must be based on compelling evidence of risk. Similarly, in *Neulinger and Shuruk v. Switzerland* (2010), the Court reiterated that the child's best interests must be a primary consideration, but not the sole one, and must be assessed in light of all relevant circumstances. These cases illustrate that judicial and administrative authorities must strike a careful balance between safeguarding the child's welfare and preserving the integrity of family life, ensuring that any limitation on parental rights is necessary, proportionate, and consistent with democratic principles.

Another significant challenge identified in relation to the legal obstacles faced by Social Assistance Directorates (DAS) concerns the insufficiency of human, financial, and logistical resources. This shortage substantially impedes the timely and effective conduct of assessments and social investigations carried out by social workers. Consequently, delays in these critical processes can undermine the protection of

children's rights, limit the capacity for early intervention, and reduce the overall effectiveness of child welfare services. Addressing these resource constraints is therefore essential to ensuring that social assistance institutions can fulfill their legal obligations and uphold the best interests of the child. The United Nations Committee on the Rights of the Child has repeatedly emphasized the importance of adequately resourcing child protection systems to ensure the realization of children's rights as guaranteed by the Convention on the Rights of the Child (CRC). Similarly, the Council of Europe's recommendations on child protection underscore the necessity of sufficient funding and staffing to enable social services to respond promptly and appropriately to cases of child vulnerability. Addressing these resource constraints is therefore essential to ensuring that social assistance institutions can fulfill their legal obligations and uphold the best interests of the child.

Another significant issue identified is the failure to adequately respect the child's opinion within the intervention plan. It is my view that in specific cases—particularly those requiring comprehensive assessment and coordinated inter-institutional and specialized interventions, such as psychological counseling, medical treatment, therapy, placement, or criminal proceedings—the child's perspective must be carefully considered. However, this consideration should be balanced with an appropriate evaluation of the child's age and capacity for discernment. Recognizing the child's voice is essential for upholding their rights and dignity, as emphasized by Article 12 of the United Nations Convention on the Rights of the Child (CRC), which guarantees the right of children to express their views freely in all matters affecting them, with due weight given according to their age and maturity. This principle is further supported by the Committee on the Rights of the Child's General Comment No. 12 (2009), which elaborates on the importance of facilitating meaningful child participation in decisions. Scholarly literature also underscores that meaningful involvement of children in intervention plans improves outcomes and respects their evolving capacities (Lundy, 2007; Hart, 1992).

Access to justice remains a critical barrier to the full realization of children's rights in many legal systems. Although children are recognized as rights-holders under international law—most notably in the United Nations Convention on the Rights of the Child (CRC)—in practice, their ability to engage with the justice system is often limited by structural, procedural, and cultural obstacles. These challenges include the lack of child-friendly legal procedures, insufficient legal representation, limited awareness of legal rights, and the absence of specialized professionals trained to work with children. In many jurisdictions, children may be discouraged or even excluded from participating meaningfully in legal proceedings that directly affect

them, such as custody disputes, juvenile justice processes, or administrative hearings. The Committee on the Rights of the Child, in its General Comment No. 24 (2019) on children's rights in the child justice system, stresses the importance of ensuring that justice systems are accessible, fair, and adapted to the needs and capacities of children. Furthermore, factors such as socio-economic disadvantage, disability, or belonging to a minority group can further compound inequalities in access to justice. Addressing these issues requires a systemic approach, including legal reform, capacity building, and the establishment of independent mechanisms to monitor and enforce children's rights within the justice system.

Another critical issue that warrants attention is the persistent problem of poor inter-institutional coordination, which significantly undermines the effectiveness of child protection interventions. This lack of coordination is often rooted in the insufficient professional training of personnel within the Social Assistance Directorates (DAS). Inadequate training can lead to a lack of shared protocols, inconsistent communication between agencies (such as schools, healthcare providers, law enforcement, and child protection services), and delays in responding to cases involving vulnerable children. According to international standards, including those outlined by the United Nations Committee on the Rights of the Child and the Council of Europe, effective child protection systems must be based on multisectoral cooperation, timely information-sharing, and clearly defined institutional responsibilities. Without continuous professional development and inter-agency training programs, staff may struggle to navigate complex legal and social issues, which in turn compromises the child's right to protection, participation, and timely intervention. Strengthening institutional collaboration and investing in the professionalization of child protection workers is therefore essential to ensuring a coherent and rights-based approach to child welfare.

Conclusion

The Romanian child protection system, while formally aligned with international legal instruments such as the United Nations Convention on the Rights of the Child (CRC), continues to face systemic legal and institutional deficiencies that obstruct the full and consistent realization of children's rights. Chief among these are the inconsistent application of the best interests of the child principle, overlapping and conflicting legal provisions across civil, criminal, and administrative law, and the inadequate harmonization between domestic legislation and international standards.

The lack of a clear, unified interpretation of the best interests principle has generated conflicting judicial and administrative practices, while chronic under-resourcing of Social Assistance Directorates (DAS) significantly impairs the execution of mandated legal duties. The absence of stable, standardized working methodologies and effective inter-institutional cooperation further exacerbates these issues, often leaving vulnerable children subject to delays, inconsistent interventions, or decisions not grounded in a rights-based framework.

Additionally, the failure to systematically incorporate the child's opinion in intervention planning, as required under Article 12 of the CRC, reflects a persistent disregard for children's procedural rights and evolving capacities. Coupled with barriers to access to justice—ranging from the absence of child-friendly legal mechanisms to the limited availability of trained legal representatives—these issues raise serious concerns regarding the practical enforcement of children's rights under both domestic and international law.

A coherent and legally sound reform strategy is therefore necessary. Such reform should include legislative clarification and alignment, capacity-building initiatives for legal and social professionals, secure and sustained funding for child protection institutions, and the implementation of standardized legal protocols to ensure inter-agency accountability. Crucially, Romanian law and practice must shift toward a model that recognizes the child not only as a subject of protection but as a legal actor whose rights must be enforceable and respected in all proceedings that affect them.

Only through such legal and structural reform can Romania fulfill its obligations under the CRC, the European Convention on Human Rights, and other binding instruments, ensuring that the legal system upholds the rights, dignity, and welfare of every child within its jurisdiction.

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