

REGULATORY AND INSTITUTIONAL ASPECTS OF THE PROTECTION OF YOUNG PEOPLE LEAVING ALTERNATIVE CARE ON THE GROUNDS OF AGE

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Abstract

Young people who leave the alternative care system on the grounds of age are a challenge for social welfare and child protection systems around the world. According to the legislation, they are no longer children, whereas from the psychosocial perspective, they do not have the necessary skills for independent living yet. Thus, on the one hand, young people leaving the alternative care system on the grounds of age are no longer beneficiaries of the child protection system and, on the other hand, their status of “graduates of alternative care services” is not enough to be taken over by the social welfare system.

With the adoption in 2010 by the UN General Assembly of the Guidelines for the Alternative Care, which provides for the guarantee by member states of the necessary support after leaving alternative care, the national laws were to be adjusted accordingly. The experience of some countries in this field is quite advanced therefore it can serve as a model for the Republic of Moldova, both from the perspective of legislation and of the financial coverage.

In this paper, we analyze the national regulatory framework of the Republic of Moldova in light of its compliance with the UN Convention on the Rights of the Child, in the context of commitments made in support of young people who leave the alternative care on the grounds of age.

Keywords: *young care leavers, child rights, social welfare for “alternative care leavers”*

JEL Classification: [K36]

1. Introduction

The child protection system in the Republic of Moldova has undergone spectacular changes in the last 15-20 years.

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The diversification of the network of alternative care services, the establishment of services for prevention of child separation from the family are just a few elements that were aimed at responding to the challenges of adjusting the national child protection framework to the requirements of the UN Convention on the Rights of the Child.

At the same time, the issue of social welfare of young people leaving the alternative care system on the grounds of age (18 years) is still unresolved. The lack of independent living skills, as well as of accommodation and guidance services makes them particularly vulnerable (Neagu, 2017; Stein et al, 2012).

The recent research (Paternini et al, 2011; Gînu et al, 2018) indicates the lack of the legal status “child without parental care” for about half of the young people who left the alternative care system on the grounds of age in the Republic of Moldova. More than half of them become parents before coming of age and a similar number do not have a profession. Only less than a quarter of these young people own (fully or partly) a dwelling.

In 2017, for example, over 2000 young people left the planned alternative care system of the Republic of Moldova. Of them, about 30% - because they came of age and only about 1.3% as a result of graduation of a boarding-school.

For comparison, the stable population in Moldova, according to the National Bureau of Statistics, by 1 January, 2017 represented 3550,8 thousand inhabitants, excluding the population from the left bank of Nistru river.

The share of the population of children (0-18 years old) in 2017 represents only 19.2% of the total population, compared to 20.9% in 2010 and 24.9% in 2005, and the share of young people (14-35 years old) - 33% of the total population of the country (Vîlcoş et al, 2017).

At the same time, the share of young people of working age (16-34 years old) in 2017 constituted 31% of the total population of the Republic of Moldova.

2. International regulations on the protection of children/ young people leaving alternative care system

The UN Convention on the Rights of the Child (UN, 1989) requires, through art. 20, par. 1-2, the member states to provide alternative care to children who are temporarily or permanently deprived of their family environment or in whose own best interests cannot be allowed to remain in that environment (Hodgkin and Newell, 2007).

The Guidelines for the Alternative Care (UN, 2009) in article 29, letter c) classifies the care outside the biological family in: care in the extended family; care in substitute families; other forms of family placement; institutional care; arrangements for supervised independent living. In addition, these Guidelines address the challenges of preparing children to leave the alternative care,

including in terms of providing the necessary post-care support to young people.

It should be noted that few countries have addressed the Guidelines for the Alternative Care in a systemic way. An example in this sense is the United Kingdom, which revised the 1989 Children Act.

Thus, the British Children Act, in accordance with the new amendments, imposes duties in relation to children who are both in and out of care to the local authorities. Therefore, all children over 16, who are in alternative care and those leaving the alternative care services, are potential beneficiaries of a package of services such as: health and wellbeing; relation-setting (interaction/communication); education and training; employment; housing (accommodation); inclusion in society.

The UN Committee on the Rights of the Child worried about the difficulty faced by adolescents and young people to enter independent life after a childhood spent in institutions, recommends our country in the Concluding Observations of 20 October, 2017 on the periodic Combined Report 4 and 5 of the Republic of Moldova, to prepare the children in alternative care for independent living as adults; to provide dwellings to care leavers; to monitor adequately, to provide services and support to care leavers.

Currently, these recommendations are addressed in a fragmented manner. For example, some social services of alternative care have minimum quality standards that provide for preparation for independent living. However, the standards are not explained, which hampers their enforcement.

On the other hand, the current legislation does not explicitly delegate to guardianship authorities or to other authorities powers of care and protection for the young people leaving the alternative care system on the grounds of age.

3. National regulations on the protection of children/young people who leave the alternative care system

3.1. General protection framework

Children and young people in the Republic of Moldova, according to the Constitution (the Constitution of RM, 1994), “*enjoy a special regime of assistance in the realization of their rights*” (art. 50, para.2), and the “*care and education of the orphan children and children without parental care is the duty of the state and society*” (art. 49, para. 3). These constitutional provisions were inspired by the international regulations as a result of the accession of (the Supreme Council of the MSSR, 1990) of the Republic of Moldova to the UN Convention on the Rights of the Child.

In addition, according to Law no.338 of 15.12.1994 on the rights of the child, the state is required to create all conditions for the development of independent living skills (art. 23) for the children in its care, as well as

”maintenance and repair of dwellings for orphan children and children without parental care until they come of age” (art. 19, para. 2), as well as allocating *“dwellings cutting in line, if living in the occupied dwelling is impossible”* (art. 19, para. 3) to children who return from a state institution and to those who return from relatives or legal subrogatory persons.

The powers to decide on the separation of children from parents and their placement in alternative care, as well as to assign the legal status of child *“without parental care on a permanent basis”* or *“without parental care on a temporary basis”* are delegated, according to the Law no.140 of 14.06.2013 on the Special Protection of Children at Risk and Children Separated from their Parents, to local and territorial guardianship authorities.

However, there are no specific provisions to stipulate the specific duty of the public authorities towards the young people who came of age and have to leave the alternative care system. Only a few alternative care services have the carers’ duty to take care of the young people in placement even beyond this age stipulated in their minimum quality standards (see Sub-Chapter 3.4).

3.2. Preparation for leaving the alternative care system

The alternative care services (except for the guardianship service) dedicate minimum quality standards to the preparation of the child for leaving care (GD 432, 2007; GD 823, 2008; GD 52, 2013; GD 760, 2014; GD 885, 2015; GD 591, 2017; GD 51, 2018).

Thus, for the young people who will leave the alternative care service on coming of age, the service provider is required to plan and implement preparation activities at least two years before the individual turns 18.

These provisions are, however, declarative, because there are no guidelines, instructions and models of good practice for the enforcement of these standards. The staff of the alternative care services, especially, the institutional ones, usually only look for a vocational school that provides, as a rule, accommodation in a hostel (Paternini et al, 2011; Gînu et al, 2018).

3.3. Allowances and benefits

Children under 18 (pupils and students of the secondary, secondary specialized and higher education, except for part-time education until graduation, but under the age of 23), in case of loss of the breadwinner and, if they are not in full maintenance of the state, are entitled to the allowance stipulated in art. 9, para. 2 of the Law no.499 of 14.07.1999 on State Social Allowances for some Categories of Persons.

The amount of this child allowance represents 15% of the indexed minimum old-age pension, which is equivalent to the guaranteed minimum monthly income set every year by the Government. In 2018, the guaranteed minimum monthly income is 1025 lei (equivalent to 54 EURO).

Children under “18 or, if they continue their education (secondary, secondary vocational and higher education) until the completion of education, but not beyond the age of 23”, in accordance with the Law no. 156 of 14.10.1998 on State Social Insurance Pensions (art. 25, para. 1) are entitled to survivor's pension “if the deceased person was a retired person or met the criteria for receiving a pension in accordance with the law” in question (art. 24).

The minimum amount of the survivor's pension is set as a percentage of the minimum amount of the old-age pension.

The access to these allowances, including to the survivor's pension, depends on the quality of case management: timely assignment of the legal status, regular monitoring of the placement and identification of the most suitable form of alternative care, etc.

According to the Expenditure Norms set by the Government (GD 870, 2004), “orphan pupils (students) and those who are in guardianship and enrolled in vocational schools, secondary specialized and higher education institutions, boarding-schools and children's homes”, are entitled to a number of allowances, either one-off or monthly.

The amount of these benefits depends on the legal status of the beneficiaries, the form of education, the offer of accommodation in dormitories during the studies, etc.

The above-mentioned Expenditure Norms have not been updated for the last 8 years, although the prices for food, industrial items, utilities and school supplies have increased.

The access to funds to cover the rental costs is provided only in cases when the educational institution does not provide accommodation.

3.4. Social housing

In line with art. 10, para. (2), letter e) of the Law no. 75 of 30.04.2015 on Housing, orphan children who have come of age and have not received housing from the state, have a priority right to social housing if they meet the mandatory requirements set forth in para. (1) of this law.

The supply of such housing is almost non-existent. The local public authorities, usually, claim the lack of available housing.

On the other hand, a number of social services, in particular, the alternative care ones, consider, to a certain extent, the issue of housing for young people who turn 18.

For example, the Foster Care Service (GD 760, 2014) sets out protection measures for some beneficiaries after coming of age, such as: (planned) long-term placement in a foster family for at least one year and up to age of 18 and, if the person continues education in high-school, until the completion of the high-school education, if it is not possible to (re)integrate the child in the

biological or extended family and if foster care is the most appropriate form of protection in the long term, taking into account the care and development needs of the child, as well as from the perspective of further social integration.

Also, people with mental disabilities who are aware of and control their actions, are not declared by the court as legally incapable, have turned 18, do not have housing or require improvement of living conditions and can have an independent life in the community with periodical support, may access the Protected Living Service (GD 711, 2010). In the last 5 years, this service is actively developed, following the implementation of the reform of the institutional care system for children and adults with disabilities.

3.5. *Social services*

In line with Law no. 123 of 18.06.2010 on Social Services, children and young people without parental care can access primary, specialized and highly specialized social services.

The nomenclature of social services (Order of the Minister of Labour Social Protection and Family no.353 of 15.12.2011) stipulates for young people in difficulty, including “*young graduates of residential institutions*” and children without parental care, at least two types of services:

1) Center of social (re)integration of young people, which implies the delivery of: a) services for the development of cognitive, communication and behavior skills; b) professional guidance; c) psychological counseling; d) counseling of family members; e) legal assistance; f) nutrition;

2) Assisted social housing, which is a temporary accommodation service for young people, where skills of independent living and self-maintenance are formed.

Both types of services seem to meet the needs of young people who leave the alternative care system; however, both lack a regulatory framework and, therefore, are not implemented.

3.6. *Employment*

Young people aged 16, according to the Labor Code no. 154 of 28.03.2003, have full capacity to be employed, whereas teenagers aged 15 can work only with the written consent of their parents or legal representatives, provided that their health, development, education and vocational training is not endangered.

Young job-seekers aged 16 may register with the National Employment Agency or with a private employment agency.

In addition, in compliance with the Law no. 102 of 13.03.2003 on the Employment and Social Protection of Job-Seekers, young people are entitled to

vocational training for the unemployed. During the training, they receive a monthly scholarship that is not taxable.

The law protects adolescents aged 16 years if they have or not a profession and cannot be employed, because of the lack of appropriate jobs (art. 26, para.2). In addition, the Law offers priority access to professional training courses for graduates of boarding-schools, children without parental care and in guardianship, persons released from social rehabilitation institutions (art. 26, para. 3).

At the same time, recent research (Paternini et al, 2011; Gînu et al, 2018) has highlighted a number of problems faced by young people who left the alternative care system in the Republic of Moldova when finding a job. To a large extent, they are related to the lack of communication skills, as well as skills of adaptation to the employer's requirements, such as compliance with the schedule and internal regulations.

Conclusions and recommendations

The issues that young people leaving the alternative care system on the grounds of age must face are related to all aspects of life. The most difficult, however, are:

- Lack of housing or of alternative solutions such as cash benefits (that meet the reality of the rental market in different locations) to be able to rent dwellings;
- Limited access, especially, to social benefits and allowances, because some children do not have the status of “child without parental care”;
- Lack of independent life skills and incapacity to adapt to independent adulthood.

To solve these issues, a number of actions are required to ensure the social inclusion of young people leaving the alternative care system, such as:

Preparation for independent living: all the alternative care services must have clear and explicit minimum quality standards concerning the preparation for leaving care; such preparation will, among other things, consider the development of independent living skills in (male and female) children/adolescents, and, the timely assignment of the legal status as children without parental care, to provide each child with access to all existing facilities as stipulated by the legislation.

Transition from alternative care to independent living: all adolescents/young people, both male and female, who are in alternative care, must receive services of transition from supervised living to independent living with and without support depending on their needs and capacities; these services may include: counseling (for employment, access to documents, etc.), supervised, semi-supervised or independent living, as well as other services as needed.

Review of the existing benefits that are accessible to the young people who leave the alternative care system.

Establishment of mechanisms to provide access (on favorable terms) to housing for young people leaving alternative care on the grounds of age.

For all these recommendations to be achievable, it is necessary to establish the responsibility of the guardianship authority for the whole process of social integration of young people leaving the alternative care system, including beyond the age of 18, to ensure continuity in social assistance.

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