



MINISTERUL MUNCII  
ȘI JUSTIȚIEI SOCIALE

Autoritatea Națională pentru  
Protecția Drepturilor Copilului și Adopție

  
romania2019.eu

Nr. 5983/DGPDC/SSP/amc/04.06.2019

To: Natacha Foucard, Officer in Charge  
Special Procedures Branch  
United Nations Human Rights, Office of the High Commissioner

Ref.to: Letter from the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material

Dear Ms. Foucard,

Please find attached our official answer to the questions that correspond to the National Authority for the Protection of Children Rights and Adoption field of activity, as included in the questionnaire attached to the letter of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, Ms. Maud de Boer-Buquicchio.

For a comprehensive response, please be informed that we had also consulted the Ministry of Health, but according to the answer received from this institution, in the field of health there is no national specific legislation related to the rights of children, born in context of surrogacy arrangements as a reproductive practice.

Sincerely yours,

Gabriela Coman  
President



Președinția României la Consiliul Uniunii Europene

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President

Elena Tudor, director general  
Cristina Cuculas, Șef serviciu  
Adina Codreș, Consilier

Președinția României la Consiliul Uniunii Europene

Questionnaire on Safeguards for the protection of the rights of children born  
from surrogacy arrangements

Identity, origins and parentage

1. Describe safeguards protecting identity rights (CRC art.7 and 8) that are currently being implemented in your State. Safeguards include laws, judicial and administrative procedures, enforcement actions and other practices intended to prevent or remedy violations of human rights norms.

According to the national legislation, Law no. 272/2004 on the protection and promotion of the rights of the child "(2) The child's best interest is circumscribed to the child's right to normal physical and moral development, to socio-affective balance and to family life. (3) The principle of the best interests of the child is also imposed in relation to the rights and obligations of the child's parents, other legal representatives, and any persons to whom he / she has been legally placed. (4) The principle of the best interests of the child shall prevail in all approaches and decisions concerning children, undertaken by public authorities and authorized private bodies, as well as in the cases solved by the courts. (5) The persons referred to in par. (4) are obliged to involve the family in all decisions, actions and measures concerning the child and to support the care, growth and training, development and education of the family."(art. 2)

In determining the best interests of the child, at least the following shall be considered: "a) the needs of physical, psychological, educational and health development, security and stability and belonging to a family; b) the child's opinion, depending on the age and degree of maturity; (c) the child's history, particularly with regard to situations of abuse, neglect, exploitation or any other form of violence against the child, as well as the potential risk situations that may occur in the future; d) the capacity of parents or persons to care for the child's growth and care to meet his or her specific needs; e) maintaining personal relationships with the person to whom the child has developed attachment relationships." (art.2, alig 6)

For the purposes of the Law no. 272/ 2004, art. 4 specifies the following terms and expressions: "a) child - the person who has not reached the age of 18 and has not acquired the full exercise capacity, according to the law; b) family - parents and their children; c) extended family - the child's relatives, up to the fourth degree including; d) substitutive family - persons other than those belonging to the extended family, including affinity to grade IV and foster caregivers who ensure the child's growth and care, according to the law; (...) g) legal

representative of the child - the parent or the person designated, according to the law, to exercise the rights and to fulfill the parental obligations towards the child.”

”(1) The child has the right to establish and maintain his or her identity. (2) The child shall be registered immediately after birth and shall be entitled from that date to a name, to the right to acquire a nationality and, if possible, to know their parents and be cared for, raised and educated by them. (3) Parents choose the child's name and surname, according to the law. (4) The child has the right to retain his/ her nationality, names and family relations, under the conditions stipulated by law, without any interference. (5) If it is found that a child is unlawfully deprived of the constitutive elements of his/ her identity or of some of them, the institutions and public authorities are obliged to take urgently all necessary measures in order to restore the identity of the child.”(Art. 9 by the same Law no 272/2004).

Both parents are responsible for raising their children. ”(2) The exercise of rights and the fulfillment of parental obligations must take into account the best interests of the child and ensure the material and spiritual well-being of the child, especially by caring for him/ her by maintaining personal relations with him/ her by ensuring his/ her growth, education and maintenance, as well as by its legal representation and administration of its patrimony. (3) Where both parents exercise parental authority but do not live together, important decisions such as the choice of the type of teaching or training, complex medical treatment or surgery, the child's residence or the administration of the property shall be taken only with the agreement both parents. (4) If, for any reason, a parent does not express his/ her will to take the decisions provided for in align. (3), they are taken by the parent with whom the child resides, unless this is contrary to the best interests of the child. (5) Both parents, whether or not they exercise parental authority, have the right to request and receive information about the child from school units, sanitary units or any other institutions that come in contact with the child. (6) A parent can not give up the parental authority, but one can understand with the other parent about the way of exercising the parental authority, under art. 506 of the Civil Code. (7) There are reasonable grounds for the court to decide that the parental authority exercises by one parent the alcoholism, the psychological illness, the drug addiction of the other parent, the violence against the child or the other parent, the convictions for traffic offenses people, drug trafficking, sex offenses, violence, and any other reason related to the risks to the child that would arise from parental authority exercising that parent. (8) In the event of misunderstandings between parents regarding the exercise of rights and the fulfillment of parental obligations, the court, after hearing both parents, decides according to the best interests of the child.” (article 36)

2. Describe safeguards protecting the access to origins (CRC art. 7 and 8) that are currently being implemented in your State.

"The responsibility for the growth and the development of the child rests primarily with the parents who have the obligation to exercise their rights and to fulfill their obligations towards the child, taking into account the superior interest of the child." (art.5 alin 2)

The child has the right "to maintain personal relationships and direct contacts with parents, relatives, and other persons to whom the child has developed attachment ties. (2) The child has the right to know his/ her relatives and to have personal relations with them, as well as with other persons with whom the child has enjoyed family life, insofar as this does not conflict with his / her superior interest. (3) The parent or other legal representative of the child cannot prevent his/ her personal relations with his/ her grandparents, siblings or sisters or other persons with whom the child has enjoyed family life, except in cases where the court decides to do so, that there are good reasons for the child's physical, mental, intellectual or moral development. (4) In the event of a misunderstanding between parents regarding the means of exercising the right to have personal ties with the child, the court will establish a program according to the age of the child, the care and education needs of the child, the intensity of the affective connection between the child and the parent to whom he does not live, the behavior of the latter, and other relevant aspects in each case. (5) The criteria set out in paragraph (4) shall also be taken into account in establishing the program of personal relationships and with the other persons with whom the child enjoyed family life." (art. 17 by the Law no 272/2004).

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#### Sale of children

1. Provide information on the laws prohibiting the sale and trafficking of children as well as corresponding implementation measures.

The child has the right "to be protected against abuse, neglect, exploitation, trafficking, illegal migration, abduction, violence, internet pornography and any form of violence, regardless of the environment in which it is: family, institutions education, medical, protection, crime and rehabilitation / detention facilities, the Internet, media, jobs, sports, community; (2) Any person may request the general direction of social assistance and child protection in the county/ sector of Bucharest to take appropriate measures to protect child against all forms of violence, including sexual violence, injury or physical abuse or mentally, of maltreatment or exploitation, abandonment or neglect. (3) The employees of

public or private institutions which by the nature of the own profession come into contact with the child and have suspicion of a possible abuse, neglect or maltreatment, shall have the obligation to immediately notify the general direction of social assistance and child protection.” (art. 89 by the Law no 272/2004)

Article 95 by the Law no 272/2004 provides that ”It is forbidden to commit any act of violence and to deprive the child of his or her rights to endanger life, physical, mental, spiritual, moral or social development, physical integrity, physical or mental health of the child, both in the family and in the family in institutions that provide protection, care and education of children, in sanitary units, educational establishments, as well as in any other public or private institution that provides services or carries out activities with children.”

As well ”(1) any person who, by the nature of his profession or occupation, works directly with a child and has suspicions about the existence of a situation of abuse or neglect is obliged to refer the public social assistance service or the general welfare department and the protection of the child in whose territorial jurisdiction that case has been identified. (2) In order to report cases of abuse or neglect of the child, at the level of each general directorate of social assistance and child protection, the child's phone must be established, the number of which shall be made known to the public. (art. 96)

The child has the right to protection „against any form of exploitation. 2. The institutions and public authorities, shall in accordance with their powers, to adopt specific regulations and apply appropriate measures to prevent, inter alia: (a) the illicit transfer and non-return of the child; b) concluding national or international adoptions for purposes other than the best interests of the child; c) sexual exploitation and sexual violence; d) kidnapping and trafficking of children for any purpose and in any form; e) the involvement of children in armed conflicts; f) the forced development of children's talents at the expense of their harmonious, physical and mental development; g) exploitation of the child by the media; h) exploitation of the child in scientific researches or experiments.” (article 110)

The court is the only authority competent to decide, taking into account, as a priority, the best interests of the child with regard to: ”a) the person exercising the rights and fulfilling the parental obligations in case the child is temporarily or permanently deprived of the protection of his / her parents; b) the ways in which the rights are exercised and the parental obligations are fulfilled; c) total or partial deprivation of the exercise of parental rights; d) reproduction of the exercise of parental rights.” (article 43)

The issue of preventing children's risk situations, identifying the risk situations in which children can be found, and identifying and protecting child victims of any form of violence, including internal or international trafficking, is governed by

both Law no. 272/2004, republished, on the protection and promotion of the rights of the child, as well as by other complementary normative acts such as:

- Government Decision no. 49/2011 approving the Framework Methodology on Multidisciplinary and Networking Prevention and Intervention in Child Violence and Domestic Violence, and the Multidisciplinary and Interinstitutional Intervention Methodology on Children Who are Involved in Occupational Risks , child victims of trafficking in human beings, as well as Romanian migrant children victims of other forms of violence on the territory of other states;
- Government Decision no. 617/2004 on the establishment and organization of the National Steering Committee for the Prevention and Combating of the Exploitation of Child Labor, as subsequently amended and supplemented;
- Decision no. 1443/2004 on the methodology for the repatriation of unaccompanied Romanian children and the provision of special protection measures in favor of them;
- Government Decision no. 691/2015 for the approval of the procedure for monitoring the way of raising and care of the child with parents who have left work abroad and the services they can benefit from, as well as for the approval of the Working Methodology on the collaboration between the General Directorates of Social Assistance and Child Protection and public social assistance services and the standard model of documents drawn up by them;
- Order no. 288/2006 approving the Minimum Mandatory Standards for case management in the field of the protection of children's rights;

In view of a more rigorous approach at the central and local level of the problem of trafficking in children, in the same normative act, 109 paragraph (1), Section 5 The protection of the child against abduction or any form of trafficking is subject to regulations concerning the inter-institutional steps necessary for the enforcement of the law, namely "the Ministry of Internal Affairs and the Ministry of Labor and Social Justice in cooperation with the Ministry of National Education, will take the necessary steps to adopt all legislative, administrative and educational measures designed to ensure effective protection against all forms of internal or international trafficking of children, for any purpose or in any form, including by their own parents. (2) To this end, the said public authorities have the responsibility to develop a national strategy for preventing and combating this phenomenon, including an internal mechanism for coordinating and monitoring the activities undertaken. "

In the legislative context described above, it was achieved by implementing the provisions of the Government Decision no. 49/2011, the common methodological framework for authorities responsible for child protection against violence, including for victims of trafficking in human beings, for service providers in this field and for professionals working directly with children, their families and alleged perpetrators / aggressors, and procedures working according to the legislation in force and the

specificity of each institution involved in the prevention and intervention in cases of violence against the child, including trafficking.

Based on this common methodological framework, the General Directorates for Social Assistance and Child Protection at the level of each county and sector of Bucharest Municipality have initiated the signing of partnership agreements with the other public institutions and accredited private bodies relevant in the field in the county / Bucharest on the issue of preventing and combating violence against children, including trafficking.

Specifically, in the field of preventing and combating child trafficking, as well as in the field of protection and assistance to child victims of trafficking, there is a number of specific responsibilities of the specialized institutions and structures, which are part of the Monitoring Mechanism for child victims of trafficking and of the Romanian migrant children who are victims of other forms of violence on the territory of other states, based on the provisions of the National Mechanism for Identification and Referral of Victims of Trafficking in Human Beings, approved by the Order of the Minister of Interior and Administrative Reform, of the Minister of Labor, Family and Equal Opportunities, the Minister of Education, Research and Youth, the Minister of Public Health, the President of the National Authority for the Protection of the Rights of the Child, the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice and the Minister no. 335 / 2.881 / 1.990 / 1.072 / 2007/266 / A6.880 / 409 / C / 2.353 / C / 2008 and the Methodology of Repatriation of Unaccompanied Romanian Children, approved by Government Decision no. 1.443 / 2004, as amended and supplemented.

In the case of deciding for a special protection measure for the child, the General Direction of Social Assistance and Child Protection has the obligation to draw up the individual protection plan within 30 days after receiving the application for a special protection measure or immediately after the director of the Directorate-General for Social Assistance and Child Protection has placed emergency placement.