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## **PROTECTION AND PROMOTION OF THE RIGHTS OF THE CHILD: A DIACHRONIC APPROACH**

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### *PROTECȚIA ȘI PROMOVAREA DREPTURILOR COPILULUI: O ABORDARE DIACRONICĂ*

*Această lucrare prezintă istoricul principalelor documente – carte, convenții, declarații și reguli – privind protecția și promovarea drepturilor copilului și, implicit, plasamentul și adopția copilului. Perioada analizată cuprinde aproape mai mult de șase decenii (din 1924 până în 1989). Acest tip de interes – separată sau legată de protecția și promovarea drepturilor*

omului, în general, sau de protecția și promovarea altor drepturi (civile, culturale, economice, politice și sociale), în special – este veche de un secol în România, unde legislația trece printr-un proces continuu de adaptare din cauza provocărilor legate de migrație.

## Introduction

Protection and promotion of children's rights in Romania has a history of almost a century. Everything began in 1924 with the „**Geneva Declaration of the Rights of the Child**” adopted 26 September 1924 [1], by the League of Nations (1920-1946) (United Nations precursor) – the first global intergovernmental organization whose main mission was to maintain peace in the world – but it was only 60 years later that **child placement** and **child adoption** came under scrutiny.

The main documents – charters, covenants, declarations, and rules – regarding the protection and promotion of the **rights of the child** and, implicitly, **child placement** and **child adoption**, are:

- **1924** – „**The Geneva Declaration of the Rights of the Child**” [1], the first document on human rights approved by an intergovernmental institution, containing five criteria regarding the rights of the child:
  - „1. The child must be given the means requisite for its normal development, both materially and spiritually;
  - 2. The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succoured;
  - 3. The child must be the first to receive relief in times of distress;
  - 4. The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation;
  - 5. The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men”.
- **1948** – „**The Universal Declaration of Human Rights**” [2], which refers to the rights of the child:
  - „Article 25(2): Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection”.
  - „Article 26(3): Parents have a prior right to choose the kind of education that shall be given to their children”.

- **1959** – „*The Declaration of the Rights of the Child*”, stating 10 principles regarding the rights of the child:

„The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

- The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.
- The child shall be entitled from his birth to a name and a nationality.
- The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.
- The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.
- The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.
- The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society. The best interests of the child shall be the guiding

principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents. The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

- The child shall in all circumstances be among the first to receive protection and relief.
- The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form. The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.
- The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men”.
- **1966 – „*The International Covenant on Civil and Political Rights*”** [4], which mentions the rights of the child:
  - „Article 18 – 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions”.
  - „Article 24 – 1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as axe required by his status as a minor, on the part of his family, society and the State. 2. Every child shall be registered immediately after birth and shall have a name. 3. Every child has the right to acquire a nationality”.
- **1966 – „*The International Covenant on Economic, Social and Cultural Rights*”** [5], which also refers to the rights of the child:
  - „Article 10 – The States Parties to the present Covenant recognize that:
    1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into

with the free consent of the intending spouses. 2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits. 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law”.

- „Article 12 – 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child”.
- „Article 13 – 3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose schools for their children, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions”.
- 1974 – **„The Declaration on the Protection of Women and Children in Emergency and Armed Conflict”** [6], which asks for the strict observance of the following:
  - „1. Attacks and bombings on the civilian population, inflicting incalculable suffering, especially on women and children, who are the most vulnerable members of the population, shall be prohibited, and such acts shall be condemned.
  - 2. The use of chemical and bacteriological weapons in the course of military operations constitutes one of the most flagrant violations of the Geneva Protocol of 1925, the Geneva Conventions of 1949 and the principles of international humanitarian law and inflicts heavy losses

on civilian populations, including defenceless women and children, and shall be severely condemned.

- 3. All States shall abide fully by their obligations under the Geneva Protocol of 1925 and the Geneva Conventions of 1949, as well as other instruments of international law relative to respect for human rights in armed conflicts, which offer important guarantees for the protection of women and children.
- 4. All efforts shall be made by States involved in armed conflicts, military operations in foreign territories or military operations in territories still under colonial domination to spare women and children from the ravages of war. All the necessary steps shall be taken to ensure the prohibition of measures such as persecution, torture, punitive measures, degrading treatment and violence, particularly against that part of the civilian population that consists of women and children.
- 5. All forms of repression and cruel and inhuman treatment of women and children, including imprisonment, torture, shooting, mass arrests, collective punishment, destruction of dwellings and forcible eviction, committed by belligerents in the course of military operations or in occupied territories shall be considered criminal.
- 6. Women and children belonging to the civilian population and finding themselves in circumstances of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence, or who live in occupied territories, shall not be deprived of shelter, food, medical aid or other inalienable rights, in accordance with the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration of the Rights of the Child or other instruments of international law”.
- **1985 – „*The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (‘The Beijing Rules’)*” [7]:**
- „Article 2 – 2.2. For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts: (a) A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult; (c) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence”.

- „Article 4 – 4.1. In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity”.
- „Article 13 – 13.2. Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home”.
- „Article 18 – 18.2. No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary”.
- **1986 – „*The Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally*” [8], containing principles regarding general family and child welfare and child placement and adoption:**
  - „Article 5 – In all matters relating to the placement of a child outside the care of the child’s own parents, the best interests of the child, particularly his or her need for affection and right to security and continuing care, should be the paramount consideration.
  - Article 6 – Persons responsible for foster placement or adoption procedures should have professional or other appropriate training”.
  - „Article 8 – The child should at all times have a name, a nationality and a legal representative. The child should not, as a result of foster placement, adoption or any alternative regime, be deprived of his or her name, nationality or legal representative unless the child thereby acquires a new name, nationality or legal representative”.
  - „Article 10 – Foster placement of children should be regulated by law.
  - Article 11 – Foster family care, though temporary in nature, may continue, if necessary, until adulthood but should not preclude either prior return to the child’s own parents or adoption.
  - Article 12 – In all matters of foster family care the prospective foster parents and, as appropriate, the child and his or her own parents should be properly involved. A competent authority or agency should be responsible for supervision to ensure the welfare of the child.
  - Article 13 – The primary aim of adoption is to provide the child who cannot be cared for by his or her own parents with a permanent family.

- Article 14 – In considering possible adoption placements, persons responsible for them should select the most appropriate environment for the child.
- Article 15 – Sufficient time and adequate counselling should be given to the child’s own parents, the prospective adoptive parents and, as appropriate, the child in order to reach a decision on the child’s future as early as possible.
- Article 16 – The relationship between the child to be adopted and the prospective adoptive parents should be observed by child welfare agencies or services prior to the adoption. Legislation should ensure that the child is recognised in law as a member of the adoptive family and enjoys all the rights pertinent thereto.
- Article 17 – If a child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the country of origin, intercountry adoption may be considered as an alternative means of providing the child with a family.
- Article 18 – Governments should establish policy, legislation and effective supervision for the protection of children involved in intercountry adoption. Intercountry adoption should, wherever possible, only be undertaken when such measures have been established in the States concerned.
- Article 19 – Policies should be established and laws enacted, where necessary, for the prohibition of abduction and of any other act for illicit placement of children.
- Article 20 – In intercountry adoption, placements should, as a rule, be made through competent authorities or agencies with application of safeguards and standards equivalent to those existing in respect of national adoption. In no case should the placement result in improper financial gain for those involved in it.
- Article 21 – In intercountry adoption through persons acting as agents for prospective adoptive parents, special precautions should be taken in order to protect the child’s legal and social interests.
- Article 22 – No intercountry adoption should be considered before it has been established that the child is legally free for adoption and that any pertinent documents necessary to complete the adoption, such as the consent of competent authorities, will become available. It must also be established that the child will be able to migrate and to join the prospective nationality. adoptive parents and may obtain their nationality



- Article 23 – In intercountry adoption, as a rule, the legal validity of the adoption should be assured in each of the countries involved”.
- **1989 – „*The United Nations Convention on the Rights of the Child*”** [9], which defines the **child** as “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”, details the rights and basic priorities of the child, and tackles the issues of child placement and adoption:
  - „Article 20 – 3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or, if necessary, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background”.
  - „Article 21 – States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall: (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child’s status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary; (b) Recognize that inter-country adoption may be considered as an alternative means of child’s care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin; (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption; (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it; (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs”.
    - „Article 25 – States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic

review of the treatment provided to the child and all other circumstances relevant to his or her placement”.

**Evolution of the Protection and Promotion of the Rights of the Child**

As mentioned above, **child placement** and **child adoption** had to wait 60 years to be properly detailed. Table 1 below shows the evolution of the debates over the issues of the rights of the child, child placement and child adoption over the years as reflected in the documented detailed above.

**Table 1. Evolution of the debates over the issues of the rights of the child, child placement and child adoption between 1924 and 1989**

Year of Issue	The Rights of the Child	Child Placement	Child Adoption
1924	+	-	-
1948	+	-	-
1959	+	-	-
1966 (ICCPR)	+	-	-
1966 (ICESCR)	+	-	-
1974	+	-	-
1985	+	+	+
<b>1986</b>	+	+	+
1989	+	+	+

Undoubtedly, of the three documents approaching the issues of child placement and child adoption, „*The Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally*” from 1986 is the most important and it inspired national legislation on adoption (e.g., *Law no. 273 of 21 June 2004 on the adoption procedure*) [10].

It is interesting to note that, no matter the focus of the documents presented above (the rights of the child, child placement, child adoption), they all stress the idea of **family preservation**, possible only when the State acts “to enable children to stay with a family despite severe problems that prevented good parenting” to avoid child abandonment, abuse, or neglect, child removal from the home and child placement or child adoption (Adamc & Miller, 2007) [11]. According to Article 10, 1, of „*The International Covenant on Economic, Social and Cultural Rights*” from 1966, **family** is

“the natural and fundamental group unit of society”, and “the parents have not only the right to care for and supervise their children but also the responsibility to do so”. Likewise, Rule 18.2 of „*The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (‘The Beijing Rules’)*” from 1985 had already emphasised the importance of the family, requiring that the separation of children from their parents [through placement or adoption] be a measure of last resort – “only when the facts of the case clearly warrant this grave step (for example child abuse).”

### **Conclusions**

The concern for the **protection and promotion of the rights of the child** (separated or linked to the *protection and promotion of human rights*, in general, or to the *protection and promotion of other rights – civil, cultural, economic, political, and social*, in particular) is a century old in Romania, but **child placement** and **child adoption** had to wait six decades to be properly tackled.

„*The Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally*” is a seminal document inspiring national legislation on placement and adoption. However, despite the clear specification of child placement and child adoption, the underlying idea of these documents is to preserve the family to avoid child abandonment, abuse, or neglect (within one’s own family), child removal from the home by accredited institutions and child placement or child adoption – be it in professional settings.

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## **ASPECTE BIOETICE ÎN CONSULTUL MEDICO-GENETIC**

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### *BIOETHICAL ASPECTS IN MEDICO-GENETIC CONSULTATION*

*In the article are emphasized several aspects related to implementation of bioethical concepts in prenatal genetic diagnostic activity. Principles and values of bioethics lat a deep trace on medicine as well as on prenatal genetic diagnostics and medical-genetic counseling and become important*