

Parents' Legal Obligations towards Their Children before Leaving to Work Abroad

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Abstract:

This article tries to underline the importance of parents' awareness regarding their role within child protection during the time when they are physically absent from their children's lives. This new type of "cross-border" families, as Segalen called them, determines problems that can be avoided or diminished if legal indications are obeyed. Checking the legal guardians and the parents in charge of a child is the improvement of the law adopted in view of a better monitoring of the child while the parents are working abroad, a period which should be no longer than a year.

Keywords: *extended family, legal guardian, checking legal parents, care, entrusting*

The effects determined by parents' departure to work abroad required the introduction of legislation in social assistance, to prevent the negative effects of education and care for the child whose parents are working abroad. To this respect we implemented the dispositions of Law 272/2004, regarding the protection and support of children's rights, modified and updated with Law 257/2013, as well as the Government decision no. 691 from August 19, 2015. The legal procedure is applied in the case of families in which the parental authority is entrusted to a single parent, in the situations in which the place of residence of the child is established with one of the parents, with a legal guardian, and the parents or parent wishes to leave for work abroad. It is also mentioned that it is not important whether the parent/parents or legal guardian have or not a labour contract. (<http://www.avocatul.ro/articol-copiii-ai-caror-parinti-sunt-plecati-lamunca-in-strainatate-sunt-verificati-periodic-de-autoritati/>)

The legal procedure is compulsory and in the light of Law 272/2004, art. 142 coercive measures are stipulated (contravention fees in case of ignoring the obligations mentioned within this law).

One of the main obligations, which will initiate the whole procedure, consists of the necessity that the legal guardian of the child, who wishes to work abroad, to notify through a letter, at least 40 days in advance, the Service of Social Assistance with the mayor's office, of his future departure. To this respect, he must indicate a person that he will delegate his parental authority to while he is away. The designated person is necessary to be a member of the extended family. Law 272/2004 stipulates that the **extended family** is composed of the relatives of the child up to the 4th degree of consanguinity, to this respect parents may designate: grandparents, great/grandparents, uncle and aunt, brother of the grandparents, cousins, a brother/sister or persons that became such relatives through a process of adoption. It is also stipulated that the designated person must be an adult (18 years old) and must be in legal capacity in order to be accepted by the Central Family Court. With respect to the legal capacity, there are a few exceptions mentioned which consist in a previous granting of a legal capacity by the Family Court, in certain cases, with the achieving of the legal capacity through marriage.

A final condition that we may find within the law requires to the person designated by the parents/parent "to fulfil the material conditions and the moral guarantee necessary to the education and care of a child", aspects that need to be proven by presenting documents to attest that the person has the financial situation to provide for the child and that the person is acknowledged by society as appropriate for such a mission.

The request will be presented wither by the person interested in doing so or by the Public Service of Social Assistance to the Family Court, a concept created by the New Civil Law. The foundation, organization and functioning of the Family Court will be regulated, *in future*, by the law that regulates the judicial system. Until the foundation of the Family Court, all the attributions established by the Civil Law come to the resorts, sections or panels specialized for children and families that function according to Law no. 304/2004, art. 39 regarding judicial organization (<https://copiiisinguriacasa.ro/pentru-specialisti/>).

On the occasion of analyzing the request, the person indicated by the parents/parent will be asked by the panel whether he/she consents to take the parental authority for the period indicated by the parents, which can be no longer than a year. The designated person will take over the parental authority within three days, after giving the consent and presenting the documents regarding the material and moral guarantees.

The rights and obligations as well as the limits of the new legal guardians are mentioned in the decision of the court to confirm the delegation of the parental authority. The decision will be communicated by the court to the mayor from where the parents or legal guardians reside, as well as to the mayor from where the delegated person resides.

The delegated person will be obliged to attend a counseling program with the service of social assistance.

The service of social assistance will visit every two months the residence of those to whom parental authority was entrusted, in view of counseling them with respect to the responsibility they have for the child, and subsequently the visits will be every semester, which means that there will be only one more visit, the delegation period being one year, according to Law 272/2004. Each visit implies a report filed by the representative of the public service of social assistance, regarding the evolution of the child. The report will contain information with respect to care, school results, physical condition as well as the child's group or entourage. ([https://www.avocatnet.ro/articol.copiii ai caror parinti sunt plecati la munca in strainatate sunt verificati periodic de autoritati/](https://www.avocatnet.ro/articol.copiii%20ai%20caror%20parinti%20sunt%20plecati%20la%20munca%20in%20strainatate%20sunt%20verificati%20periodic%20de%20autoritati/)).

The public service of social assistance has the obligation to request support to the school counselor, psychologist, the general direction of social assistance and child protection, family physician or any other authority/local public institution, in case he observes problems of the child or other negative aspects that intervened during surveillance.

The public service of social assistance has the obligation (according to Decision 691/2015 to request in the last semester of each calendar year, data from schools regarding children whose parents/parent are working abroad and children returned into the country after staying with their parents for more than a year.

In the case where the person responsible for the child did not follow the procedure requested by Law no. 272/2004, republished, this person is

obliged to announce this within 48 hours the authority of the local public administration to which he/she belongs.

To this respect, the public service of social assistance will request data and information regarding the address where the parents can be contacted abroad, as well as the proof of the fact that the person in charge of the child maintains a relationship with the parents. Following the respective visit, the representative of the public service of social assistance will fill in the Chart for the identification of risks requested in art. 7, Appendix 2.

In March 2017, according to the situation presented by ANPDCA, the official statistics of the authorities responsible with social assistance mentioned a total of **97.841** children whose parents are working abroad, an increase from December 2015, when there was a total of **85.194 children** (<https://copiisinguriacasa.ro/ap-content/themes/csa/doc/>).

The statistics obtained from the County School Inspectorates show the existence of a total of 212.352 children with parents working abroad (December 2015).

However, the data presented by the educational system are not complete either, because they do not include children of pre-school age and those that are not enrolled in school/school abandonment (<https://www.avocatnet.ro/articol.copiii-ai-caror-parinti-sunt-plecati-la-munca-in-strainatate-sunt-verificati-periodic-de-autoritati/>).

One may mention that the data provided by the County School Inspectorates within an analysis of Save the Children, show that the statistics originating from the General Directions of Social Assistance and Child Protection (DGASPC) present only a part of the real range of the phenomenon.

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