

# CHILD PROTECTION IN CASE OF ARMED CONFLICT

Sorina-Lucreția DRĂGAN\*

## Abstract

*The international concern regarding the value of children's rights led to the signing, in 20<sup>th</sup> November 1989, in New York City, of the Convention on the Child Rights<sup>1</sup>. This convention establishes the international framework for the protection of the child's rights, having, as a basis, the Declaration of the Child Rights, signed in 20<sup>th</sup> November 1959, as well as other referent documents and conventions on the matter<sup>2</sup>. The convention acknowledges the childhood's special status and affirms the necessity of its protection by the ruling of an assembly of norms and social-judicial institutions of assistance and of security, creating a complex judicial document which reunites the child's civil rights, as well as political, economical, social and cultural-educational rights into an unitary and undividable system.*

**Key words:** *child rights, child protection, armed conflict.*

The international concern regarding the value of child rights led to the signing, in 20<sup>th</sup> November 1989, in New York City, of the Convention on the Child Rights<sup>1</sup>. This convention establishes the international framework for the protection of the child's rights, having, as a basis, the Declaration of the Child Rights, signed in 20<sup>th</sup> November 1959, as well as other referent documents and conventions on the matter<sup>2</sup>. The convention acknowledges the childhood's special status and affirms the necessity of its protection by the ruling of an assembly of norms and social-judicial institutions of assistance and of security, creating a complex judicial document which reunites the child's civil rights, as well as political, economical, social and cultural-educational rights into an unitary and undividable system. Almost 40 years of work were needed until the provisions of the Universal Declaration of Human Rights were codified under a treaty which later reached to the

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\* Lecturer at the Law Faculty, Cluj-Napoca, Christian University „Dimitrie Cantemir” Bucharest, candidate for a doctor's degree at the Law Faculty „Simion Bărnuțiu”, University „Lucian Blaga”, Sibiu.

adoption of this convention. The difficulties, among others, were due to the disagreement on the interaction and on the mutual interaction between the civil and political rights, on one hand and the economical, social and cultural ones, on the other hand<sup>3</sup>. The Convention's adoption with respect to the child's rights marked itself the end of stretched negotiations, but it also marked the appearance of a new subject, titular of rights in the international law, none-other than the **child** itself<sup>4</sup>. By order of the Law 18/1990<sup>5</sup>, Romania ratified the Convention on the Child Rights<sup>1</sup>.

As to the international concern for the child's safety, in case of armed conflicts, the Additional Protocols of 1977<sup>2</sup> added at the 1949 Geneva Convention are considered to be the first international law instruments which have provided special security.

Therefore, the Additional Protocol I compels state-parties to undertake all possible measures in order to prevent full participation of children under 15 years of age. This document expressly forbids the recruitment of children in the armed forces and it encourages state-parties to take on those who are mature enough, of 15-18 years old. The Second Additional Protocol is more restrictive because it bans the enrollment, as well as the direct or indirect participation of children younger than 15 years old.

Article 38 of the Convention on the Child Rights states the obligation of state-parties to respect and to ensure the observance of rules belonging to the international humanitarian law applicable in the case of war, rules meant to guarantee the child's safety. To this effect, these rules will do everything possible to make sure that the persons under the age of 15 won't take part in hostile situations. Furthermore, these persons will withhold from enrollment in the armed forces. When it comes to subjects between 15-18 years old, the state-parties will have to make sure that the older ones have priority in the recruitment process. In accordance with the international humanitarian law, state-parties have the obligation of protecting the civilians, so that in case of an

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<sup>1</sup> The Convention on the Child Rights was adopted by the United Nations General Assembly through the Resolution 44/25, on 20.11.1989.

<sup>2</sup> Also see: the Geneva Declaration was adopted in 1924 by the League of Nations which was the first international act in view of the child's rights; the Declaration of the Child Rights of 1959 of the United Nations Organization, act which was the basis on which the convention was drafted. A significant role had the International pact regarding the civil and political rights, signed on 16.12.1966, published in B. Of. nr. 146/20.11.1974, as well as the International pact regarding the economical, social and cultural rights, signed on 16.12.1966, published in B. Of. nr. 146/20.11.1974.

armed conflict, they'll be able in taking suitable actions, helping the children affected by the conflict by means of security and attendance.

Therefore, the Convention on the Child Rights maintains the age of 15 stipulated in the protocols, without making sure of a greater protection for the children involved in an armed conflict and it doesn't discuss the matter of recruiting into armed groups with no governmental status.

In this case, there are a series of other international conventions with provisions created in the hopes of protecting the children involved in a war.

Thus, the 26<sup>th</sup> International Conference of the Red Cross and Red Crescent, which took place in December 1995, recommended that parties of a conflict should take all necessary procedures in order to stop children under 18 years old from participating in the conflicts.

The enrollment of children under 15 years of age or the usage of such subjects in local or international conflicts in active roles are considered to be war crimes, according to the Statute of the International Criminal Court of Rome<sup>7</sup> which states that, for the continual strengthening of the implementation of the rights, acknowledged by the Convention on the Child Rights, it is required a constant and growing sense of security for the children against any involvement in the armed conflicts.

The Convention 182/1999<sup>8</sup> of the International Labour Organization, considering the most serious forms of child's labor exploitation and towards taking immediate action in eradicating such problems, emphasized the significance and prerequisite of signing of an optional protocol that should be in accord with the goals and principles written in the Charter of the United Nations. The Convention condemns forced or mandatory recruitment of children in wars that are taking place inside or outside national borders, in the taking part of distinct armed groups or armed forces of a state in various hostile situations. In the same time, the Convention underlines the obligation of each fighting-side to conform itself with the provisions of the international humanitarian law.

The international community, encouraged by the large support it offered to the Convention on the Child Rights<sup>1</sup>, reaffirmed the fact that the child requires special attention and it initiated an appeal for the constant reform of the condition of all the children, for their peaceful and safe development and education. This preoccupation was initiated due to the

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<sup>1</sup> The Convention was ratified by 193 countries.

harmful and global effects of wars they had on the children, their handling as targets in wars and in direct attacks over retreats (protected by international law), including places that are generally frequented by children (schools, hospitals).

The children are suffering in a variety of ways with long-term effects, the impact of armed conflicts over future generations holding the seeds of continued or resumed conflicts. For this reason, the Optional Protocol II attached to the Convention on the Child Rights, concerning the children's involvement in conflicts, was signed on 25<sup>th</sup> May 2000. Romania signed this protocol on 6<sup>th</sup> September 2000 and it was ratified by the Law 567/2001<sup>10</sup>. The protocol mentioned above affirms that state-parties should commence all possible measures in order to supervise the army-corp. members who didn't reach the age of 18, to obstruct any chance of directly participating in hostile circumstances and to halt the mandatory enrollment of these subjects within the army.

Even so, in the exception case in which the state-parties due allow voluntary enrollment in the national armies before the age of 18 years, they have to implement a minimum set of guarantees:

- a) the recruitment is voluntary;
- b) the recruitment is done with the parent or of the legal guardian's consent and awareness;
- c) the person will be well informed of the duties he will be assigned to during military service;
- d) the person will provide a clear evidence regarding its age before being accepted in the national military service;

We can observe constant interest on the matter even in the European Union. Considering the fact that the future belongs to the children and that a list of rights is being guaranteed for them, the support and protection of the children's rights is a political priority in the E.U. which believes that severe actions must be taken in order to clear the children's-involvement-in-wars problem. For these reasons, the E.U. is engaged in fighting efficiently and globally the short, medium and long-term effects on which the wars have on children, using all the instruments at its disposal and counting on the past or present activities carried out on the subject presented. The E.U.'s objective is to influence third party-states and partner organizations to put into use the international norms and provisions in the field of human rights and also the

legislation with reference to humanitarian issues, including international or regional instruments intended for human rights and to take up strong actions for the children's security against the effects of the armed conflicts and to cease the enrollment of children in the army or in the armed groups.

In the Romanian law system, the Law 272/2004 concerning the security and wellbeing towards the child's rights regulates the legal frame concerning the respect, the support and the guarantee of the child's rights. This law is more than just a simple improvement of the present legislative framework, it can be considered the foundation of the modern-day system, a European system of securing all the children's rights, fully corresponding with the international treaties of which Romania is part of, especially with the European Convention on Human Rights and with the U.N. Convention on the Child Rights.

According to this law, the children affected by armed conflicts shall benefit of special protection, including physical and psychological recovery, as well as social reintegration. The Article 76-79 of the law mentioned above are presenting regulations of general nature created to ensure the children's safety in case of war. These general norms invert the principles and the obligations' content enforced by Article 38 of the U.N. Convention on the Child Rights, especially that of which aims at taking on possible measures to ensure the protection and welfare of children affected by war.

So, Article 77 of the Law 272/2004 forbids the idea of using a child as a spy, guide or post-boy in times of war. In case of armed conflicts, the State's institutions shall take up the necessary actions for the development of special mechanisms meant to guarantee the supervision of the adopted tasks for the protection of the child's rights. Therefore, the National Agency for the Protection of the Child's Rights, working together with the Ministry of Administration and Interior, as well as other institutions with specific qualifications, is compelled to initiate and implement programs and strategies, including those for family and community, with the aim of demobilizing the soldier-kids and to remedy the war-effects of the child, both physical and psychological and to support his social reintegration. The above-mentioned institutions of the central public administration, together with the National Agency for Employment and the Ministry of Education and Research, will promote the proper measures for:

- a) the education in the spirit of understanding, solidarity and peace, as a general and continued process in preventing clashes;
- b) the education and training of demobilized children for an active and responsible social life.

In the same time, Article 79 of the Law 272/2004 stipulates the obligation of the president of the county's Council or as appropriate, of the mayor of Bucharest Municipality to forward a complete list of all the children present in the area of the territorial-administrative entity in question to the General Directorate of Social Assistance and Child Welfare, in 24 hours after the break of an armed conflict, in order to supervise their condition. The law bans the use, for military purposes, of the substructure intended for the safety and preferment of the child's rights and in the case of evaluation procedures unfolded after the wars, the children will have right of way.

The General Directorate of Social Assistance and Child Welfare, in collaboration with the Civil protection, will initiate the basic procedures in order to ensure the custody of evacuated children, by people who can take responsibility in giving them protection and wellbeing. Whenever it will be possible, members of the same family will be housed together.

After carefully examining the previous information, we can now determine the fact that in the Romanian legislation the child's rights are interpreted and applied in line with the pacts and other treaties on which Romania is part of, here the principle of the infant's best interest being valued.