

CONTEMPORARY PARADIGMS OF LABOR MIGRATION AND THE SOLUTION OF PARENTAL AUTHORITY DELEGATION¹

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Abstract

Closely related to the very quality of being European Union citizens, the movement of people and labor migration is significant from Romania to other EU countries. Being a complex process, the labor migration determines a chain of effects, involving both positive aspects (economic, social, cultural or relevant to the labor market) as well as negative, unfortunate and unintended, especially for families and children. Although the parents' choice to work abroad is based on a criterion related to the level of economic development of the family, which meets the legal imperative that any decision must respect the principle of best interests of the child, the imminent risk factor generated by this choice leads to serious vulnerabilities and problems regarding a judicious and real protection of children's rights in our country. Numerous studies and statistics published at national level have determined, on one hand, the need of a more active involvement of the local and central public administration authorities in order to establish the actual dimensions of this phenomenon and, on the other hand, the necessity of establishing an express alternative protection framework for these abandoned children, which are now, in many cases, in the random care of people, other than their parents. Given this general context, this study identifies and analyzes the extent to which the current legislative framework on the situation of children whose parents have moved abroad in order to work is applicable or not. We will also present our opinion on the procedure of delegating parental authority by parents in the situation mentioned above and the efficiency of other alternative care measures and see if they meet the requirements established by the principle of the best interests of the child.

Keywords: labor migration, parental authority, child protection, best interest of the child, social assistance, children rights.

JEL Classification: K15, K31, K36, K37

1. Introduction

Acquiring the capacity of member state of the European Union, Romania implicitly adopted the common European values and gradually assimilated the policies in the social field, one of the four freedoms that the Romanian citizens also benefit from being the *free movement of workers*. This involves the right of workers to free movement and residence, the right of entry and residence for members of their families, the right to work in another Member State and to be treated equally with the citizens of the Member State in which they arrive⁵. In Romania, within the population flows, the labor movement registers various sizes, with “bursts” of enhancement and with various forms of manifestation in some periods and geographical areas and, respectively, of decrease in others. And when labor migration is reported in the case and in consideration of the capacity of parent, the factual situation becomes a sensitive one, whose paradigm made us to analyze it.

The legal issue subject to research is due, on the one hand, to the wide scope phenomenon of *labor migration* and its impact on children and, on the other hand, to the role that the Romanian state has in ensuring certain mechanisms for child protection, related with international principles transposed into our legislation, namely, *the principle of respecting the best interests of the child and the principle of exercising parental rights and duties in the best interests of the child*.

We find that, in parallel with the entire strategy for developing European policies, the phenomenon of *labor migration*, paradoxically, generates at national level both costs and benefits, as

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⁵ Article 45 of the Treaty on the Functioning of the European Union (TFUE).

well as unexpected implications. Although the possibility of labor migration across the EU is supported by the idea of the *fundamental freedom* of the European citizen to free movement, such a phenomenon is likely to generate also a negative impact: family values are severely affected when parents are the beneficiaries of this freedom. It is a contradiction for a freedom to give birth to imbalance, insecurity! Multiple studies and statistics published at national level have determined not only the need to involve local and central public administration authorities with a view to knowing the real dimensions of this phenomenon, but also the intromission of setting up an express alternative protection framework for the children left in the random care of persons other than of parents. In this context, the center of interest of the study confronts both the two protagonists of the parental relationship, parent-child, as well as the manners in which this relationship is protected by private law rules - the exercise of parental authority and its delegation in expressly regulated situations.

2. Social implications of the migration phenomenon on children left at home

As a total social phenomenon, migration is one of the important tests for all European Union states⁶. It is a test of the capacity to lead a phenomenon with multiple valences and, at the same time, of the capacity to ensure a safe space for the exercise of a recognized right, that of mobility. As has often been stated, migration is the third major change for Romania subsequent to 1990, the first being the transition from totalitarianism to democracy, and the second from a centrally planned state economy to a market economy⁷.

Even though the statistics on Romanian migration are cloudy and contradictory, there is enough evidence to show that Romanians have taken advantage of the opportunity for the right to free movement. In the early 1990s there is a trend of migration of a single member of the household (4 persons out of 1,000 inhabitants⁸, usually the father. In 2020, according to Eurostat data, Romania has the most employable citizens (aged between 20 and 64 years old) resident in another EU Member State, being the largest exporter of employees in the European Union⁹.

Regardless of its form, migration is associated with economic and social advantages and disadvantages¹⁰. Each of those involved - the state or the individual - records benefits and losses equally, whose amount is judged quantitatively and in value. The perspective of emigration has led to more investments in human capital, higher individual incomes, but also to economic growth and the limitation of Romania's external balance deficit¹¹. The validity of the neoeconomic theory (or the new economy of migration)¹² is confirmed in the case of Romania, migration being perceived as a force generating opportunities. The result is obtaining a safety net for the family, diversifying sources of income.

Public opinion credits the phenomenon positively, generating a "culture of migration", expressed through manifestations of sacrifice and commitment¹³. 93% of Romanians consider that

⁶ Traian Rotariu, *Demografii și sociologia populației. Structuri și procese demografice / Demography and Sociology of the Population. Demographic Structures and Processes*, Polirom Publishing House, Iași, 2009, p. 54.

⁷ Dumitru Sandu, *Migrația românească, un strigăt pentru reformarea țării / Romanian Migration, a Cry for the Country Reformation*, in the "Lumina" newspaper, 2017. The document is available online at: <http://ziarullumina.ro/migrația-românească-un-strigăt-pentru-reformarea-țării-125421.html>, accessed on 4.11.2021.

⁸ Bogdan Alexandru Suditu (coord.), Gabriela Prelipcean, Daniel Celu Virdol, Oana Anuța Stângaciu, *Perspectivile politicii de migrație în contextul demografic actual din România / Perspectives of migration policy in the current demographic context in Romania*, Bucharest, European Institute of Romania Publishing House, 2013, p. 83.

⁹ Statistical data are available at <https://ec.europa.eu/eurostat>, accessed on 3.11.2021.

¹⁰ Andreea Elena Matic, Ștefania Cristina Mirică, Special Aspects Regarding Women and Children Refugees, *Cross-Border Journal for International Studies*, vol.2, no. 3/2017, pp. 69-80, <https://www.cbjis.ugal.ro/index.php/cbjis/article/view/37> accessed on 01.11.2021.

¹¹ Irina Diana Mădroane, *The media construction of remittances and transnational social ties: migrant-non-migrant relationships in the Romanian press*. „Identities”, vol. 23(2), pp. 228–246. Doi:10.1080/1070289x.2015.1054393; Ciprian Iftimoaei, Ionuț Cristian Baciu, *Analiza statistică a migrației externe după aderarea României la Uniunea Europeană / Statistical analysis of external migration after the accession of Romania to the European Union*, „Romanian Statistical Review” – Supplement, nr. 12, / 2018, pp. 166-187; Florin Tudor, *Fiscal Policy and Tax Procedure in Romania*, Lambert Academic Publishing, Saarbrücken, 2011, p. 9.

¹² Oded Stark, & David Bloom, *The New Economics of Labor Migration*, 1985 in „The American Economic Review”, vol. 75(2), pp. 173–178, the document is available online at: <http://www.jstor.org/stable/1805591>, accessed on 4.11.2021.

¹³ Irina Diana Mădroane, *op. cit.*, p. 236.

the majority of Romanian citizens leave the country to make money¹⁴, 71% of young people believe that massive labor migration is beneficial, 37% considering that it is financially beneficial, 22% showing that it helps to the integration of Romanian citizens in European socio-economic environments, and 10% that it is socially beneficial¹⁵.

On the other hand, all studies addressing this issue also highlight the social implications of the phenomenon, especially the erosion of family functions - economic function (organization of production and consumption), the function of socio-affective solidarity, education and socialization¹⁶. No matter from which perspective it would be viewed, the family has as its determination a unity of functions, of thoughts, feelings, desiderata, projections. Where family there are set family relations with a child, action must be taken in such a way that the role of the legal mechanism be able to strengthen family-type relations. Becoming **parents**, their intrinsic responsibility is to invest in their children the most beautiful hopes and an accumulation of values according to which to organize their social activities. **Minority** or rather, childhood, has a charm apart. Beyond the playful universe, that period is marked by physical and mental immaturity, social dependence, the need for material and emotional support. In this context, the family role is major, as a protective environment, as within it the individual learns the normative essence of the world in which he/she lives, passed by his/her parents through the **exercise of parental authority**.

With the principle value, pursuant to Article 483 para. (2) Civil Code, the parents (and other persons designated by law) "*exercise parental authority only in the best interests of the minor, with due respect for his/her person, and involve the child in all decisions concerning him/her, taking into account the age and his/her degree of maturity*". Parental authority presumes the existence of a plurality of rights and obligations for parents, who should make decisions together concerning the upbringing and education of children, as well as their property, in full connection with ensuring **respect for the best interests of the child**. The latter principle is enshrined in the provisions of Article 263 para. 1-4 Civil Code, text that also has a correspondent in Law No. 272/2004 (Article 2 and Article 6 of the law) on the protection and promotion of the rights of children¹⁷. In relation to the same international requirements, "any measure concerning the child, regardless of its author, must be taken with respect for the best interests of the child". The complexity of the concept of respecting the best interests of the child lays us under an obligation to mention that in this paper we will look at its content only in relation to parental responsibilities, child deprivation of the family environment and the state mechanism of social protection through alternative care. Equally, in the last part of our analysis, this principle was also approached from the perspective of a court procedure instrument, as a guarantee in decision-making in the field of family relations.

Apart from the risk of family dissolution, parental migration has also led to a redefinition of kinship relationships, to the change and/or takeover of other patterns of family behavior, and even to psychological effects with negative impact. By leaving the parents to work abroad, children are not to a certainty abandoned, but the parental role is taken by relatives, sometimes by neighbors or friends.

At national level, the data of the National Authority for the Rights of Persons with Disabilities, Children and Adoptions show that in the records of the authorities responsible for social assistance there were, at the end of June 2021¹⁸, a total number of 75,803 children with parents who were working abroad, of which 8,938 children left at home from families with a single support parent gone abroad to work, and in 2020, despite the pandemic situation caused by Covid-19, a number of 75,136 children, respectively, 9,409 children left at home from families with a single support parent left to

¹⁴ Sebastian Lazaroiu, *Migration Trends in Selected Applicant Countries* Vol. IV - Romania: More 'Out' than 'In' at the crossroads between Europe and the Balkans, International Organization for Migration, 2004, p. 43.

¹⁵ Viorel Rotilă, *Problemele copiilor cu părinții plecați la muncă în străinătate: ce cred copiii despre situația lor (aspecte metodologice)* / *Problems of children with parents working abroad: what do children think about their situation (methodological aspects)*, USMF Scientific Annals "Nicolae Testemitanu", 9th edition, 2008, p. 196.

¹⁶ With regard to a detail of the family functions, see Marieta Avram, *Drept civil, Familia / Civil Law, Family*, 2nd edition revised and added, Hamangiu Publishing House, Bucharest, 2016, pp. 3-4.

¹⁷ Law no. 272/2004 on the protection and promotion of children's rights, republished in the Official Gazette no. 159 of March 5, 2014; with subsequent changes.

¹⁸ <http://andpdca.gov.ro/w/date-statistice-copii-si-adoptii/>, accessed on 05.11.2021.

work abroad.

Although decreasing compared to 2016, when a total of 95,308 children are registered, the number fluctuated from year to year, but without a clear trend showing an improvement of the phenomenon. Alternatively, as it also arises from the data shown in Table 1, it can be noticed as a positive trend the constant reduction in the number of children who remain completely voided of parental care, either having both parents gone or only the single support parent working abroad. If in 2008, immediately after Romania became an EU member state, there remained at home 28,795 children with both parents left and a number of 10,408 children whose single parent was left for working abroad, in 2021, for example, the figures back up a visible decrease, 12,664 and 8,938 children, respectively. In this context, the pressure on the social assistance system increased over time and, although it is not the subject of this analysis, we should also remind the phenomenon of returning to the country of origin of children who emigrated alongside their parents to work abroad (remigration). Up to the present, compared to this situation, Romania has failed to outline or adapt special social services appropriate to the needs of children "returned" in the country¹⁹.

Year	Total Children	Number of children left at home - single-parent families working abroad	Number of children left at home – families with both parents working abroad	Number of children left at home
2008	92,328	53,125	28,795	10,408
2009	85,605	48,665	26,472	10,468
2010	84,084	40,037	25,567	10,480
2011	83,658	49,470	23,924	10,264
2012	79,901	46,917	22,993	9,991
2013	80,036	47,394	22,329	10,313
2014	82,339	49,885	22,050	10,434
2015	85,194	53,507	21,610	10,077
2016	95,308	62,978	18,646	13,684
2017	94,896	64,701	17,425	12,770
2018	92,027	62,890	16331	12,806
2019	82,263	59,262	15,858	11,143
2020	75,136	52,474	13,253	9,409
2021	75,803	54,201	12,664	8,938

Table 1. The situation of children left in the country whose parents are working abroad ²⁰

The lack of direct parental supervision leads to more social problems²¹, and the same public opinion that resonates with the sacrifice and commitment of migrants, urges the Government to reconsider the legal obligations towards children whose parents are working abroad and which would guarantee the protection of the best interests of the child. In such a context, can we not help but wonder what is the role of law in maintaining and strengthening parental relationships, taking into account the principles that protect the rights of the child?

True to the observance of the European commitments assumed, the Romanian state was concerned with the implementation in domestic law of a social protection policy in the field of family

¹⁹ For details, see Luminița Iosif, Iolanda Stîngă, *Fenomenul remigrării în România. Implicații sociale / The Phenomenon of Remigration in Romania. Social Implications*, Annals of the Dunărea de Jos University of Galați, fascicle XX, Sociology, 2017, no. 12, pp. 35-47.

²⁰ Statistical data were taken from the official website of the Ministry of Labor and Social Protection, National Authority Service for the Rights of Persons with Disabilities, Children and Adoptions, available at: <http://www.copii.ro/statistica-pe-ani/>. The website was accessed on 7.11.2021. Moreover, similar data are included in the numerous reports and statistics made by the organization Children at Home Alone, the page that can be accessed at: <https://copiisinguriacasa.ro/>. The document that underlay our analysis, Report on the observance of the rights of children in Romania (2019) is available online at: <https://www.salvaticopiii.ro/sci-ro/files/97/9752e45b-e734-4d25-8d8f-b2f899a7fe73.pdf>, accessed on 01.11.2021.

²¹ Daniela Petronela Feraru, *Costuri sociale ale migrației externe din România / Social Costs of External Migration in Romania*, 2nd edition, LUMEN Publishing House, Iași, 2019, p. 94.

relations. Through the recent amendments brought to Law no. 272/2004 on the protection and promotion of the rights of children, through the normative framework of Government Decision No. 691/2015²² on the Procedure for monitoring the way of upbringing and nurse of the child with parents working abroad and the services they can benefit from, it has been set up the **procedure for delegating parental authority** by parents who are to go to work abroad. The legal provisions contained in Law 272/2004 target the following categories of persons:

- both parents leave at the same time or the situation when initially one parent leaves and later the other parent leaves the country;

- the parent who exercises parental authority alone, following the dissolution of the marriage by divorce or other situations in which such a measure has been ruled;

- the parent with whom the child lives in the case of parents who exercise joint parental authority, and following the divorce the court has established who is the parent with whom the child will normally live, following the marriage dissolution. In Annex 1 of the G.D., it can be found the procedure for carrying out the procedure of temporary delegation of parental authority.

Schematically, this is how the new procedure for delegating parental authority looks like, in order to regulate the situation of children with parents abroad:

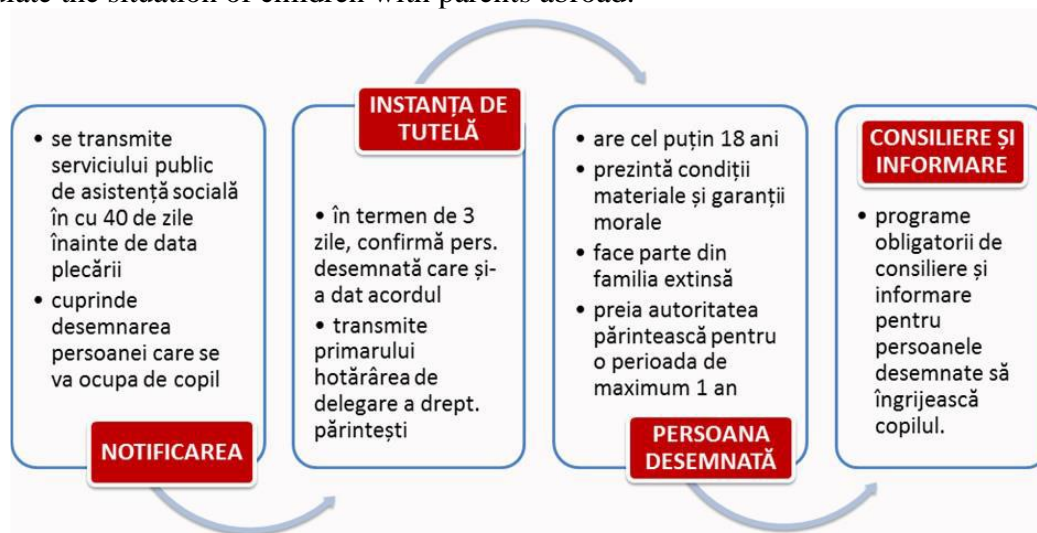


Figure 1. Stages of the procedure for delegating parental authority ²³

Source: www.copiisinguriacasa.ro

3. Specific legal issues regarding the procedure of temporary delegation of parental authority

From the corroboration of Articles 104 par. (3) and 105 para. (3) of Law No. 272/2004 on the protection and promotion of the rights of children, amended and supplemented by Law No. 257/2013 it follows that the procedure of temporary delegation of parental authority will be completed by the guardianship court, which will confirm the person designated for the maintenance of the child. The court will order the temporary delegation of parental authority with regard to the person of the child during the parents' absence, but not more than one year.

Pursuant to the express provisions of Article 105 para. (6) of the law, the resolution of the request for delegation of parental rights and duties is made within 3 days from its submission, in a non-contentious procedure, according to the Code of Civil Procedure. The consent of the person to

²² Government Decision No. 691/2015 on the Procedure for monitoring the way of upbringing and nurse of the child with parents working abroad and the services they can benefit from, as well as for the approval of the Working Methodology regarding the collaboration between the general directorates of social assistance and child protection and the public social assistance services and of the standard model of the documents drafted by them, published in the Official Gazette no. 663 of September 1, 2015.

²³ <https://copiisinguriacasa.ro/pentru-specialisti/legislatie-si-servicii/indrumar-de-implementare-a-dispozitiilor-cuprinse-in-legea-272/2004-modificata-si-actualizata-prin-legea-257/2013-referitoare-la-protectia-copilului-cu-parinti-plecati-la-munca-in-strainatate/>, website accessed on 5.11.2021.

whom the parental authority is to be delegated is expressed by this person, before the court [art. 105 para. (4)].

At national level there is no mechanism for monitoring the implementation of the legal provisions regarding the procedure for temporary delegation of parental rights and, implicitly, data concerning the number of parents who completed this procedure²⁴. Save the Children Organization²⁵, based on the accumulated experience, estimates that up until now the procedure was carried out by a rather small number of parents.

Checking the courts portal, we find that the reckoning of the Save the Children Organization is confirmed, for instance at the Galati Court there are recorded two cases in 2021 with this object, four cases in 2019 and one case in 2018.

The study of jurisprudence also reveals some cases of non-uniform enforcement of the special law provisions. Thus, the administrative, preparatory stage of the delegation procedure begins, according to Article 104 para. (1) of the law, with the notification of the public social assistance service by the parents/parent regarding the intention to go to work abroad, "with minimum 40 days before leaving the country". This time limit was labelled differently by the courts: some considered it to be a recommendation time and judged the request even if the time limit was not complied with, while others considered it a mandatory/forfeiture legal time and, therefore, rejected the request as inadmissible or tardily advanced, in the case of its exceeding²⁶.

In relation to the purpose for which it was regulated (performing the proper assessments so that the guardianship court can be provided with the references required for confirming the person designated by the parents and completing the delegation procedure until the parents/parent leave/s the country), we cannot construe otherwise the legislator's provision but in the sense of qualifying it as a time of recommendation. The spirit of the regulation is to provide protection for children and not to sanction the holders of the right to action.

Moreover, qualifying the time of minimum 40 days defined by the legislator as an imperative time, it is cancelled the possibility of carrying out the procedure by parents who are already working abroad and did not initiate the procedure before leaving²⁷ (in 2013, on the date of amending Law no. 272/2004, there were already many parents gone to work abroad).

With regard to the second phase of the delegation procedure, the approval of the temporary delegation of the exercise of parental authority, the competence undoubtedly falls on the guardianship court [Article 104 para. (3)], which will resolve the request by making the enforcement of provisions regulating the activity of the courts by which there are resolved requests that do not intend to set an

²⁴ As of August 19, 2015, the method of collecting data with regard to children with parents working abroad is regulated in Annex 1 of Government Decision no. 691/2015 on the Procedure for monitoring the way of upbringing and nurse of the child with parents working abroad and the services they can benefit from. According to the mentioned normative act, the Public Social Assistance Service requests annually, in the last quarter of the year, from the school units operating in their administrative-territorial area, data and information regarding the children in the following situations: children with both parents gone abroad, children with a single support parent who went abroad, children with one parent who went abroad, children who returned to the country after a period of staying abroad with parents for more than one year. The school has the obligation to send the nominal list with children being in the mentioned situations within maximum 15 calendar days from the request. At central level, the National Authority for the Protection of the Rights of the Child and Adoption (ANPDCA) presents, quarterly, a statistical situation drafted based on the data reported by the public social assistance services from each administrative-territorial unit to the general directorates of social assistance and the child protection at the level of each county. By consulting the institution link (<http://www.copii.ro/statistica-pe-ani/>) we notice that among the data collected by ANPDCA there are no data regarding children for whom the measure of temporary delegation of parental authority was approved by the guardianship court.

²⁵ Save the Children Organization has been concerned since 2007 with the identification of appropriate directions for intervention in support of these children and has proposed, since 2010, the specific approach to the issue of children with parents working abroad in Law no. 272/2004 on the protection and promotion of children's rights. See in this sense Anca Stamin, *Exercising parental authority in the case of children whose parents work abroad*, in the collective work *Parental authority. Between greatness and decay*, Marieta Avram (coordinator), Solomon Publishing House, Bucharest, 2018, pp. 109-110.

²⁶ For a solution of rejection of the request for delegation, maintained by the appellate court, holding that the petitioning parents did not notify the public social assistance service from their home, but from the home of the designated respondent and, in any case, the notification titled "Statement" was not drafted while complying with the minimum time of 40 days, see Trib. Prahova, s. I civ., Judgment No. 261 / 27.02.2018, *apud* Emese Florian, *Delegarea voluntară a exercitării autorității părintești / Voluntary delegation of the exercise of parental authority*, in the collective work *Autoritatea părintească. Între măreție și decădere / Parental authority. Between greatness and decay*, Marieta Avram (coordinator), Solomon Publishing House, Bucharest, 2018, p. 39.

²⁷ On the same line, see Anca Stamin, *loc. cit.*, pp. 113.

antagonist right against another person, the non-contentious judicial procedure [Article 105 para. (6)]. That is why, unlike the contentious procedure, the non-contentious procedure is characterized by the absence of a dispute, so by the absence of a conflict of interest, we consider illegal or even abusive the sanctioning of the parent/parents for failure to comply with the time of minimum 40 days mentioned in the law as a time limit within which the notification is to be lodged.

The Code of Civil Procedure regulates the non-contentious judicial procedure in Book III, titled "Non-Contentious Judicial Procedure", Article 527-540. Therefore, in accordance with the provisions of Article 527 from the Code of Civil Procedure, the requests for the resolution of which the intervention of the court is needed, but without aiming to establish an antagonist right against another person, such as those regarding the granting of judicial authorizations or the taking of legal measures for supervision, protection or insurance, are subject to the provisions of this book.

Articles 527-540 from the Code of Civil Procedure include the general regulation of the non-contentious judicial procedure. These provisions are supplemented by those of contentious procedure, to the extent that they are not adverse to the non-contentious nature of the request.

At the same time, the provisions from Article 527-540 from the Code of Civil Procedure "constitutes the common law"²⁸ for non-contentious matters with regard to which the law sets up a special procedure.

Returning to the jurisdiction of the court, according to Article 528 para. (2) from the Code of Civil Procedure, when the request is made in the main way, the court jurisdiction - general, material and territorial -, as well as the resolution of incidents regarding the jurisdiction are subject to the rules provided for contentious requests. However, considering the fact that the Special Law no. 272/2004 expressly provides the jurisdiction of the guardianship court, the latter provisions will be enforced with priority.

Also taking into account the provisions of the special law, the non-contentious request is accompanied by documents from which to arise the fulfillment of the conditions: the person appointed to be part of the extended family, to be at least 18 years old, to fulfill the material conditions and moral guarantees required for upbringing and caring for a child.

For the aspects not regulated, the special rule is completed with the general rule in the matter. Consequently, the notification of the court is made through a request stated in writing, which, according to Article 530 para. (1) from the Code of Civil Procedure, will include: the surname, forename and domicile or, as the case may be, the name and headquarters of the person making it and, depending on the circumstances, of the persons he/she requests to be summoned before the court, the object, its motivation and signature. The request will be accompanied by the supporting documents.

Going through the provisions of the special law, we deem incompatible the awarding of a solution of the request with the prior verification and regularization regulated by the provisions of Article 200 from the Code of Civil Procedure. The solution of the request for delegation of parental rights and duties is made with accelerated speed, within three days from the date of its submission [Article 105 para. (6) of Law no. 272/2004].

The procedure for awarding a solution unfolds in the council chamber, the rule regarding summons being that it is not mandatory to summon the petitioner and the persons mentioned in the request, unless the law expressly provides [Article 532 para. (1) Code of Civil Procedure]. Seen from this aspect, the special law provides only the summoning of the person to whom is to be delegated the exercise of parental authority, who must express his/her personal consent before the court [Article 105 para. (4) of the law].

In non-contentious matters, the judge reckons whether the summons is necessary, so that it will not apply the rule in contentious matters, which obliges to summoning in all cases, except for the exceptions provided by law.

The court has the right to rule any measures useful to the case, such as "attaching files or

²⁸ Gabriel Boroi, Mirela Stancu, *Drept procesual civil / Civil Procedural Law*, ed. 5th revised and added, Hamangiu Publishing House, Bucharest, 2020, p. 933.

requesting information from various institutions of the state"²⁹. In addition, Article 532 para. (2) Thesis II provides that the court has the right to hear any person who can bring clarifications in the Code of Civil Procedure case, as well as those whose interests could be affected by the judgment.

In applying the principle set up by the provisions of Article 78 para. (1) Code of Civil Procedure, according to which, in the non-contentious procedure, the court might order ex officio the introduction in the case of other persons, even though the parties stand against, we consider that, when the court finds that the person appointed by the parent fails to meet the requirements imposed by the legislator, for example he/she has not reached the age of 18, will be able to enter in the case ex officio a third party, identified as a suitable person, following to pronounce on the delegation, with his/her consent, after being evaluated concerning the material conditions and moral guarantees.

Towards the provisions of Article 29 para. (2) of Law no. 272/2004, the guardianship court will mandatorily listen to the minor who has reached the age of 10 years.

The court pronounces by executory conclusion, in relation to all de facto and de jure circumstances of the case, even though they were not invoked in the request or throughout the procedure (Article 533 Code of Civil Procedure), But came to the knowledge of the court, based on the clarifications brought by the participants in the procedure³⁰.

As it follows from the content of Article 535 Code of Civil Procedure, the conclusions pronounced in the non-contentious procedure do not have the authority of the res judicata, solution motivated by the fact that within this procedure a conflict is not resolved, showing on which side is the justice, but the court decides only on certain measures or operations, given by the law in its jurisdiction. As a consequence, the court may return to this conclusion, upon the request of the interested party, if the de facto situation regarded in its ruling has changed³¹ (for example, the minor's parent dies in a work accident shortly after leaving the country)

The judgment will include the express mention of the rights and duties that are delegated [among those regarding the person of the child, according to Article 105 para. (3) of Law no. 272/2004], as well as the period for which the delegation takes place [Article 105 para. (7) of the law]. It is notified, ex officio, to the mayor from the domicile of the parents or, as the case may be, to the guardian, as well as to the mayor from the domicile of the delegated person [Article 105 para. (9) of the law].

The conclusion is subject only to appeal, except for the one pronounced by a panel of the High Court of Cassation and Justice, which is final [Article 534 para. (2) Code of Civil Procedure].

The time of appeal will run from the pronouncement, for those who were present at the last court hearing, and from the communication, for those who missed, the appeal being able to be declared by any interested person, even though it was not summoned or not participated in the solutioning of the request (an important derogation from the rule according to which the appeals can be exercised only by those who had the capacity of party to the trial ended with the judgment that is under appeal³²), the time of appeal running from the date on which it took a note of the conclusion, but not later than one year from the date of pronouncement, in order to protect the safety of the civil circuit.

4. Conclusions

A complex phenomenon, labor migration brings with it significant consequences in society at the economic, social, cultural level. Although it is a driving force for domestic economic growth, social policies concerning migration must remain firm and protect the interests of community members, especially those being in a form of legal protection. In accordance with the above, by taking into account the whole legal mechanism for ensuring the interests of the child, the exercise of parental

²⁹ Gabriel Boroi, Mirela Stancu, *op. cit.*, p. 935.

³⁰ Andreea Tabacu, *Drept procesual civil / Civil Procedural Law*, ed. II revised and added, Universul Juridic Publishing House, Bucharest, 2019, p. 396.

³¹ Gabriel Boroi, Mirela Stancu, *op. cit.*, p. 935.

³² *Ibidem*, p. 936.

authority remains the main form of protection, the parents being the ones who fall on this task prioritarily regarding both the person of the child and his/her goods. The exercise of parental authority by other persons is a measure which is ordered by the guardianship court, exceptionally, through the procedure presented above. We express our persuasion that the discussion of the challenges and drawbacks in the enforcement of legislation in the field will facilitate, in the future, to a larger extent the implementation of measures for protecting children without legal representation, as a result of parents leaving to work abroad.

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