

THE SOCIAL ASSISTANCE SYSTEM IN ROMANIA. LEGISLATIVE REFERENCES

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Abstract: *This article attempts to briefly review the Romanian legislation adopted after 1990 in the field of social assistance. Thus, we can say that regarding the preoccupations for drawing up the normative framework in social assistance there were two directions of action: the configuration of the legal acts of the various social benefits (allowances, social benefits, compensations, etc.) for the categories of people in difficulty and the setting up of the normative framework in order to establish the general principles and regulations for functioning of the social assistance services. Tracking the practical impact of the effects generated by the rule of law can lead to conclusions regarding to the improvement and development of the legislative framework, institutions and mechanisms that support the coherent functioning of the social assistance system as a whole.*

Key words: *normative framework, social benefits, social services, desynchronization.*

1. Introduction

Social assistance is a component of the national social protection system and includes social services and social benefits provided by the state in order to develop the individual or collective capacities needed to ensure social needs, increase the quality of life and promote the principles of cohesion and social inclusion.

During the transition period between 1990-2000, a period marked by deepening poverty, the legislative amendments focused mainly on the financial transfer measures objectified in the provision of social benefits such as allowances, social benefits and compensations. Thus, in 1991, Law 61/1991 on state allowance for children appeared, in the immediately following year the Law 53/1992 on the social protection of persons with disabilities, and three years later Law 67/1995 on social benefits.

Social benefits have diversified and have experienced significant quantitative growth without always achieving the expected results. Thus, it has led to undesirable cases as outcome, such as:

- the benefits were not a real means of combating or preventing the risk of social exclusion because of uncorrelated and insufficient levels;

- according to the principle of universality, allowances were granted to families / people who were not in need, these ones cumulating more financial aid;
- since the provided amounts covered the minimum daily subsistence needs, they discouraged any initiative to enter the labour market.

In 2001, Law 67/1995 on social benefits was abolished by entering into force of the Law 416/2001 on minimum guaranteed income. Setting up the minimum guaranteed income is based on the principle of social solidarity within a national social assistance policy. (Legea 416/2001 privind venitul minim garantat, art. 1, alin. (3)) It is granted to families or people with low incomes or no income, in cases and during the periods when they cannot ensure, by their own efforts, the minimum living conditions.

The necessity to align with European standards as well as covering the areas insufficiently regulated in this field led to the adoption in 2001 of the first framework law on social assistance, namely Law 705/2001, which laid the foundations for structuring the institutional framework of the national social assistance system having as pillars:

- regulation of setting up public social assistance services at county, municipality, city level by Government Decision no. 90/2003, with attributions in the evaluation of the person, family, community, the provision of services and social benefits;
- sharing responsibility between central and local levels;
- recognition of non-governmental organizations as providers of social services
- regulation of the mechanisms of financing, quality assurance
- regulation of the social services nomenclature.

At this stage, the Ministry of Labour, Social Solidarity and Family has been responsible for developing a social assistance policy, setting up a national development strategy in the field, and promoting the rights of the family, child, the single, the elderly, the disabled and any other persons in need.

In 2006, the Law on the National Social Assistance System no. 47/2006, which replaces Law 705/2001, improves the building of the system, maintaining the role of the Ministry as a system coordinator, strengthening the capacity of public social assistance services at county and local level, and the SPAS liability at the commune level is regulated by the existence of a designated social welfare officer.

Law no. 47/2006 was repealed in 2011, by entering into force of Law 292/2011.

Social Assistance Law no. 292/2011 regulates the legal framework of the national system of social services which "represents all the institutions, measures and actions by means of which the state, represented by the central and local public administration authorities, as well as the civil society, intervene for preventing, limiting or eliminating temporary or permanent effects of situations that can lead to marginalization or social exclusion of the person, family, groups

or communities. The national social assistance system intervenes as a subsidiary or, as the case may be, complementary to social insurance system and consists of the social assistance benefits system and the social services system” (*Legea nr. 292/2011 a asistenței sociale, actualizată*, art. 2, alin. (1) și (2)).

As regards the social assistance benefits system, this is represented by "financial/material redistribution measures for persons or families who meet the eligibility conditions provided for by law” (Idem, art. 6, lit. c).

Benefits of social assistance are a form to supplement or substitute the individual/family income earned from work in order to ensure a minimum standard of living, as well as a form of support to promote social inclusion and increase the quality of life of certain categories of people whose social rights are expressly provided for by law.

Benefits of social assistance are granted for defined periods of time or for specific situations and may include the following main categories:

- social benefits supported by the state budget, focused, for the categories of population at risk of poverty;
- community social benefits supported by local budgets, focused, as individual support measures to help overcome temporary difficulties;
- emergency benefits supported by the state budget and/or by local budgets granted for situations due to natural disasters, fires, accidents, etc .;
- social grants and financial benefits to facilitate access to education supported by the state budget and/or local budgets;
- in-kind, food and material benefits, including those provided under educational support programs for children and young people from disadvantaged families, supported by the state budget and/or local budgets, such as programs for food supplements, school supplies and other materials necessary in the education process;
- benefit granted by the state budget for refugees, as well as persons who have obtained subsidiary protection in Romania, under the conditions provided by the law;
- facilities for the use of public transport, access to communication and information, as well as other facilities provided by law;
- child allowances;
- allowances for children who are temporarily or permanently deprived of parental care;
- child raising allowances;
- facilities, according to the law;
- allowances for people with disabilities;
- care allowances,
- facilities under the law.

If the basic function of benefits is recuperative, social services are both recovery and prevention. For a coherent, integrated social assistance system, the

two components (benefits and services) are complementary and assumed to be mutual and their development must be achieved together, simultaneously, ensuring through their functions the gradual rehabilitation of those in difficulty, as well as the prevention of some risks that could arise.

In fact, the benefits are related to an economic and monetary deficit, and services can recover individual capacity deficits.

"The benefit system, according to the Social Assistance Law no. 292/2011 it is achieved by cash transfers or in kind, as free services, subventions, allowances or preferential credits. Benefits in the current law on social assistance are divided, according to eligibility, into:

- selective, those that are given by testing the means of the family or the persons requesting them;
- categorical, as eligibility is made by belonging to a certain category of beneficiaries (children, single mothers, disabled, poor, etc.);
- universal, are given, without other conditions, to those proposed by law; appear as a social right (eg child allowance)" (Zamfir, 2012: 145).

With regard to social services, these represent the activity or the set of activities designed to meet the social needs as well as the special, individual, family or group needs in order to overcome the situations of difficulty, to prevent and combat the risk of social exclusion, to promote social inclusion and increasing the quality of life.

The responsibility for developing, managing and delivering social services is shared as follows:

- a) setting up national policies, programs and strategies in the field, regulation, coordination and control on their implementation, as well as evaluating and monitoring the quality of social services - under the responsibility of central public administration authorities;
- b) organization, administration and granting of social services - under the responsibility of local public administration authorities, attributions that can be outsourced to the non-governmental sector, religious institutions, other natural and legal persons of public or private law, according to the law;
- c) the financing of social services, according to the law - from the local budget, from the beneficiary's contribution and/or, as the case may be, from his family, the state budget, as well as from other sources.

The process of providing social services has the following mandatory stages:

- a) initial assessment;
- b) elaboration of the intervention plan;
- c) complex assessment;
- d) elaboration of the individualized assistance and care plan;
- e) implementing the measures provided for in the intervention plan and in the individualized plan;
- f) monitoring and evaluation of service delivery

The main areas in which social services are organized and provided:

- Preventing and combating poverty and the risk of social exclusion
- Social assistance of the child and the family
- Social assistance of people with disabilities
- Social assistance of the elderly

Social services are organized in different forms and structures, depending on the specifics of the activities carried out and the particular needs of each category of beneficiaries, and involve an integrated approach to the needs of the individual, in relation to the socio-economic situation, health status, its social environment.

Regardless of the legal form, in order to provide social services on the territory of Romania, social service providers must be accredited under the law.

Social service providers in Romania are public authorities, non-governmental organizations and religious cults.

In our country, social services operate and are decentralized on the principle of local autonomy.

Taking into account the abovementioned aspects, we can say that the purpose of the new law on social assistance was to create a unitary and coordinated legal, institutional framework setting out the principles and general rules for granting social assistance measures and the criteria for organizing and functioning of the system in order to ensure adequate conditions for setting up and implementing sectoral public policies in the field of social assistance.

Compared to the previous normative framework, the new law underlines and reinforces to some extent the basic principles defining social assistance in Romania:

- responsibility for developing social integration capacity and solving difficult situations lies with each person and his/her family;
- responsibility of the state to create equal opportunities and, in subsidiary, to provide social benefits and services appropriate to the person/family situation and not to compensate for its specific tasks;
- the social assistance system is complementary to social security systems.

Mainly, Law no. 292/2011 regulates the following aspects:

- defines the social assistance system and its components (the social benefits and the social services system);
- outlines the general principles and basic values of the social assistance system (social solidarity, subsidiarity, universality, respect for human dignity, individual approach, partnership, beneficiary participation, transparency, non-discrimination, efficiency, respect for the right to self-determination, social cohesion, proximity, complementarity and integrated approach, competition and competitiveness, equal opportunities, confidentiality, equity, focus).
- regulation of the main responsible actors at central and local level in the provision of social assistance measures and their responsibilities;

- regulation of the general framework for financing social benefits and social services.

The legal framework for social assistance is not limited to Law 292/2011. During the 28 years of transition, a multitude of laws have been adopted, each of which directly or indirectly alters the application of others and pushing the system in confused directions.

Depending on the sector they can be classified into:

- normative acts of organizing the social assistance system;
- normative acts regulating the method of action (methodological norms) of the institutions or the way of acting of the specialists;
- normative acts that define and regulate mandatory minimum standards regarding the quality of social services.

2. Normative acts for organizing the social assistance system

- Ordinance no. 68 of 28 August 2003 on social services
- The Decision no. 329 of March 20, 2003 for the approval of the framework regulations for the organization and functioning of institutions for the special protection of persons with disabilities (abrogated 9 November 2015)
- Law no. 515 of November 28, 2003 for the approval of Government Ordinance no. 68/2003 on social services
- Law no. 272 of 21 June 2004 on the Protection and Promotion of the Rights of the Child – Republished
- Law no. 273 of 21 June 2004 on the Legal Status of Adoption - Republished
- Ordinance no. 86 of 19 August 2004 amending and supplementing the Government Ordinance no. 68/2003 on social services
- The Decision no. 1434 of 2 September 2004 on the attributions and the Framework Regulation for the organization and functioning of the General Directorate of Social Assistance and Child Protection – Republished (abrogated 23 November 2017)
- Law no. 488 of 10 November 2004 approving the Government Ordinance no. 86/2004 amending and supplementing the Government Ordinance no. 68/2003 on social services
- The Decision no. 539 of 9 June 2005 for the approval of the Nomenclature of Social Assistance Institutions and the Indicative Personnel Structure, of the Framework Regulation for the organization and functioning of social assistance institutions, as well as of the Methodological Norms for the application of the provisions of the Government Ordinance no. 68/2003 on social services
- Law no. 47 of 8 March 2006 on the national social assistance system (repealed on 23 December 2011)
- Order no. 280 of April 11, 2006 approving the Working Procedure for establishing, updating and accessing the Single Electronic Social Services Register

- Law no. 448 of 6 December 2006 on the Protection and Promotion of the Rights of People with Disabilities - Republished
- The Decision no. 23 of 6 January 2010 on the approval of costs standards for social services (repealed on 1 January 2016)
- Law no. 292 of 20 December 2011 on social assistance
- Law no. 197 of 1 November 2012 on quality assurance in the field of social services
- Ordinance no. 27 of 19 August 2015 for amending and completing the Law no. 197/2012 on quality assurance in the field of social services
- Government Decision no. 867 of 14 October 2015 for the approval of the Social Services Nomenclature and of the framework regulations for the organization and operation of social services
- The Decision no. 978 of 16 December 2015 on the approval of minimum cost standards for social services and the level of monthly income per family member on the basis of which the monthly maintenance contribution due by legal supporters of the elderly in residential centers
- Law no. 57 of 11 April 2016 for amending and completing the Law no. 273/2004 on the adoption procedure, as well as other normative acts
- The Decision no. 584 of 10 August 2016 for the modification and completion of the Methodological Norms for the application of the provisions of Law no. 197/2012 on quality assurance in the field of social services, approved by the Government Decision no. 118/2014, and Government Decision no. 867/2015 for the approval of the Social Services Nomenclature, as well as the framework regulations for the organization and functioning of social services
- The Decision no. 797 of 8 November 2017 for the approval of the framework regulations for the organization and functioning of public social assistance services and the guiding staff structure

3. Normative acts regulating the way of action (methodological norms) of the institutions or the way of acting of the specialists

- The Decision no. 427 of April 25, 2001 for the approval of the Methodological Norms regarding the conditions of employment, the rights and obligations of the personal assistant of the disabled person
- Order no. 725 of October 1, 2002 on the criteria for determining the degree of handicap for children and the special protection measures applied to them
- Order no. 18 of 26 February 2003 on the approval of the methodological guide for the evaluation of the child with disabilities and the categorization of handicap
- The Decision no. 679 of 12 June 2003 on the conditions for obtaining the attestation, the attestation procedures and the status of the professional maternal assistant

- The Decision no. 1435 of September 2, 2004 for the approval of the Methodological Norms for the application of Law no. 273/2004 on Adoption Legal Status (repealed 23 April 2012)
- The Decision no. 1437 of 2 September 2004 on the organization and working methodology of the Child Protection Commission
- The Decision no. 1439 of 02 September 2004 on specialized services for the child who has committed a criminal offense and is not criminally liable
- The Decision no. 1440 dated September 2, 2004 on the conditions and procedure for licensing and inspection of services for the prevention of separation of the child from his/her family, as well as of the special protection of the child temporarily or permanently deprived of his/her parents' protection (*abrogated January 1, 2014*)
- The Decision no. 1443 of 02 September 2004 on the methodology for repatriation of unaccompanied Romanian children and the provision of special protection measures in their favor
- Law no. 466 of 04 November 2004 on the status of the social worker
- The Decision no. 463 of 19 May 2005 amending the Methodological Norms regarding the conditions of employment, the rights and obligations of the personal assistant of the disabled person, approved by the Decision no. 427/2001
- Order no. 286 of 06 July 2006 for the approval of the Methodological Norms regarding the elaboration of the Service Plan and the Methodological Norms regarding the elaboration of the individualized protection plan
- Order no. 762 of 31 August 2007 for the approval of the medical-psychosocial criteria on the basis of which it is established the degree of handicap
- The Decision no. 350 of April 18, 2012 for the approval of the Methodological Norms for the application of Law no. 273/2004 on the legal regime of adoption and the Regulation on the organization and functioning of the Coordination Council of the Romanian Office for Adoptions (repealed 12 August 2016)
- The Decision no. 579 of 10 August 2016 for the approval of the Methodological Norms for the application of Law no. 273/2004 on the adoption procedure, amending and supplementing the Government Decision no. 233/2012 regarding the services and activities that may be carried out by the Romanian private bodies in the internal adoption procedure, as well as the methodology for their authorization and for the amendment of the Government Decision no. 1.441/2004 regarding the authorization of foreign private organizations to carry out activities in the field of international adoption

4. Normative acts that define and regulate mandatory minimum standards for the quality of social services

4.1. In the field of child protection

- Order No. 35 of May 15, 2003 regarding the approval of the Minimum Mandatory Standards for ensuring child protection in the professional maternal

assistant and the methodological guide for the implementation of these standards

- Order no. 177 of 16 December 2003 on the approval of minimum standards for child benefit helpline, minimum standards for the abusive, neglected and exploited child care center, as well as mandatory minimum standards on the Community resource center to prevent child abuse, neglect and exploitation
- Order no. 21 of 26 February 2004 on the approval of minimum standards for child protection services of a residential type
- Order no. 24 of 04 March 2004 for the approval of Minimum Standards for day centers
- Order no. 25 of March 9, 2004 for the approval of the Minimum Standards for Day Care Centers for Children with Disabilities
- Order no. 45 of 25 March 2004 on the approval of minimum standards for the internal adoption procedure (repealed 7 April 2012)
- Order no. 48 of March 30, 2004 for the approval of the Minimum Standards Standards for Service for the Development of Independent Living Skills (abrogated February 28, 2007)
- Order no. 89 of July 27, 2004 for the approval of the Minimum Mandatory Standards for the Emergency Reception Center for the Abused, neglected and exploited child
- Order no. 132 of 07 April 2005 for the approval of mandatory minimum standards for services for the protection of street children
- Order no. 101 of 15 March 2006 on the approval of the Maternal Minimum Maternal Standards and the Methodological Guide on the Implementation of these Standards
- Order no. 289 of 06 July 2006 for the approval of the Minimum Mandatory Standards for the Counseling and Support Center for Parents and Children and the Methodological Guidelines for the Implementation of these Standards
- Order no. 288 of 06 July 2006 for the approval of the Minimum Mandatory Standards for case management in the field of the protection of children's rights
- Order no. 287 of 06 July 2006 for the approval of the Minimum Mandatory Standards for the Center for Preparation and Support of the Reintegration or Integration of the Child in the Family as well as the methodological guide for the implementation of these standards

4.2. Adults with disabilities

- Order no. 175 of 12 July 2006 on the Approval of Minimum Quality Standards for Domestic Social Services for Adult Persons with Disabilities
- Order no. 559 of October 22, 2008 regarding the approval of Quality Specific Standards for Residential Centers, Day Care Centers and Protected Homes for Disabled Persons (abrogated February 13, 2015)

- Order no. 67 of 21 January 2015 on the Approval of Minimum Quality Standards for Accreditation of Social Services for Adults with Disabilities

4.3. Domestic violence

- Order no. 383 of 12 July 2004 on the approval of quality standards for social services in the field of protection of victims of domestic violence.

Besides all these normative acts, there are others, such as the local public administration law, which do not have as a priority theme the social assistance, but with the social assistance implications that have directed the social assistance system in different, contradictory directions.

It is worth mentioning that the different legislative regulations are promoted by distinct bodies, bearing their interests, without any coordination by a body that has a global responsibility for social assistance (such as the Ministry of Labor and Social Justice).

This form of legislation creates inconsistencies, often a confusing and conflicting development, and does not allow for an initial assessment of the sustainability of the measures promoted and their effects on the system as a whole.

The analysis carried out on the legal regulations regarding the social assistance system show that the steps taken were aimed at approximating the European directives, but they are not correlated with the real needs of the Romanian society. Thus, in the opinion of some specialists, we are dealing with a legislative synchronization, but with a dissonance between needs and legislation.

Desynchronization is due to several factors that denote a top-down legislative construction and not to the needs of the population, namely from the bottom up. The argumentation used in drafting legislation, such as "internal and external pressures on the social assistance system, demographic evolution, changes in family structure, negative dynamics of the labor market, pressure on public spending cuts and lack of staff in the public social assistance system" are motivations of bureaucratic type, unrelated to social benefit and territorial problems. There are no references to the effectiveness of the social assistance components and the necessary financial and human resources. (Zamfir, 2012)

Therefore, with regard to social assistance legislation, we can say that important but insufficient steps have been taken in the last 28 years to create a legal, unitary and coordinated institutional framework by which to establish the principles and general guidelines rules for the provision of social assistance measures and the criteria for the organization and operation of the system in order to ensure adequate conditions for the development and implementation of sectoral public policies in the field of social assistance.

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