



CHILDREN LEFT WITHOUT PARENTAL CARE MUST BE PROTECTED FROM CORRUPT TRANSACTIONS

A child LWPC is "... a child under the age of 18, whose parents (or only parent) have died or been deprived of parental rights or recognized as incapacitated, or avoid rearing their children or protecting their rights and interests, or have under the procedure defined by law been recognized as dead, missing, or unknown."ⁱ

RoA Law on the Social Protection of Children Left without Parental Care

Children left without parental care (LWPC) are a vulnerable group, and the state bears the obligation to ensure their care and the protection of their rights and interests.

Based on the Convention on the Rights of the Child, the Republic of Armenia has undertaken to ensure alternative care for children in accordance with the following fundamental principles: the best interests of the child being the paramount consideration, preventing separation of the family, including the child's right to regular contacts and communication with the family members, family reunification, preference for family-like alternative care, protection of the child from abuse, organization of support services and protection mechanisms, organization of care, and supervision of child care.ⁱⁱ

Despite Armenia's continuous reforms of policies, legislation, and practices related to the protection and care of children LWPC, there are still a number of factors that pose corruption risks.

The Issues

The circumstances and criteria for assessing whether “a parent is avoiding rearing of the child or protecting the child’s rights and interests” are not defined. Unlike the grounds for recognizing a child as LWPC, which are found by a court judgment or other documents, a comprehensive study by the Guardianship and Custody Authority (CGA)ⁱⁱⁱ is required in order to find that the parents avoid rearing of the child or protecting the child’s rights/interests. However, in the absence of a clear assessment toolkit and criteria, there may be arbitrariness, to the detriment of the child’s rights and interests, in finding or not finding that a particular situation constitutes such avoidance. The legal grounds for returning to the family children recognized and recorded as LWPC, too, are unclear and may lead to arbitrary and differentiated construal and application.

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.^{iv}

UN Convention on the Rights of the Child, Article 3

No mechanisms and procedures are defined for identifying children LWPC. The CGA’s mandate of identifying children LWPC is unclear; the respective tools and mechanisms are lacking. There are interagency cooperation gaps, including in terms of the procedure, timeframe, and conditions of responsible bodies’ information provision to the CGA about children LWPC; in practice, this may leave some children LWPC unidentified. There may also be occurrences of complicity in inaction, as well as unlawful cooperation with the competent authorities. There are no mechanisms for holding officials responsible for failure to identify such children or for acting inadequately.

There is *de-facto* practice of recognizing a child as LWPC on the basis of “temporarily relinquishing” the care of the child. The legislation of the Republic of Armenia does not contemplate the possibility of recognizing a child’s LWPC status in case of a parent temporarily relinquishing the care of the child. In practice, however, parents, due to various circumstances, and in reality not intending to relinquish their parental rights, present an application on temporarily relinquishing the care of the child. The child is then recognized as a child LWPC on its basis, and as a rule is placed in a social protection institution. Due to the gap in legislative regulation, this practice gives rise to no legal consequences for either the parent or the competent authorities. More broadly, the grounds and criteria for holding a parent responsible for avoiding rearing the child or protecting the child’s rights and interests are unclear, which in practice leads to a situation in which the competent authorities refrain from taking steps to hold the parent responsible.

Placement of a child in an institution due to the parent’s social or health condition not only violates the child’s rights and contradicts the Republic of Armenia legislation, but also creates corruption risks by securing a certain number of children under care for the institutions.

Expert

The lack of capacity among experts involved in the process of recognition and assessment of a child as LWPC leads to arbitrary decisions. The CGAs, the Territorial Units of Social Assistance, and the Units for Protection of the Family and Women’s and Children’s Rights often lack staff with professional competence to assess the child’s needs and best interests. This gap often leads to a low level of professional independence, and the decision-making process is driven by administrative command authority, rather than knowledge, values, and integrity.

There are functional overlaps in the process of recognizing a child as LWPC and referring such children, which cause wasting of resources and time. For example, if there is a contradiction between the “preliminary conclusion” (issued by the

Territorial Agency of Social Assistance) and the “conclusion” (issued by the Units for Protection of the Family and Women’s and Children’s Rights in the regional governor’s office, or in Yerevan, in the Yerevan City Administration), it is unclear what weight each one of them will have in final decision-making on the child’s care.^v In practice, this functional overlap makes the three-tier system, which lacks mutual jurisdiction in child protection matters, inefficient, especially due to inter-agency interests and problems, as well as the discretion of individual officials.

Oversight of the protection of children LWPC is insufficient and ineffective. The process of recognizing the LWPC status and selecting the form of care involves nothing but a review of the documents submitted on the child and the potential form of care,^{vi} which however may be incomplete, biased, and not based on a professional opinion. The status of children placed in institutions is not subject to regular review with a view to assessing the possibility of returning the child to the biological family or providing alternative care, and a child may live in an institution for years without review of his or her case, and in case of temporary placement, also without obtaining final clarity on his or her status. Oversight of guardians, custodians, and the organization of child care and rearing in foster families is ineffective, too: it is performed rarely and only upon necessity, or not performed at all. The circumstances to be checked and their assessment criteria are unclear.

Recommendations

The following recommendations are aimed at reducing the identified corruption risks.

The National Assembly should initiate changes in the law in order to:

- Clarify the term “child left without parental care” and to preclude, to the utmost extent, the possibilities for is arbitrary construal;
- Review the powers of the competent authorities in the system for protection of children left without parental care, eliminating overlaps and addressing the lack of clarity;
- Clarify and improve the mechanisms for oversight of the identification of children left without parental care, the selection of their care and rearing organization form, and the subsequent care and rearing; and
- Clarify the mechanisms for holding the competent officials responsible.

The Republic of Armenia Government and the Ministry of Labor and Social Issues should:

- Define the functions and toolkit for identifying children left without parental care for all competent authorities, and define the scope of inter-agency cooperation in child identification matters;
- Define and ensure in practice the compatibility of the child and the person/-s providing care and rearing for all forms of child care and rearing;
- Define and ensure in practice the regular review of the status of children left without parental care;
- Regulate the criteria, procedure, and timeline of the return of a child left without parental care to the biological family;
- Conduct long-term professional training for officials.

ⁱ Article 2 of the RoA Law on the Social Protection of Children Left without Parental Care.

ⁱⁱ UN Convention on the Rights of the Child, Articles 9, 10, 19, 20, 25, and 34.

ⁱⁱⁱ Paragraph 16 of the Annex approved under the RoA Government Decree 1112-N dated 25 September 2015 “On Approving the Procedure of Granting Care to Children, the Elderly, and/or Persons with Disability, Approving the List of Illnesses Serving as a Basis for Refusing Care, and Appealing a Number of Decrees of the RoA Government.”

^{iv} UN Convention on the Rights of the Child, Article 3.

^v RoA Government Decree 1112-N dated 25 September 2015.

^{vi} Ibid, para. 19.

This policy brief was prepared on the basis of a study carried out by the non-governmental organizations “Transparency International Anticorruption Center” and “Social Justice” under the USAID-supported “Engaged Citizenry for Responsible Governance” project; the underlying Report on Assessment of Corruption Risks in the Sphere of Protection of Children Left without Parental Care is available at <https://transparency.am/hy/publications/view/210>. The aforementioned non-governmental organizations are responsible for the contents of this policy brief, which do not necessarily represent the views of USAID or the US Government.

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