THE INTERNATIONAL ADOPTION

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Abstract

Adoption is an institution that the majority of peoples have known under different names since old times, its major aim being the protection of parentless children or of those who, although having parents, are not offered a proper education and breeding.

The adoption is the juridical operation through which there is created an affiliation relationship between the adopter and the adoptee, as well as a kinship relationship between the adopter and their relatives.

An adoption becomes international when the juridical operation through which the adoption is made involves the existence of at least one extraneity element such as the adopter's citizenship, residence, or the place of adoption, etc.

International adoption has always represented a delicate matter which, under the pressure of the European or international organisms, underwent a series of legislative interventions, some of them reflecting the international political conjuncture.

Keywords:

adoption, international adoption, child, adoptee, adopter, the Romanian Office for Adoptions.

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1. Brief introduction on the institution of adoption

The institution of adoption was born from the social need of protecting the child even when there was no blood relation. This type of relation that appears between the persons involved into a process of adoption is generically named civil kinship.

In the Roman law, the term "adoption" meant the adoption of a dependent person –"alieni iuris"- i.e. of a son within the family.(Dariescu, N.C., Dariescu, C., Petraru, R.A., (2009) : 309)

When the adopted person was an "independent" one –sui iuris –we talk about an *adrogation (adrogatio)* whose effects were more serious, because the person had to transfer their welfare and relatives to another head of family and they had to give up their family cult. That is why, because it was a very delicate situation, the law asked that the document should have been approved by the college of pontiffs and the people's assembly which were to analyze the gravity of the reasons invoked. In the presence of the committees –*calatis comitiis*, the magistrate asked the adrogater if he wanted to be *pater* to the adrogatee, the adrogatee if he wanted to be *filius* to the adrogater, and then the people if they agreed. The people agreed by means of an authentic law –*regatio*.

In what concerns the conditions of adrogation, the adrogater had to be a male, a pater, to be childless and to have no expectation of having a baby, such a situation being able to be taken into account only after the age of 60. The adrogatee had to be sui generis and capable.

In our present law system, the adoption represents the juridical operation through which the kinship relationships resemble the real ones and are established, on the one hand, between the adopter and their descendents and, on the other hand, between the adoptee and their relatives.

Art. 1 from Law no. 273/2004 regarding the juridical regime of adoption[1] defines adoption as being the juridical operation through which there is created an affiliation relationship between the adopter and the adoptee, as well as kinship relationships between the adoptee and the adopter's relatives.

This doctrine offers the notion of adoption a triple acceptation: of a juridical document, of a juridical relationship and of a juridical institution.

As a juridical document, the notion of adoption represents the benevolent agreement of the parents that take part in the signing of the document; after being approved by the Court, it gives birth to the juridical relationship of adoption.

As a juridical relationship, the adoption represents the entire juridical norms which regulate the conditions regarding its birth, effects, nullity and cancellation. (Bacaci, A., Dumitrache, V.C., Hageanu, C., (2005), : 218).

[1] Published in the Official Monitor of Romania no. 557/23.06.2004

Art. 2 from the same Law enumerates the principles that must be respected during the adoption procedure:

- The principle of the child's superior interest;
- The principle of the child's breeding and education within a family environment;
- The principle of the child's permanent education, being taken into account their ethnic, cultural and linguistic origins;
- The principle of the child's being informed and taken into account their opinion in relation to their age and maturity degree;
- The principle of celerity in carrying out all sorts of actions related to the adoption procedure.

The fundamental principle that dominates the entire institution of adoption, which is deliberately stated in Art. 5 from Law 273/2004, is that of exclusively protecting the child's interests. This constitutional principle (Art. 48 and 49 from the Constitution of Romania) is also added in Art.1 Paragraph 1 form the Family Code and underlines the following: "The State protects marriage and family and defends the interest of mother and child." Therefore, the interest of the adopter must be taken into account not only when the adoption is signed but also during its existence or when it has to be cancelled. The interest of the adopter is appreciated within the framework of the legal regulations, and the interest of the adoptee does not mean that the adopter cannot have a moral interest in signing the adoption, i.e. their desire of showing feelings of social protection to help children which are deprived of parental protection. The interest of the adopter, although not directly stipulated in the Family Code, can be inferred as being part of the law because without this, the satisfaction of the interest of the adopter in what concerns their protection in supporting the innate relationships of the family, cannot be conceived. (Filipescu, I.P., (2003), : 232)

The principle that the adoption is signed only in the interest of the adopter must not be misunderstood. Its main target is of offering the children that cannot enjoy parental protection, the possibility of being bred and educated within the family of the adopter.[1]

2. International adoption

An adoption is considered international when the juridical operation supposes the existence of one or more extraneity elements such as citizenship, residence, place of adoption, etc.

International adoption focuses on two situations. The first one involves the adoption of a child whose residence is in Romania, by a person or family whose residence is abroad. In this case, Law no. 173/2004 is applied. The

[1] C.S.J., Civil Section, Dec. no. 595/1991

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second one involves the adoption of a child whose residence is abroad, by a person or family whose residence is in Romania. In this case, Law no. 105/1992 is applied and it regards the regulations of the private international rights.

International adoption has represented a delicate matter which, under the pressure of European and international organisms underwent a series of legislative interventions, some of them reflecting the international political conjuncture. Thus, before Law no. 273/2004 was passed through the O.U.G. (Government's Urgent Disposal) no. 121/2001, published in the Official Monitor no. 633/09.10.2001, there had been ordered that, for a period of 12 months from the disposal's entry into force, all the procedures referring to the two situations mentioned above should be delayed.

As they stated in Art. 2 from the Disposal, this delay wanted to allow the National Authority for Adoption and Child Protection and the Ministry of Justice to reanalyze the juridical regime of international adoptions in order to balance the national legislation with the international regulations and procedures, trying to dissolve corruption, and, most of all, to stop child trafficking.

The normative document was completed by the O.U.G. no. 161/2001 published in the Official Monitor no. 780/07.12.2001, which required that all the procedures on the Court's roll should be solved according to the norms applicable at the time they were registered. Also, in exceptional circumstances, imposed by the superior interest of the child, the Government should approve the sending of an international adoption approval petition to the competent juridical instances.

This Disposal which actually represents a step behind in the international adoption matter, was rejected by Law no. 384/2002, published in the Official Monitor no. 411/13.06.2002. (Bacaci, A., Dumitrache, V.C., Hageanu, C., (2005), : 252)

The present regulations have offered special conditions for international adoptions, first, for aligning the national legislation to the international conventions Romania is part of, and second, for being able to monitor the evolution of the Romanian children adopted by foreigners and for preventing child trafficking.

The international conventions Romania is part of are:

- *The European Convention on the Adoption of Children*, signed at Strasbourg on the 24 April 1967, to which Romania adhered through Law no. 15/1993, published in the Official Monitor no. 67/31.03.1993. The Convention was signed with the following reservation: "In accordance with the terms of Art. no. 25, Paragraph. 1, of the Convention, enabling Contracting Parties to make not more than two reservations in respect of the provisions of Part II of the Convention, Romania hereby declares that it will not apply the provisions of Art. no. 7, under which the adopter's age may be neither less than 21 nor more than 35 years, as the

minimum age under Romanian legislation is 18 years and no upper limit applies."

- *The Convention on Protection of Children and Cooperation in Respect of International Adoption* signed at the Hague on the 29 May 1993 and ratified by the Parliament of Romania through Law no. 84/1994, published in the Official Monitor no. 298/21.10.1994.

3. The background conditions that must be accomplished for an international adoption

The background conditions that must be accomplished for an international adoption are required by the law and stipulated by the absolute nullity. They are to be accomplished by the adopter or the adoptee or by both, as required. Certain conditions may target other people, too, such as the child's biological parents or tutor, or the adopter's spouse. (Bodoasca, T., (2007), : 147)

The background conditions are presented in Chapter II from Law no. 273/2004 regarding the juridical regime of adoption. We will list both the general background conditions regarding adoption and the specific ones regarding international adoption. All of them must be comprised:

- The adoption must be approved only for the adoptee's superior interest;
- The adoptee must not have reached the civil legal age;
- The brothers must be adopted by the same adopter or family;
- The adoptee must not be adopted by different adopters, simultaneously or successively;
- The adopter and the adoptee must not be the children of the same person;
- The adoptees adopted by the same adopter or family must not be spouses or former spouses;
- The adopter must not have psychical diseases or mental handicaps;
- The adopter must have acquired the maximum exercise capacity;
- The adopter must be at least 18 years older than the adoptee;
- The adopter or the adopting family must accomplish the moral warranties and the material conditions required for a complete and harmonious development of the child's personality;
- There must be the consent of the persons required by the law;
- The adopter or one of the spouses of the adopting family who resides abroad must be at least a third-degree relative with the child for whose internal adoption procedure has been open;
- The adoptee must be totally or partially deprived by the protection of their parents, or, for their own protection, not to be taken care of by them;

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- The adopter or the adopting family accomplishes the eligibility conditions for adoption and is able to adopt according to the applicable legislation of the receptive country and has been counseled concerning the adoption in the receptive country. The evolution of the child after adoption is monitored for at least two years, at the same time being assured some postadoption services for both the child and the family in the receptive country.

The accomplishing of these conditions by the adopter are acknowledged by the competent central authority in the recipient country or by its organizations authorized and accredited by the law.[1]

4. The form conditions regarding international adoption

The adoption petitions required by the adopters residing abroad are addressed to the Office through the competent central authority from the recipient country or its accredited organizations and the following documents must be attached:

- Information regarding the identity of the persons that want to adopt, their ability for adoption, their personal, familial, material and medical situation, their social environment, their reasons for adopting a child from Romania, as well as information regarding the children they might adopt; the conclusions of the report will be sustained by documents issued by the competent authorities from the recipient country;
- Authenticated copies of the birth and marriage certificates and the identity cards of the future adopters, to which authenticated translations into Romanian of the documents must be annexed.
- The criminal records of the future adopters;
- Medical report for each of the future adopters;
- The document according to which there is the warranty that the adoptee has the right to enter and live permanently in the recipient country.

The documents mentioned in Paragraph (1) letters a), c), d) and e) will be presented in original and their authenticated translation into Romanian must be annexed.

[1] It refers to the states that are part of the Hague Convention. For the states that are not part of this Convention, the Office receives the petitions through the authorities whose duties include international adoptions or through accredited organizations from the recipient country. However, the accredited organizations, no matter if the recipient country is a member of the Hague Convention or not, must be authorized by the Office according to the methodology approved by Government decision (Art. no. 43 Paragraph (2) from Law no. 273/2004)

5. The procedure and the effects of international adoption

The petition of the adoption's approval to which the documents mentioned in Art. no. 43-45 from Law no. 273/2004, must be forwarded to the Court by the Romanian Office for Adoptions. The Office's duty is to assure that the adoptee will benefit by the same warranties and norms similar to those that make the case of a national adoption. When the adoption petition is approved, the Court will take into account the document that mentions this obligation. (Art. no. 46 Paragraph (3)).

On the basis of the irrevocable juridical decision for adoption's approval, within three days from its official statement, the Office issues a certificate which certifies that the adoption is in conformity with the norms of the Hague Convention. (Art. no. 47)

The adoptee can leave Romania only when the approval of the adoption decision is irrevocable. The adoptee must be accompanied by the adopter or the adopting family and travel in safe conditions corresponding to own their needs (Art. no. 48).

The Office has the duty to observe the child's evolution and their relationship with their adoptive parent(s) for at least two years from the adoption's official approval, by means of the competent central authority or of the accredited or authorized organization from the recipient country.

To accomplish the duties mentioned above, the Office must require the handing over of trimestrial reports to the competent central authority or the accredited and authorized organization from the recipient country. If, subsequent to the international adoption, the adopter or the adopting family establishes their residence in Romania, the observation of the child's evolution will be transferred to the office that is in charge of the territorial area of the adopter's residence.

The effects of international adoption, as well as the effects of its cancellation upon the citizenship of the adoptee are those mentioned in the Law of the Romanian citizenship no. 21/1001, republished with the subsequent rectifications.

6. In brief

In the past, the children in our country were perceived as goods. They could be exchanged according to certain persons' wish who wanted to adopt someone but could not adopt a child from their own country, either because they could not accomplish the conditions imposed by national adoption procedures (which usually are more restrictive than those of an international adoption), or because in their country of residence, there were respected the norms of international Conventions.

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The superior interest of the child is the principle that generated the analysis of all information regarding the children asked for international adoption by foreign citizens. Yet, the child's rights have often been broken.

Initially, to protect children's interests when dealing with international adoptions, Law no. 273/2004, added the condition that the adopter or one of the spouses of the adopting family which resides abroad, should be a grandparent to the child whose internal adoption procedure was to be approved. This article arouse several controversies that regarded the fundamental right of the child, that of having a family.

Subsequently, this article was modified by Law no. 49/2009[1] regarding the approval of O.U.G. no. 102/2008 that dealt with the ratification and completion of Law 273/2004 regarding the juridical regime of adoption, and it states the following: "the international adoption of a child that resides in Romania can be approved only when the adopter or one of the spouses of the adopting family that resides abroad is at least a third-degree relative of the child for whom the opening of the internal adoption procedure has been approved."

The assertion according to which the international adoption can be a protective means for the child deprived of a family environment in their own country, has the risk of being interpreted as a means for the family residing in developed countries to adopt children from the countries that have political and economical difficulties. (Avram, M., (2001), : 90)

[1] Published in the Official Monitor, Part I, no. 190/26.03.2006

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