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**Reflections on the Child Born with
Unknown Parents and the Adoption Institution**

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Abstract: After reading statistics from the adoption domain we have discovered that, in the recent years, the number of abandoned children in health care facilities has increased, therefore two questions arise: do the changes in adoption favor adopting a child born of unknown parents?; is there a link between the abandonment of children subsequently registered as born from unknown parents and adoption? In this material we will answer to these questions, based on the reality of figures and the interpretation of the legislation in the field.

Keywords: abandoned baby; birth registration; unknown parents; adoption

1. Argumentation

Ministry of Labor, Family and Social Protection and Elderly Persons site announced having posted on the site² the Resolution Project on the National Strategy for the Protection and Promotion of Child Rights (2014-20120) and the Operational Plan for its implementation for the period 2014-2015.

Within the strategy on page 24, at the category of “vulnerable children” there are mentioned also the “children abandoned in hospitals.” Although it is mentioned within the strategy that the number of children abandoned in hospitals has decreased in the last 10 years four times, for 2010-2012, it was found that their number increased by 12 %, so the total of 1474 children abandoned in 2012 in the medical units, the increased number of 918 cases were recorded in maternity.³

These facts, interpreted in the light of the principle of the superior interest of the child, which governs the entire legislation on children's rights matter, led to the amendment of Law no. 273/2004 on the procedure of adoption and Law no. 272/2004 on the protection and promotion of children's rights⁴, and the emergence of Order no. 359/2012 regarding the criteria for registration and declaration of the newborn.⁵ Also, recently, it has been approved G.E.O. no. 11/2014 on adopting measures to reorganize at the level of central and public administration and amending and supplementing certain legal acts⁶, according to which it is established the National Authority for Child Protection and Adoption, as a specialized body of the central public administration, under the Ministry of Labor, family, social Protection and the Elderly Persons, by taking the activity in the domain of protection of child's right from the Ministry of Labor and from the field of adoptions from the Romanian Office for Adoptions.

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² <http://www.mmuncii.ro/j33/index.php/ro/transparenta/proiecte-in-dezbatere/3172-2014-02-03-proiecthg-strategiecopii>.

³ In 2009, 1400 children were abandoned in hospitals, in 2010 a total of 1315 children, and in 2011 a total of 1432 children were abandoned in medical units.

⁴ It is Law no. 257/2013, published in the Official Monitor of Romania no. 607 of 30 September 2013.

⁵ Published in the Official Monitor of Romania no. 237 of April 9, 2012.

⁶ Published in the Official Monitor of Romania, Part I, no. 203 of 21 March 2014.

2. Some Aspects of a Child's Birth Record Born of Unknown Parents

Law no. 272/2004 establishes in the content of articles 8-49 the every child's rights in Romania, among which there are listed the following: the child has the right to establish and maintain his identity; the child shall be registered immediately after birth¹ and starting from that day he shall have the right to a name, the right to acquire a nationality and, if possible, to know his parents and to be cared for, raised and educated by them; parents choose the name and surname of the child, according to the law.

The child has the right to retain nationality, name and family relations, as provided by law without interference. According to the Romanian legislator the expression "child born of unknown parents" covers two situations: the child found and the child left by the mother in the maternity ward, whom we will call abandoned.²

A. The Procedure in the Case of a Found Child

Any person who has found a child whose identification data are not known is obliged to notify the nearest police station within 24 hours³ and the preparation of the birth certificate of the found child is achieved within 30 days since its finding by the local public records of persons or, where appropriate, by the City hall of the administrative-territorial unit in whose area the child was found, based on documents provided by law:⁴

The obligation to take the necessary steps to register the birth of the child returns to the public social assistance service (SPAS) in whose administrative-territorial area it was found, meaning that it will have to obtain the decision of establishing the name and surname of the child by the mayor of the county.

B. Procedure for Abandoned Children

In the situation where the child is abandoned by the mother in the maternity, the medical unit is required to notify by telephone and in writing the General Directorate of Social Assistance and child protection and the police within 24 hours of finding the mother's disappearance. If the mother's identity was not established within the period specified in paragraph (1), the public social assistance in whose administrative-territorial jurisdiction the child was found, based on the documentation submitted by the General Directorate of Social Assistance and Child Protection is obliged within five days to get the mayor's decision for preparing the birth certificate establishing the name and surname of the child and to make the birth registration statement to the Public Community Service of Personal Records.

¹ The law establishes different limits of birth registration in the registry office, i.e. 15 days for the child born alive, 3 days for the stillborn, and 24 hours of the date of death for the child born alive, who died in the period of 15 days; after the legal deadline up to one year, the registration is achieved with the approval of the mayor, and after a year only by final and irrevocable court decision, according to Law no. 119/1996.

² See article 22, paragraph 2 and article no 23 of Law no. 119/1996 and articles 33-36 in G.D. no. 64/2011.

³ Article 22 paragraph (1) of the Act no 119/1996 republished.

⁴ These documents are written statement of the person who found him or the report public social service representative within the administrative unit of the area where the child was found; minutes prepared and signed by the public social service representative, by the representative of the competent police unit and by the doctor; the deposition of establishing the name and surname, issued by the mayor, for situations that do not know the last and first name of the child; the medico-legal expertise determining the sex and the approximate age of the child, article 22 paragraph (1) of Law no. 119/1996, republished.

After recording the child's birth, found /abandoned by the mother in maternity, the public Service is required to submit the birth certificate of the child to General Directorate of Social Assistance and Child Protection.¹

According to article 13 of Law no. 272/2004, health facilities, social protection facilities, residential care facilities, unincorporated entities, other legal entities and individuals, which receive or provide care for pregnant women or children who do not have papers based on which it can be determined the identity, are obliged to notify within 24 hours, in writing, the authority of local public administration² in whose jurisdiction they are established or, if applicable, the address, in order to establish their identity and to which general directorate they belong.

3. Several Aspects of the Procedure for the Adoption of a Child Born of Unknown Parents

Referring to the adopting the Civil Code³ makes a distinction only in terms of exercise capacity, the adoption of a person with full legal capacity, representing the exception to the rule for adopting a child. From the analysis of the provisions of Law no. 273/2004, it results that, unlike other categories of children, for the child born of unknown parents, the legislator has provided special regulations, which lead us to the conclusion that the adoption procedure is shorter by at least 6 months for other children whose affiliation is established by at least one parent.

Thus, the internal adoption, as a finality of the individualized plan for the protection of a child shall be determined within 30 days of the issuance of the birth certificate of the abandoned child, born of unknown parents, according to article 26, paragraph 1, letter c) of Law no. 273/2004 and Article 48 of Government Decision no. 350/2012.⁴

Given the information, based on article 28, paragraph 1 in relation to art. 29 of Law no. 273/2004, the court, upon the notification of the directorate⁵ will allow the opening of the internal adoption procedure, after a process that takes less than one hearing (we emphasize the fact that for the child born of unknown parents, the directorate has no obligation to prove those actions provided by article 26, paragraph 2, approaches for identifying and contacting the natural parents /relatives until the fourth degree of the child, informing them of the whereabouts of the child and on how they can maintain the personal relationships with the child and efforts to integrate or reintegrate the child in the extended family).

Once opened the internal adoption procedure based on matching criteria and methodology set out in the Government Decision no. 350/2012, it goes onto the competent authorities to the stage of

¹ If parents have subsequently been identified, namely the mother was identified, the directorate will provide advice and support in order to achieve its steps for the issuance of birth certificate, and the public service or, where appropriate, the city hall of the territorial-administrative unit where the birth was registered, under the position of "found child" or "mother left the hospital", she will request the court to annul the birth certificate.

² The notification is achieved by telephone to the public service to which is ascribed the medical unit or the social protection and the person designated within the public service record of people will check records to identify the person concerned and it may, if necessary, with the support of other competent authorities, put into legality the person by issuing the identity document.

³ For a critical analysis of the institution of adoption, see (Hageanu, 2009, p. 86; Lupșan, 2011, pp. 61-65).

⁴ Decision for approving the Methodological Norms for applying Law no. 273/2004 and Regulation of organization and functioning of the Coordination Council of the Romanian Office for Adoptions it was published in the Official Monitor of Romania, Part I, no. 268 of 23 April 2012.

⁵ According to article 52 of the G.D. no. 350/2012 within 30 days of taking out the file, the legal adviser prepares action, and the Directorate notifies the court.

theoretical fit at central level (performed by the Romanian Office for Adoptions¹ by identifying and selecting from the National Registry for adoption of a number of 10 adopters and certified adoptive families that meet to a great extent the needs of the child²) and the *theoretical fit* at local level (achieved by the directorate of the residence of the child born of unknown parents by choosing a number of 3 adopters/adoptive families from the list sent by the Romanian Office for Adoptions within 10 days of the date of registration of the judgment opening the internal adoption), and finally at the stage of *practical fit* (after ranking the adopters /adoptive families based on their ability to meet the criteria for theoretical fit, it is designated the first place), described by the legislator in detail³, in articles 63-70 of G.D. no 350/2012.

An observation is required in this situation: from the analysis of the priority criteria set out in article 58 paragraph 1 of this final legislative act it results that the adoption of a child born of unknown parents is applicable only the criterion related to the facts according to which the child enjoyed the family life along with the person /adoptive family for a period of at least six months.

Continuing the analysis on the adoption process, it is noted that after the preparation of the fit report between the child and the person/adoptive family, within five days, the directorate is required to submit to the Court a request *for custody of the child for adoption*, asking at the same time the revocation of special protection measure. The custody for adoption is ordered by the court for a period of 90 days, during which bi-monthly reports shall be achieved by the directorate showing the child's development, the relations between him and the person/adoptive family.

Assuming that the child born of unknown parents is for at least two years in foster care adoption facility, to one of the adoptive spouses or adoptive family or under guardianship, the custody stage is no longer required⁴, thus passing onto the stage of granting internal adoption.

The stage of granting the adoption of the child starts by informing the court by the adopter /adoptive family or directorate, at least five days before the expiry of the period for which it was ordered the custody for adoption, the application is accompanied by the writings expressly provided by article 48 paragraph 2, of Law no. 273 of 2004. The speedy trial demand⁵ is based on the assessment of the administrated evidence (submission of final reports on the relations between the child and adoptive parents is obligatory, as the social inquiry report on the child), summoning the directorate in whose jurisdiction is the residence of the child or the directorate which has requested the opening of the internal adoption procedure and the person /adoptive families, with the compulsory involvement of the prosecutor.

¹ According to article 5 of GEO no. 11/2014 on measures to reorganize at the level of central public administration and for amendment of some acts (published in the Official Monitor of Romania, Part I, no. 203 of 21 March 2014) is set up the National Authority for Child Protection and Adoption, as a specialized body of the central public administration, subordinated to the Ministry of Labor, Family and Social Protection for the Elderly, by taking activity in the domain and from the adoptions of Romanian Office for Adoptions. Starting with 22/12/2012, based on article 21 of G.E.O no. 96/2012, the Romanian Office for Adoptions has been subordinated to the Ministry of Labor, Family and Social Protection for the Elderly.

² The list of 10 persons / adoptive families is sent by the Romanian Office for Adoptions by the directorate of the area where the child resides within 10 days from the date of registration of the judgment on opening the internal adoption for the child.

³ For example, the minimum number of encounter between the child and the person / adoptive family is of 4 and they are achieved both in the child's environment and outside of it, with the participation of the psychologist (to at least one of the meetings). Resuming the fitting procedure of the child, after the failure of the first procedure is achieved without exceeding 3 months from the time of termination of the previous fit.

⁴ According to article 42, paragraph 1, letter c and d of Law no. 273/2004 and article 80 of G.D. no. 350/2012.

⁵ Article 76 of Law no. 273/2004 provides that the hearings cannot be more than 10 days, drafting and communication of the decision shall be made within 10 days from their adoption, and the decision is subject only to appeal.

4. Conclusions

The adoption produces effects on filiation (set to the adopter or adopters), the adopted becoming, as appropriate, a child marriage from or out of wedlock, with the surname of the adopter or adopters, according to their agreement. Through adoption, the child born of unknown parents acquires another state, thus identifying through a family lineage, by the filiation and kinship created by the civil way. In addition, article 474 of the Civil Code states that the information on adoption is confidential. The way in which the adoptee is informed of adoption and his family of origin, and also the general legal regime of the information on adoption is regulated by the special law (for example, article 68 of Law no. 273, of 2004).

From the analysis of the legal provisions and based on the verification of practice, we can argue that the legislation on adoption favors the adoption of a child of unknown parents, by removing some barriers, stages and procedures. This leads, in our opinion, to the increase in the number of children abandoned by their mothers, shortly after birth, for their families and the society would not be aware of the fact that they gave birth to a child, on the one hand, and on the other hand, it can be stated that there is a certain superficiality in the activity of finding the mother who abandoned an unwanted child, in our opinion, a certain preference to families to adopt such a child born of unknown parents (no claims on natural parents in the birth certificate leads to impossibility, at least as facts, of a meeting between the child born of unknown parents and subsequently adopted, and his natural family).

In our opinion, this situation generates an infringement of the right of child to know his true origins¹ (article 7 of the UN Convention on the Rights of the Child) and an inapplicability of article 68 of Law no. 273/2004 regarding access to information concerning the identity of the parents, especially for medical reasons.

5. References

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¹ For France, see (Gouttenoire & Bonfils, 2008, pp. 75-105).