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**International Adoption of Romanian Children, the Reality
of Post-Revolutionary and Contemporary Europe**

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Abstract: The topic of international adoption is undoubtedly one of the most present and controversial phenomena of the Romanian contemporary law, a phenomenon that has gained amplitude in the immediate post-revolutionary period, Romania ranking first among the former communist countries in the field of international adoption, the child being considered a commodity generating substantial income. Corruptibility that developed in this domain has caused many children to miss adoption, with the most diverse and serious consequences for them. In 2003, Romania has suspended international adoptions further to pressures of the MEP Emma Nicholson, Special Rapporteur at the time, for our country's accession to the European Union. She invoked alleged dangers such as begging or organ trafficking which were menacing the future of Romanian children, once arrived in the West. Several countries such as USA, Israel, France and Spain protested against this decision. Neither the pressures of the European institutions from the recent years did not lead to changes in the Romanian legislation. If a child is adopted by a foreign citizen, he will receive citizenship of the country. In this situation his evolution would be extremely difficult to track. The international adoption as a “last resort” must be understood in the context of the provision referring to the importance of maintaining the continuity of cultural, linguistic, ethnic and religious background in a child's education. We hereby appreciate the idea that adoption by its nature, changes destinies and aims to a certain degree of spiritual empathy, not being only a measure, but a clarification that can mark and change a human life, and despite all regulations, decisions or political or legislative decisions, nothing is more important than life.

Keywords: International adoption; Romanian children; Romanian contemporary law

1. Introduction

The topic of international adoption is undoubtedly one of the most present and controversial phenomena of the Romanian contemporary law, a phenomenon that has gained amplitude in the immediate post-revolutionary period, Romania ranking first among the former communist countries in the field of international adoption.

Starting from the phrase “child’s adoption”, “child” meaning a young person of either sex, either by birth or by adoption, meanwhile “adoption” means the act or process of adopting a person; “child’s adoption” is a national and international social and legal phenomenon (Mihăilă, 2010) that ensure children without parents or without proper parental care,

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integration into a family, with a climate of love and understanding, allowing him to live a life without problems.

Most of the adoption cases involve a group of potential foster parents, with one infertile spouse or no compatibility; there is also the case of family planning in which the woman decides not to carry a pregnancy. However, the public will usually ask to find the answer to the question whether it is necessary for the adoption to take place.

Is child adoption an alternative to abortion and single parenting?

However, we believe international adoption to be a solution to cure a child from the severe abuse and neglect he is subjected to in his biological family, as well as a chance to a new life in a social environment that is totally opposite to that of birth? Therefore, should international children adoption be encouraged?

Consequently, this research paper provides an overview of the history of children adoption, of international adoptions in Romania, the conditions which should be met for a child's adoption, the factors that increase the chances of child adoption, of the benefits and finally, a conclusion on the disadvantages of child adoption.

2. Content

Adoption is a very complex issue, a phenomenon that has attracted worldwide attention due to its complexity and also to its significance.

On the adoption phenomenon, the French jurist Jean Carbonnier had the following considerations: "is adoption good or bad? Adoption is bad as it is rooted in child's abandonment, and is good because the children are saved."

Adoption was practiced even in ancient Rome, the Roman law uses the term "adoption" signifying adoption of a dependent ("aliens iuris", that of a son of the family) being used especially by the emperors for the purpose of ensuring the succession to the empire's rule, identically with hereditary succession.

The institution of adoption is found in Romanian law and has a long tradition, having over time different names and legal regulations: "a lua de suflet" (Matei Basarab's Rule, 1652) "infiala" (Article 236, Callimach's Code, 1817) "facerea de fii de suflet este dar spre mântuirea celor ce nu au copii"¹ (Article 1, part IV - to Chapter 5, Caragea Law, 1818).

The "Charter (Moroşanu, Chelaru, Serbina, Iftimie, & Eparu, 1997) for iohesia", 1800 by Alexander C. Moruzzi, was a real code of adoption. In fact, from the introduction to the charter, results that iohesia is the old tradition existing in this part of the world, to raise and educate a child.

The aforementioned laws provided that only those who do not have legitimate children can adopt.

¹ Approximate translation: raising sons close to your soul is a gift for the salvation of those who bear no children.

The adoptee was called “soul child” to distinguish it from “natural child”. He/she entered the adoptive family, called “soul parent” that set him apart from the “natural parent”. Among them were established similar relationships as in the biological family, the adopter's kinship with the natural family, being kept.

The 1865 Romanian Civil Code and the legal doctrine used the name “adoptațiune” applying, as the French Civil Code of 1804 the Justinian legislation.

The Decree no. 131/1949 brought amendments to the 1865 Romanian civil code, stating the following:

- The right to adopt was also granted to those who had children, other adopted children or legitimate descendants;
- The right to adopt only under aged children;
- The adoption is only made in the interest of the adoptee;
- The right of the prosecution, of the administrative bodies and welfare institutions regarding cancellation of an adoption.

Family Code of February 1st, 1954 brought some legal changes, but we can consider as the most important, the introduction of a new legal regulation, unprecedented in Romanian law, namely, the one on the international adoption.

By 1990, according to the legal provisions, this type of adoption could have been concluded only under the presidential authorization.

After 1990, the year of introduction of the first law on this legal institution, namely Law no. 11/1990 (on approval of adoption), the international adoption gains a legal institutional framework, our country adhering to the most important international conventions in this field.

This law was adopted in the context of the heavy legacy of the former communist regime, that of 100,000 children left in institutions, in hard to imagine conditions, considering thus, that this legal framework will provide a new chance in life for those in child care institutions in the country.

By Law no. 15 of March 25th, 1993 for Romania's accession to the European Convention on the Adoption of Children, some common principles and practices regarding adoption of children were accepted, mitigating thus, most of the existing disparities in the legislation of signatory countries.

Further, based on the principle recognized by the Convention on Child Rights, according to which each child's primary interest is to have a family, and our state aims to protect all children that cannot be raised and educated by their biological family, through the national institution of adoption mainly and through international adoption in special cases.

The Convention on child protection and cooperation with respect to international adoption, signed at The Hague in 1993, defines international adoption as the act by which a child who is habitually resident in a contracting state is to be moved to another contracting state, or after his adoption in the state of origin by two spouses, or by a person resident in the incoming

state, or with the purpose of adoption in the incoming state or country of origin. The Preamble of the Hague Convention states that international adoption may come with the advantage to offer the child a permanent family, if a suitable one cannot be found in his home state.

Thus, as previously shown, international adoption consists in the adoption of Romanian children, residents in Romania, by Romanian citizens or citizens who live abroad.

International adoption is subsidiary to the national one, however, is preferable to the child's institutionalization, containing at least one international element. The subsidiary character of the international adoption, in relation with the national one is only natural, given that the child must be ensured continuity in education, language, culture and religion, the disruption might cause the child major disadvantages, even psychological. Therefore, but also for other reasons that we will describe in this paper, the Romanian legislator stated that international adoption should be done only if the adopters are the child's grandparents, and later extended the circle of people to third-degree relatives and the adopter's husband. But even with this particularly important change, the subsidiarity principle is still contemporary.

However, in our opinion, we believe that international adoption presents many more advantages, as compared to the national, as the first one we consider to be in the interest of the minor because it provides a permanent family when this cannot be found in his state of origin and also gives the child the chance to integrate into a society with social and educational opportunities that he would not have received in his/her home country.

To conclude an international adoption, certain conditions must be met, so that their totality, as well as the impediments to adoption, as prescribed by the law, largely constitutes the requirements for adoption.

The substantive conditions required to complete the adoption are determined by the national law of the adopter and of the one to be adopted. They must also fulfil the conditions that are required for both, as established by the two laws described.

The substantive requirement for the spouses who jointly adopt, or if one spouse adopts the other's child are those established by the law that governs the effects of their marriage (art. 30, paragraph. 2 of Law no. 105/1992). Simultaneously, article 20 of the Law provides that:

“Personal and property relations between spouses are subject to common national law, and in the case of different nationality, they are subject to the law of their common domicile. Common national law or the law of common domicile of the spouses continues to regulate the effects of marriage if one of them changes as appropriate, citizenship or domicile. In the absence of common citizenship or domicile, personal and property relations between spouses are subject to the law of the State where they have resided or where they have in common, the closest connections.”

Romanian legislation provides the following main conditions to be met in order to be permitted the adoption. First, we present the conditions that the adopted must meet:

1. The Adoption is meant only to protect the higher interests of the child.

UN Convention on the Child Rights, as ratified by the Romanian Parliament by Law no. 18/1990 states that “in countries where adoption is recognized and/or allowed, it shall only be made in the best interests of the child, with all the guarantees necessary for a child and by approval of the competent authorities.”

In general, it is very difficult to establish the necessary criteria which determine the best interests of the minor. The subjective factor in establishing these criteria is omnipresent and governs the entire decisional process.

2. A child can only be adopted until he/she acquires full legal capacity.

In the light of our legislation on protection of children in difficulty, the child is a person under the age of 18 and does not have full legal capacity. It is entirely devoid of legal capacity the minor under 14 years, and also the one who is under permanent interdiction by court decision, as suffering from alienation or mental debility. A person without legal capacity shall have a legal representative, through which it will be able to acquire rights and assume obligations.

At the age of 14 years the child acquires a limited legal capacity, enabling him to conclude legal acts in his own name but only with the prior consent of the legal guardian.

Mature reasoning, as considered by the legislator, is to be attained at the age of 18, when the child acquires full legal capacity. The law makes exceptions only for girl minors who may become major before the age of 16 years, or for exceptional cases regulated by the Civil Code. (Moroşanu, Chelaru, Serbina, Ifimie, & Eparu, 1997)

Furthermore, we hereby present the conditions to be met by the adopter:

1. Full legal capacity

Is a key condition to be fulfilled by the person wishing to adopt, which results from the provisions of current regulations on adoption consent. According to these, only people who have full legal capacity can adopt.

The express mention of the condition that the adopter should have full legal capacity was needed because lacking full legal capacity are not only minors, but those placed under interdiction.

Simultaneously, it must be underlined that, while Article 7 of the European Convention on Child Adoption stipulates that a child may be adopted only if the adopter has attained the minimum age prescribed for this purpose, this being not less than 21 years, nor more than 35 years, under the possibilities conferred by art. 25 of the Convention, to formulate not more than two reservations on the provisions of Part II.

In this respect, it was considered that, according to the Romanian law, the minimum age is 18 years, with no maximum limit for the consent of adoption.

2. The 18 years difference of age between the adopter and the one to be adopted.

This condition aims primarily to create, between the adopter and the adopted, family relations just like those between natural parents and children.

We have to mention that, for legitimate reasons, the court may also approve the adoption where the age difference is less than that mentioned above.

The European Convention on Child Adoption stipulates in art. 8 pt. 3, as general rule, that the competent authority shall not consider that the necessary conditions for the conclusion of adoption were met if the age difference between the adopter and the child is less than the typical difference separating parents from their children.

3. The adopter must provide the material conditions and moral guarantees necessary to ensure the harmonious development of a child.

Since by adoption, the parental care is passed from the natural parents of the adoptee to the adoptive parents, the latter are bound to raise the child, caring for his health and physical development, education and personal training, harmonized with his attributes and in line with the state goals.

Further, the substantive and the formal conditions of adoption coexist, being provided by the law and intended to ensure fulfilment of the substantive conditions and the lack of impediments to adoption.

In terms of form, the legal act of adoption is solemn in the sense that the expression of will of the one who will give his consent to adoption, called declaration of adoption, shall be expressed in an authentic document at the notary public.

The authorized persons' consent can be given, either by separate declarations or by a single document. The application for approval of adoption will be accompanied by the documents that are required by law in this area.

According to legal provisions, the request of the person or family who wants to adopt a child registered by the Romanian Adoption Committee will be submitted to court through specialized public service or authorized private body. (Moroşanu, Chelaru, Serbina, Iftimie, & Eparu, 1997)

Although from the procedural point of view, we can say that both the substantive and formal conditions for the approval of international adoptions were met, like other former communist countries, Romania was also affected by the scourge of corruption, so that further in this paper will bring to attention the effects of international adoption moratorium.

As aforementioned, until ceasing the adoptions in 2001, Romania has ranked first among the former communist countries in terms of International adoptions market, where the child was considered a commodity that brought substantial income. Corruptibility that developed in this area has caused many children to miss adoption, with the most diverse and serious consequences for them.

The new regulations came as a natural consequence of the moratorium imposed by GEO no.121/2001, on temporarily suspending all international adoptions, adopted further to pressures from the European Union, in response to cases of children selling and adoptions made without compliance with Romanian legislation.

“The scenes of degradation, starvation and misery in which thousands of children lived in Romanian institutions have gone around the world through television. Tragically, Romania introduced an excess of horror, something like Durer's paintings that depicted hell.”¹

GEO no. 1/2004 provided that the requests for approval for adoption of Romanian children, submitted by a person or a family with foreign residence or by a person or a family with Romanian nationality residing abroad, if the government approved the submission of files to the competent courts until the application of this emergency ordinance, shall be settled according to regulations in force at the time of their introduction.

Due to the fact that before 1990, the international adoptions were little practiced, the orphans, the abandoned and children with severe disabilities were kept in hundreds of prison program isolated institutions (Teodorescu, 2002). When someone wanted to adopt a child, the decision was taken with great difficulty by the Romanian President because, once internationally adopted, a child loses Romanian citizenship. As population growth became an obsession, the number of abandoned and disabled children increased. In the early 1990s, under pressure from international organizations, the Romanian legislation began to change. But international adoptions have become a business: quick documentations, marketing slogans such as “adopt Romanian children”, internet, publicity, associations and foundations established for the sole purpose of earning money from the sale of children. (Mihăilă, 2010)

Some international adoptions agencies have even used inappropriate language when referring to children in Romania: “Romania is a very productive source of children, especially for customers willing to accept some minor delays and uncertainties in exchange for the possibility of a rapid offer for the placement of a small child.”²

In 2003, Romania has ceased international adoptions on the pressures of MEP Emma Nicholson, Special Rapporteur at the time of acceding to the European Union. Dangers were invoked, such as begging or organ trafficking, once the children arrived in the Western countries. Several countries such as USA, Israel, France and Spain protested against this decision. There were no pressures from Europe in the recent years to produce changes in the Romanian legislation. The last resolution of the European Parliament on this issue will not change, most likely the current situation.³

International organizations specialized in adoptions made pressures and took even prepayments for the adoption of a Romanian child by honest families in America or Europe, lobbying on their countries' governments so they would put pressure on our country, arguing that ceasing the adoptions will cause them significant monetary capital resources loss.

Once the restrictions on international adoption began, people's opinions were divided. Thus, some may consider that the law violates the fundamental child right to have a family. It also discriminates against both children and those who want to adopt, by in compliance with the principle underlying the promotion and respect for children's rights on equality and non-discrimination.

¹ E. Nicholson, interview by R. Veress, in *Adevărul* journal No. 4261 of 15th March 2004.

² Human Rights Alert – The race for adoption, 7th September, 2004.

³ Totb.ro.

On the other hand, there are people who state that it is better for a child to be adopted within the country of origin, as it is easier to monitor him at least two years after adoption, as required by law.

If a child is adopted by a foreign person, he will receive citizenship of that country. In this situation it will be extremely difficult to keep track on his evolution.

According to a decision of the ECHR, the Romanian state was ordered to pay 35,000 Euros to two Italian families because the verdicts by which they received the right to adopt two little girls were not applied. However, the ECHR states that the solution reached by the Romanian State is one in the children's interest, especially when the legal system from that time allowed the adoption to proceed without the adopting family to have ever seen the girls in discussion.

Right of access to a court of law would be illusory if a State's domestic legal system would allow a final, binding judicial decision to remain inoperative to the detriment of one party.

Enforcement of a decision or judgment of any jurisdiction must be considered as part of the process, according to art. 6 of the European Convention on Human Rights. (Roșu, 2007)

Almost 1,200 adoptive parents of Romanian children, mostly French, have criticized the European courts which were against the resumption of international adoptions before the implementation of Law no.273/2004. "EU enlargement after Romania's accession should not be built on a blackmail concerning the abandonment of thousands of children, whether adoptable or not."¹

However, there was a real US offensive for the amendment of the current legislation. Through the media the Romanian authorities were sent the message: "Romania: let the children go" (Armitage, 2004) followed by the letter congressman asking the Government to amend the adoption law because it was violating the international legislation.

The decision to ban international adoptions has turned the fate of adoptable children into an international battle with the American authorities, and not only. There is no doubt that many adoptions had a happy ending, but many have turned into a practice in which children were sold for thousands of dollars. Old law generated a real market. In the year 2000, more than 3,000 children were adopted by foreigners, with total costs of 55,000 dollars per child.²

There were also children who, before 1997 were adopted internationally by families abroad, but they never reached the adoptive parents. Instead, in some countries other children were sent, also from Romania, but through other routes, most likely through well-developed organizations, which supplied the foreign adoption market with backup children, against large sums of money. After January 1st, 2005 there were 8 cases of children adopted from Romania, who have not reached their foreign parents, being replaced with other children. (Mihăilă, 2010)

¹ Petition of the Association of French Families which adopted children born in Romania - France Presse Agency.

² <https://www.theguardian.com/society/2004/may/06/adoptionandfostering.adoption>.

A ORA¹ patented study, revealed that, following international adoptions in the period 1997-2005, over 1,300 Romanian children who had to reach foreign parents have disappeared, one of the reasons being the non submission of post-adoption reports.

It is well known that state officials sold the abandoned children to foreign citizens who paid tens of thousands of Euros. Everything is done illicitly, so that anyone who wanted a child could come to Romania and buy one.

There has also been, of course, a time when numerous families sold their children, exploiting them as a source of income.

If abroad, even numerous families adopted, in our country, perhaps on account of the low living standards, adoption was required by only those who couldn't have children.

In countries like Britain, France, the waiting period for adoption varies between 4 and 5 years. And if such countries also adopted disabled children, in Romania, they have little chance to get a family.

An example of intermediate paid adoptions comes from Drobeta Turnu Severin, where an NGO foundation brokered 30 adoptions in the US, for each receiving 5000 dollars. Since October 2001, NGOs were excluded from the actions and all adoptions were made only through Governmental memoranda.

Concerning international adoptions, Romanian NGOs have the right to engage only in child protection services or foster family care, by family reintegration and by supporting families to prevent abandonment. Shortly before the adoption of the new legislative package, the Romanian Adoption Committee revoked the scoring system under which the adopted children were attributed to foundations so that international adoptions have become impossible to finalize until application of new regulations. (Mihăilă, 2010)

Because at first, the attempts to draw attention to illegalities in the practice of international adoptions were deterred by expressions like “it is better for the child”², the new law on adoption is the right solution, at least for now, to solve these problems.

Despite the criticisms, the current legislation on adoption is consistent with the Hague Convention and ensures better protection for minors than in many Western European countries³.

International adoption as a “last resort” must be understood in the context of the provision referring to the importance of maintaining continuity of cultural, linguistic, ethnic and religious background when raising a child.

This was highlighted in a decision of the Constitutional Court of Romania since 1993, when the objection of unconstitutionality raised on the validity of art. 3 and 4 of Law no. 11/1990, the former law of adoption, the exception being proposed further to the action of law of two

¹ ORA - Romanian Adoption Office.

² <http://jurnalul.ro/special-jurnalul/opriti-exportul-de-copii-581483.html>.

³ <https://www.theguardian.com/world/2005/dec/03/internationalcrime>.

Italian citizens who were denied the adoption of some Romanian children on the account that they were not registered with the Romanian Adoption Committee.¹

For ensuring that the respect for children's rights becomes a priority for all organizations entitled to guarantee a coherent and unified background for promoting child rights, efforts are made to adopt a single law to tackle the issue of children in care institutions, in an integrated manner. (Mihăilă, 2010)

One may say that, once this regulatory environment is created, it will prevent the cases of neglect, molestation and abuse of children, the exploitation of their work and not least, sexual exploitation.

We can state that, after countless cases related to the phenomenon of international adoption that cast a negative image on our country in the international community, Romania, in its legislative attempts managed to improve this situation/image, especially after stopping the adoptions from 2001 and creation of the necessary legislative framework consistent to the European principles.

3. Conclusions

In the conclusion, we believe that the issues addressed are an integral part of the social and political life marking Romania's evolution in the way to association to the European Union, and of the Romanian law and comparative law, as it is still a topical issue by its thematic.

November 20th, 1989 is a historic day for the 2 billion children worldwide, because at this date, the United Nations adopted the 54 articles of the Convention on the Child Rights.

The Convention was adopted by 194 countries, members of the United Nations (except the US and Somalia). Any State which signed the Convention recognizes its content, undertakes to respect and to apply it accordingly.

The idea of a special document to include the child rights belongs to Englantyne Jebb, who founded the first Save the Children organization, in 1919 in London.

The fundamental rights of the child contained in the Convention are:

- The right to live;
- The right to a name and nationality;
- The right to a proper education;
- The right to freedom of expression;
- The right to medical care;
- The right to be protected against any form of violence, abuse or neglect;
- The right to play and leisure.

¹ Decision CC No. 62 of 21st October, 1993, published in the Romanian Official Monitor. 49 of 25th February, 1994.

The higher interest of the child is one of the fundamental principles of the Convention and Law 272/2004 on the child protection and the activity of promoting children's rights.

Romania was among the first countries to ratify the UN Convention on the Child Rights, in the year following its adoption by the United Nations, by Law no. 18 of 28 September 1990. By signing the Convention, Romania set its objective to improve the situation of children, ensuring that standards for child protection and children's rights are respected, ensuring the best conditions for them to grow up healthy, to have quality education and actively participate to the community life.¹

We hereby appreciate the idea that adoption by its nature, changes destinies and aims to a certain degree of spiritual empathy, not being only a measure, but a clarification that can mark and change a human life, and despite all regulations, decisions or political or legislative decisions, nothing is more important than life.

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¹ www.salvaticopii.ro.