

# CHILDREN'S RIGHTS IN ADOPTION PROCEDURE

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## Abstract

This article analyses the adoption within the international human rights law framework. Adoption is, by definition, the most drastic of interferences with the right to respect for family life since its effect is usually to terminate completely and irrevocably the legal relationship between the child and his or her parents as well as the child's wider kinship links with the extended family. In 1994, Romania was one of the first three countries to ratify the Hague Convention

**Key words:** child's rights, the best interests of the child, adoption

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Respecting the interest of the child principle is one of the basic principles of family law. According to art. 263 of Civil Code any measure related to the child, regardless of its author, must be taken with the best interests of the child. According to art. 2 para. (4) of Law no. 272/2004, the overriding interest of the child shall prevail in all actions and decisions concerning children, whether undertaken by public authorities and private bodies, and in cases decided by the courts. According to par. (6) in determining the child's best interests are taken into account at least the following:

- a) the needs of physical and psychological development, education and health, security and stability and belonging to a family;
- b) the child's opinion, depending on the age and maturity;
- c) the child's history, having regard, in particular, situations of abuse, neglect, exploitation, or any other form of violence against children and the potential risk that may arise in the future;
- d) the parents or the caregivers' ability to meet the children's actual needs;
- e) maintaining personal relationships with people whom the child has grown attachment relationships to.

## MATERIAL AND METHOD

Adoption is defined in art. 451 of the Civil Code as the legal operation which create parent-child relationship between the adopter and the adoptee and the family ties between the adoptee and the adopter's relatives. Respecting the rights of the adopted child in adoption procedure transpires

even from the principles governing adoption. According to the principle of the interests of the child, adoption may be permitted only where the optimum solution for the protection of property and personal non-property interests of children deprived of parental care. According to art. 2 of Law no. 272/2004, the child's best interest is circumscribed to his right to a normal physical and moral development and a steady socio-affective and family life. The best interests of the child shall prevail in all actions and decisions concerning children, whether undertaken by public authorities and private bodies, and in cases decided by the courts. The court accepts the application for a declaration of adoption only if, based on evidence, it is convinced that the adoption is in the best interests of the child.

Respecting the child's best interest principle translates throughout the adoption procedure, from the moment it is proposed as a protective measure in the individualized protection plan until after its approval, when the child is monitored over a period of 2 years. Moreover, if the adoption is invalid, the court may reject the application for declaration of invalidity if it finds that maintaining it is in the interests of the adoptee.

The principle of raising and educating a child in a family environment is regulated in art. 452 lit. b).

Civil Code and art. 1 letter b) of Law no. 273/2004 on the legal regime of adoption. Naturally, the child should grow up with his parents. He is entitled to be grown under conditions that allow the child's physical, mental, spiritual, moral and social development. In case of adoption, adopters are evaluated by the competent authorities regarding the moral and material guarantees they

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may offer. Of all the protective measures that can be placed on a child without parental care, adoption is one that gives the child a stable family environment throughout life. Cases of dissolution of adoption are expressly regulated. The child's physical and mental capacity to adapt in the new family environment will be analyzed in relation with professional, economic, cultural, language, religion and other such conditions, where they live during custody and that may be relevant in assessing future developments in the case of a declaration of its adoption. Also as a consequence of this principle, siblings are adopted together.

Also, the period for which custody for adoption is ordered, experts of the specialized department must provide support to adopters / adoptive families to facilitate the child's integration into the new living environment. To this end, it provides support and specialized assistance to meet the needs identified in the prosecution of child development or reported directly by the adopter / adoptive family or, where appropriate, by the child.

Also in the adoption procedure we must respect the principle of continuity in the child's upbringing and education, taking account of ethnic, cultural and linguistic origin [art. 452 lit. c) C. civ. and art. 1 letter c) of Law no. 273/2004]. Thus, international adoption is permitted only for children who were granted the application for opening of the internal adoption procedure and an adopter or adoptive family who has the residence in Romania could not be identified; in the case of international adoption, the adopter or one spouse of the adoptive family must be a relative up to the fourth degree to the child ; the adopter or one spouse of the adoptive family is a Romanian citizen; the adopter is the child's natural parent's spouse whose adoption is requested.

Also, an important step that precede custody for adoption is matching, identifying and selecting the most suitable person / family certified as being able to adopt that meets the needs of the child and establishing compatibility between the child and the adopting person / family. Matching is performed with priority for children in the extended family of relatives and other people with whom he enjoyed family life.

As a consequence of the principle of informing the child and taking account of his opinion in relation to the age and maturity of the child [art. 1 letter d) of Law no. 273/2004], in the procedure of adoption, the child that has reached the age of 10 must be heard. Previously to expressing the consent, The Department of Social Services in whose jurisdiction resides the child who

has reached the age of 10 will advise and inform the child, taking into account his age and maturity, in particular about the effects of the adoption and his consent to the adoption, and will report on this. When a child reaches age 14, the individualized protection plan may have as a goal the internal adoption only if there is expressed consent of the child's interest in this regard and justified the opening of the internal adoption.

The adopters must inform the child that is adopted gradually, starting from early ages, with the support of specialists from the department of adoptions and postadoptions of The Department of Social Services.

According to art. 44 of Law no. 272/2004, any child who is temporarily or permanently deprived of parental protection or to protect his interests can not be left in their care is entitled to protection alternative. Alternative protection includes establishing guardianship protection, special protection measures (placement, emergency placement, specialized supervision) and adoption. Special child protection measures are defined and applied based on an individualized protection plan. In setting its objectives reintegration of the child in the family is a priority, and if that is not possible, it will proceed to the opening of the internal adoption procedure.

Adoption is established to be the purpose of the individualized protection plan if, after a period of one year from the date of introduction of the measure of special protection, the biological parents and / or relatives to the fourth degree of the child could not be found or do not cooperate with the authorities to achieve the reintegration / integration. The one year period is calculated from the first date of the establishment of special protection measures regarding the child. Also, the adoption is established to be the purpose of the individualized protection plan in cases where, after setting the special protection measure, parents and relatives of children up to the fourth degree that could be found declare in writing that they want to deal growth and childcare.

As a rule, the minor children may be adopted. A minor who has acquired full legal capacity as a result of marriage can not be adopted. Also, any emancipated minor under art. 40 C. civ. can not be adopted (Gavrilescu L.C., 2015).

As an exception, the adults can be adopted if they were brought up during the childhood of those who want to adopt them. 'Bringing up' means the care that the minor benefited from the adopter throughout the period in which he was under his protection. The upbringing of the child must be a continuing and must be analyzed in terms of parent-child relationships, both personal, affective,

and economic (the legal obligation of maintenance). The period during which the minor has received care should not overlap entirely with the one that flowed from birth to reaching adulthood. (Bodoaşcă T., T. Draghici, 2004).

The legal text should not be interpreted in the meaning that, in order to have approval of the adoption, the adult must have been raised by the adopter for the whole period as he was a minor, it is sufficient that from the evidence provided in the case (witness testimony) the court could form the belief that the adopter has contributed to the growth and care of the person that is adopted to create a strong emotional bond and strengthen a specific family relationship (Mateescu A.F., Bădescu Gheorghe I.C., 2008).

The child whose biological parents have not reached 14 years can not be adopted.

The child outside marriage who is recognized by the father through administrative channels and the child whose paternity has been established by judicial decision that has been taken note of the recognition by the father or which confirms the parties' agreement, without having examined the merits of the application may be adopted by the father's wife only if the parentage is confirmed by the result achieved by serological method DNA expertise. In case of adoption of the child by the wife of the father who admitted the child born outside the marriage, the court will accept the application for a declaration of adoption only if paternity was confirmed by DNA expertise result.

If the child whose birth was recorded of unknown parentage, the case manager establishes the adoption as a result of the individualized protection plan within 30 days of the issuance of the birth certificate.

If the child has turned 14, the adoption is set as the result of the individualized protection plan if there is written expressed consent of and the case manager assessed that the child's interest justifies the opening of the internal adoption.

For the child under guardianship, the adoption is ordered by the court if this approach responds to the child's best interest.

In cases of multiple siblings of either sex and without distinguishing whether they are from marriage or outside it, consanguine or uterine minors or adults, their adoption by people or different families can only be made if this is in their best interest (art. 456 of the Civil Code.). The purpose of these regulations is to keep siblings together, given the strong bond of affection between them, but also to preserve natural kinship.

Internal Adoption involves formalities to public administration bodies in the administrative procedure and to the court in the judicial

proceedings. Internal adoption procedure involves several steps, in an order determined by the legal provisions of the Adoption.

The adoption is the goal of the individualized protection plan only if the child is in a situation referred to in art. 26 of Law no. 273/2004, namely: it has been an year since the imposition of the special protection measure and the child's natural parents and relatives to the fourth degree can not be found or do not cooperate with the authorities to achieve approaches to integrate or reintegrate the child in the family [lit. a)]; after setting the special protection measure, parents and relatives up to the fourth degree of the children that could be found declare in writing that they want to deal with childcare and, within 60 days, they didn't withdraw this statement. The Department of Social Services must register these statements, as well as those through which parents and relatives to the fourth degree reconsider the initial statements [lit. b)]; the child of unknown parentage was recorded. In this case, adoption, as a goal of the individualized protection plan shall be established within 30 days of the issuance of the birth certificate of the child [lit. c)].

This is followed by evaluation of the adopter or adoptive family to obtain the certificate. In the evaluation process it is aimed mainly obtaining and interpreting information on family history and functionality, its beliefs, goals, attitudes, achievements, life skills, characteristics and resources. The requested information must be relevant for assessing the ability of the adopter / adoptive family to respond adequately to the needs of adoptable children.

After being identified the adopter or adoptive family or the most suitable family for the child, The Department of Social Services in whose administrative-territorial area the child's home is located notifies the court for custody of his for adoption. Throughout the custody of the child for adoption, The Department of Social Services from the domicile of the adopter or adoptive family monitor the child's development and the relationship between him and the person or family who has been entrusted, preparing bimonthly reports in this regard. At the end of custody for adoption, The Department of Social Services files a report on the evolution of the relationship between the child and the adoptive family, report that is communicated to the competent court to settle the application for a declaration of adoption.

If during the period of custody for adoption The Department of Social Services in which jurisdiction resides the adopter or adoptive family finds that the child could not adapt to the person or adoptive family or there are any other reasons that

could impede completion of the adoption procedure, it shall immediately notify the court in order to revoke or, where appropriate, to extend the measure of custody.

During the declaration of adoption, the court may ask for the natural parents consent to adoption if there are indications that, after the date on which the consent became irrevocable, there are new elements, such as to determine the return on the initial consent. The Department of Social Services which has asked for internal adoption procedure must inform the court in whose administrative-territorial area the adopter / adoptive family live, if applicable, whether there are any new elements on the situation of biological parents or the extended family that could result in a change of purpose on the individualized protection plan.

Monitoring post-adoption is conducted quarterly by The Department of Social Services in whose administrative-territorial area the child's home is located through a specialized department for a period of at least 2 years after the declaration of adoption (Popescu, 2010 ). For this activity the psychologist from the specialized department can also be in charge of the case.

## RESULTS AND DISCUSSIONS

As a result of adoption, the adoptee acquires the family name of the adopter. In the case of adoptive families where spouses do not have common surnames, the adoptee will bear the name that adopters decide he will have, namely their collective surname or the surname of one of them. If they can not agree, the court will decide instead. The same solution applies where adoption is done by the biological parent's partner. Listening to the adoptee who has reached the age of 10 is mandatory.

For good reasons, at the request of the adopter or adoptive family, with the consent of the child who has reached the age of 10, the court may order a change of name of the adoptee.

If the adult adoptee is married and has the same family name as his/her spouse, he/she will take the name of the adopters only if the other spouse consents to that before in the court which authorizes adoption. After the divorce, the adopted spouse will take the name of the adopter and will not return to her/his previous surname. In the court order through which the adoption was decided, the name and surname that the child will take after the adoption must be indicated.

If the adopted child is of age, domicile and his residence will be adopted or the adopter who lives with steadfast. If adopters have separate residences and do not live together, they agreed domicile and residence. If you can not agree, the court will decide guardianship. The minor who reached the age of 14 can change his residence in order to complete his educational or professional training.

Adoption disclosure may be made only to people who have acquired full legal capacity. Biological parents or relatives of adopted people can obtain general information regarding the adopted person only with her/his consent or, where appropriate, with the consent of the adoptive family.

Relevant information related to adoption, the child's origin, in particular regarding the identity of the natural parents, as well as data on the medical history of the child and his family must be kept for a minimum of 50 years from the date the declaration of adoption becomes final. The adopters must inform the child that he is adopted gradually, starting as early as possible, with the support of specialists from the department of adoptions and postadoptions from The Department of Social Services. After acquiring full legal capacity, the adopted person may apply to the court within whose territorial jurisdiction he lives or, if he does not live in Romania, he may apply to the Bucharest Court to authorize him access to information held by any public authority on the identity of his natural parents.

## CONCLUSIONS

Adoption is a complex psychological and judicial process. In terms of the adopter, the adoption implies some parental responsibilities, gained as a result of going through this long and difficult "journey" of adoption. For the child, the adoption means a home, a family in which he is able to develop and evolve harmoniously.

## REFERENCES

- Bodoaşcă, T., Drăghici, T., 2004** - *Family law. Part II. Kinship*, Cantemir Publishing House, P. 127.
- Mateescu, A.F., Gheorghe-Bădescu, I.C., 2008** - *Child protection and adoption. Judicial practice*, Hamangiu Publishing House, pp.65-67.
- Popescu, A. 2010** - *Human Trafficking. Legal and criminal implications*, Publishing House of „Al. I. Cuza” University, Iași, pp. 313.
- Gavrilescu, L. C., 2015** - *Civil law. General part*, Hamangiu Publishing House, pp. 91