

# Adoption System in Romania

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**ABSTRACT:** The Romanian society has undergone many changes over the years. Either in the economic, social, cultural, educational, but also family. One of the most important changes is the family structure and the creation of a new family. In this sense, since 1864, the institution of adoption was regulated in the Romanian Civil Code, which applied the Justinian law, as did the French one between the adopted and the adopter. The provisions of this code were abolished in 1954 by the entry into force of the Family Code, its autonomy and its detachment from civil law. The provision with a principle of value strictly related to the adopted one, according to which the adoption is only in the interest of the founder, is illustrative of the radical transformation of the essence of this institution-adoption. The fact is that the institution of adoption is no longer the instrument by which a family / person who wants a child can have it, but a means by which the child / adoptee can receive the family who needs.

**KEYWORDS:** adoption, child, family, process, Romania, system

## Introduction

Adoption is at present one of the most controversial and complicated themes of national law, and it is also one of the most current phenomena of contemporary law. It is a theme with various problems, because over time it has undergone numerous changes. The fact is that the adoption system in Romania goes on a line of progress in all this institution. We also need to specify that changes in adoption during the years have contributed to an intensive process / adoption system for families in Romania and abroad. However, in all laws, draft laws, decisions taken by competent bodies in this regard were taken into account, first of all, the superior interest of the child, then of the family. This concept has primacy and takes precedence in everything we can call, national adoption or adoption process.

Scientific and practical research gives us the information that the child's best interest comes from making and then adopting the baby. The interest of the child is considered to be the ultimate goal of adoption. The child's superior interest should be superior to that of adoptive parents. However, in practice it is taken into account not to make the great distinction between the rights a child has and the rights an adult has, especially in the adoption process. Therefore, the interest of the child may be different from that of his / her parents or guardians, so that the best interests of the child prevail and prevail over other interests when taking action on the child.

Recommendation 874 (1979) of the Parliamentary Assembly of the Council of Europe states as a first principle the following: "Children must not be considered the property of their parents but must be recognized as individuals by their own rights and needs." The same recommendation addresses the fact that there should be a need for juveniles to have their own legal representation, to have an official lawyer to defend their interests in any conflict in the family and not only. For this cause divorce and separation procedures should be improved. Be first and foremost based on the principle that the interests of the child are primordial. The National Authority for the Protection of the Rights of the Child (NAPCR), the 2009 National Center for Family and Child Rights Protection, states that: they have to take them into account, avoiding to decide only on the basis of personal feelings or beliefs. (ANPCD 2001, 43).

## The definition of adoption

With the development of society and the changes of social, economic, legal and technical at the origin of this change, the traditional family picture has undergone many changes that contribute essentially on child development.

For the blossoming and harmonious development of its personality, the child needs to grow and be educated in a family environment that will provide him with a happy climate, love and understanding. As much as possible, the child must be raised and educated in his / her home family. These criteria are defining or at least a fairly large margin for the growth, education and formation of the new generation. But if this is not possible, and will ensure the child a permanent family, where it is grown, educated, taught and trained to become useful and important to integrate into society without any difficulty. In this sense, the adoption institution offers the possibility of a permanent family of the child. This element is very important for a child, but equally important for the adopter.

The institution of adoption over time has been given several definitions, one of which is specified by Marieta Avram: "Adoption can be defined as the legal operation by which the paths of filiation and civil kinship are created, under the law, between persons provided by law" (Avram 2001, 90).

The new Civil Code, updated on January 16, 2012, provides in Title III, Chapter III, art. 451 that: "Adoption is the juridical operation that establishes the connection between the adopter and the adopter, as well as the relations of kinship between the adopt and the relatives of the admirer", Constantin Arcu (2003, 21) in his book, *International Adoption* says: "Indisputably, adoption is a special measure to protect the rights of the child, which is taken only to protect its interests."

In conclusion, we consider that adoption is a complex legal act of family law by means of a decision based on the court decision, it establishes both the filiation between the adopted and the adopter and the relationship between the adopted and his descendants, on the one hand, and the adopter and his relatives, on the other hand, with the discontinuation of the connections of the fire and the natural relationship for the adopted.

### **Adoption as a form of legal protection. National adoption requirements**

Romania is a country where adoption was known as a child protection and legal protection practice. The current law on adoption is Law No 273/2004 on the Legal Status of Adoption, republished on April 19, 2012. It is applied at the level of the adoption system in Romania and contains some modifications related to this system. In general, this law expressly provides for the adoption procedure, the specific steps to be taken to adopt a child at both national and international level. It describes the following stages of the adoption process at national and international level, which is an element of novelty in the national adoption law. The law has ten chapters each with a specific regulatory segment in the adoption process and 99 articles summing up everything that can be learned about adoptions. Chapter I provides for general provisions of adoption; Chapter II provides the background to adoption; Chapter III provides for the adoption procedure and all sections thereof; Chapter IV provides for the procedure of international adoption, Chapter V provides for the effects of adoption, Chapter VI provides for the cessation of adoption; Chapter VII provides for common adoption procedures; Chapter VIII provides for the national enrollment register; Chapter IX provides for post-adoption monitoring and post-adoption activities, and the last chapter X provides for the final, transitional, and adherence provisions.

### **Fundamental conditions of adoption**

The fundamental conditions of adoption are that required by law. The fundamental conditions are the circumstances or legal circumstances to which the persons prescribed by law must comply in order for the adoption procedure to be validly concluded and approved by the court.

Failure to comply with the substantive conditions leads to the absolute nullity of adoption. The background to adoption in the current adoption law is:

- Two people cannot adopt together either simultaneously or successively, only if they are husband and wife.
- A new adoption can only be approved when:

1. Adoptor or adoptive spouses have died, previous adoption is considered to have been abolished; 2. Previous adoption ceased for any other reason.

3. The adopted child has only one parent, unmarried, but who has a stable relationship with and cohabits with another person of the opposite sex, who is not related to him until the fourth degree, declares by authentic act to the notary that the new adopter participated direct to raising, educating the child for an uninterrupted period of 5 years.

### **People who can be adopted**

The child can be adopted until the exercise capacity is acquired, and the person who has full exercise capacity can be adopted if he was raised during the minority by the person who wants to adopt. Adoption of siblings, regardless of sex, by different people or families can be done only if it is in the best interests of the child. In the civil code regulated by Law 287/2009, art. 457 provides that adoption between siblings is prohibited, irrespective of sex, also the adoption of two spouses or former spouses by the same adoptive parent or adoptive family, and adoption between spouses or former spouses is forbidden.

### **People who can adopt**

In order to be able to adopt, it is necessary to meet the following background conditions:

- The ability and health of the adopter to meet legal requirements. Persons who do not have full exercise capacity, people with mental illness and mental disabilities cannot adopt.
- The age difference between adopter and adopter must be at least 18 years of age, for good reasons, the guardianship court may approve adoption even if the age difference between the adopter and the adopter is less than 18 years but not less than 16 years.
- Moral and Material Conditions. The adopter or adoptive family must meet the moral safeguards and material conditions necessary for the child's harmonious growth, education and development.
- Simultaneous or successive adoption. Two men cannot adopt together or simultaneously, or successively, only if they are husband and wife.
- Persons who consent to adoption are the natural parents, the spouse, the adopted person who has reached the age of 10, the husband of the adopter, his adopter or, as the case may be, the spouses of the adoptive family, when they adopt together. The consent given to the promise or the actual obtaining of benefits, regardless of their nature, is not valid. Adoption consent of the natural parents or, as the case may be, of the guardian can only be given after a 60-day-term child has passed since the child was born.

These are the most important background conditions of adoption that need to be respected in the adoption process.

### **Formal adoption conditions**

The form of the legal act is the modality of the act of externalizing the manifestation of will made with the intention of creating, modifying or extinguishing a concrete civil legal relationship. Formal conditions refer to the acts that the parties have to conclude for the validity of the admission procedure. In the law as well as in the previous regulations, it is necessary to recognize that the consent of the adopter is necessary to the adoption of the consent, but to the adoptive family, and to the natural parents of the child or to other organs, according to the law, to give such consent. The consent of the adopter or the admiralty shall be given to the judicial establishment with the settlement of the request for admission.

### **Conclusions**

Changing a society, changing systems takes place over time, and this has been demonstrated many times throughout history. The adoption institution has and still will have a leading place in the Romanian society, in view of the fact that it is a legal institution that is legally regulated based on the protection of the rights of the child. Not only can this be an essential one, which will always be a priority for any society. Adoption is an alternative that responds to the needs of the child and not just to the act but also to a family that wants to adopt. The identification of needs in the process of evaluation

by professionals in the field regarding the child and the admissions family are elements of novelty about the whole process of adoption.

Adoption is a state institution that governs family rights and provides the child with a special care and through it a family. For a beautiful development of the child, it needs to grow in a family environment, to ensure a climate of happiness, love and understanding. It must be appreciated that as far as possible the child must be raised in his/her family of origins, but if this is not possible, then a child will be provided with a permanent family in which he/she can be formed and grown to become useful to society to integrate without difficulty (Lupașcu 2005, 241). Adoption is an institution specially created by law, family law to offer the possibility of having a permanent family to a child who is devoid of parenting or proper care on their part.

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