

**JURIDICAL ASPECTS CONCERNING THE INSTITUTION OF
ADOPTION FROM ROMANIA AND MOLDOVA**

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Abstract:

The powerful social, emotional and economic impact of adoption requires clear and concise legal provisions, which does not give rise to misinterpretations, with well-defined features for the national and international levels. Starting from the classic definition of a child adoption, respectively legal operation by which is created the ties of filiation between adopter and the adoptee, as well as kinship ties between the adopted child and adopter's relatives, through this article we present similarities and differences regarding the institution of adoption from Romania and Moldova. Thus, we will refer to the institutional and legal regulations on adoption, the substance of adoption, the national and international adoption procedure. Without claiming an exhaustive approach, we consider that through issues highlighted in this article can be identified both positive aspects and shortcomings of the adoption process in these two countries.

Keywords: *adoption, children's rights, juridical regulations, national adoption, international adoption*

JEL Classification: K39, J13, D02

1. Introduction

Although the link between a child and his biological family is one unique, there are enough cases where the biological family is unable to respond to the child's needs, can not or sometimes does not intend to provide of the child safety, happiness and wellbeing. In such cases, adoption can be considered the best solution for the child, but taking into account all legal, psychological and social aspects. The importance of adoption, the complexity of adoption process and the effects generated by adoption must always focus on protecting children's rights (Mihăilă, 2010).

Through this article we present legal aspects concerning the institution of adoption from Romania and Moldova, highlighting the similarities and differences for this institution in the two countries. By making this comparative analysis, we want to surprise how is it addressed the adoption by "two sisters" located on the right side and the left side of Prut River.

The structure and contents of the article provides the answer to questions such as: What is the institutional framework on adoption? Which are the principles of adoption? Which are the conditions of substance for adoption? Which are the coordinates for national adoption procedure? Which are the coordinates for international adoption procedure? The responses will be based on legal regulations concerning the adoption existing under the laws of both countries.

2. The institutional framework on adoption in Romania and Moldova

Being considered a special form of protection that apply in the best interests of the child, adoption is a legal operation, which establishes both the filiation link between the adopter and the adopted child, as well as, the family ties between the adopted child and adopter's relatives (Zamostny, O'Brien, Baden and Wiley, 2003).

From the perspective of the institutional framework, both in Romania and in Moldova, the attributions in the field of adoption are assigned to specialized bodies, at central and local level.

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In Romania, the National Authority for Child Rights Protection and Adoption was established and operates as a specialized body of central public administration, with legal personality, under the Ministry of Labour, Family, Social Protection and Elderly People, whose mission consists in monitoring the way of respect the rights of all children and take all measures that contribute to a worthy society for the children (Romanian Government Decision, 2014).

According to current regulations, in Moldova the competent authorities for adoption are: central authority, respectively Ministry of Labour, Social Protection and Family, addition to which operates the Advisory Council for Adoption; territorial authority respectively sections/departments of social assistance and family protection; Municipal Department for Child Rights Protection of Kishinev (Moldova Ministry of Justice, 2010).

In both countries, the main responsibilities in the field of adoption exercised by the competent authorities make reference to: the elaboration of normative and methodological framework in the field of adoption; the development and supporting the programs in the field of adoption; the coordination and supervising the adoption activities; achievement of international cooperation in the field of adoption; fulfillment of obligations under international conventions on child protection and cooperation in respect of international adoption; receiving the requests made by foreign authorities and organizations of families and individuals who want to adopt a child; the authorization of foreign and national organizations to carry out activities in the field of adoption; supporting all adopted children in the demarches made to know their origins (RNACPA, 2015). In Moldova is distinguished the existence of The State Register of adoptions and the essential role of diplomatic missions and consular offices in the field of adoption (Moldova Ministry of Justice, 2010).

The situations presented by the competent authorities in the adoption of the two countries highlights the major differences in terms of the number of adoptable children, the number of persons/families approved for adoption and evolution of the number of granted adoptions.

In Romania, according to the data contained in National Adoption Register, on December 31, 2014 (RNACRPA, 2014) are remarkable the following: (i) the total number of adoptable children was 4,060, of which 3,439 children eligible for national adoption and 621 children eligible for international adoption; (ii) most of the adoptable children were in the age group of 7-13 years; (iii) 19.97% of all adoptable children were enrolled in category of disabilities; (iv) 1,006 adoptable children were part of groups of adoptable children who had one, two, three or four adoptable brothers; (v) there were records 1,766 families/persons certified in respect of adoption, the largest share was for national adoption respectively 97.05%.

In Moldova, according to data presented at the end of 2014 (Moldova Ministry of Labour, Social Protection and Family, 2015) are remarkable the following: (i) were registered 403 adoptable children, of which 227 for national adoption and 176 for international adoption; (ii) most of the adoptable children were in the 7-13 years age group, respectively 80.89%; (iii) 128 adoptable children were part of brothers couples in which one or more has reached the age of 7 years.

The number of assented adoptions in Romania and Moldova has evolved very differently, as can be seen from Fig. 1 and Fig. 2.

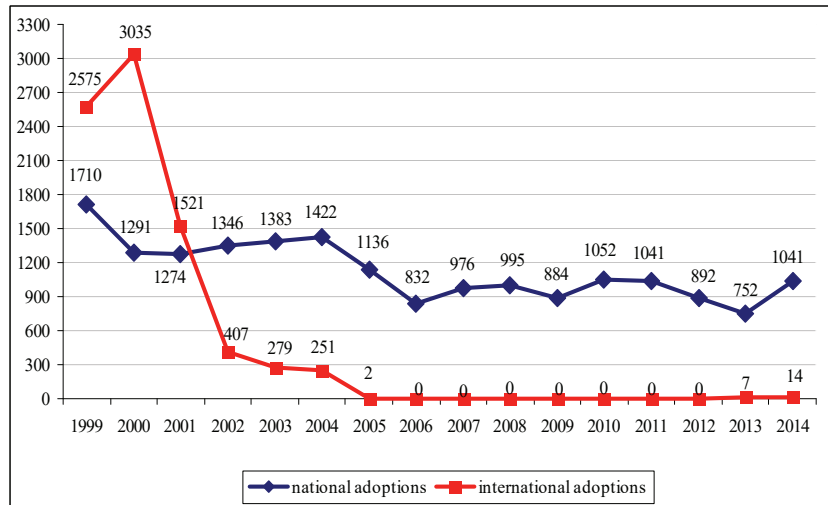


Fig. no. 1 Evolution of assented adoptions in Romania, during 1999-2014

Source: Romania, National Authority for Child Protection and Adoption

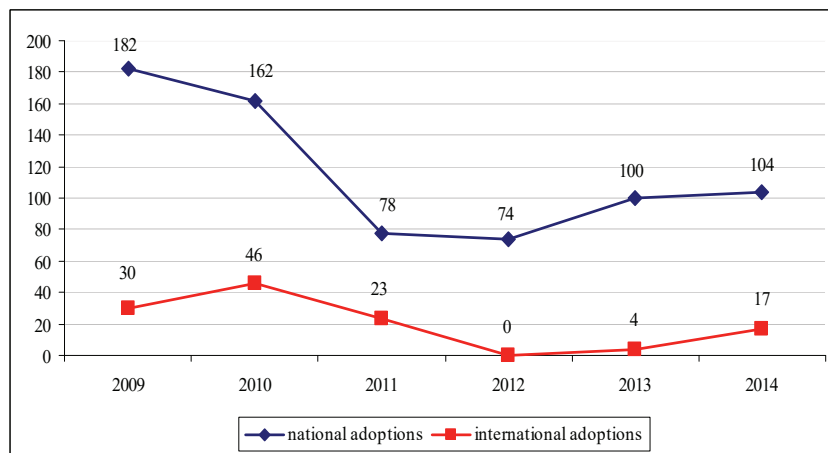


Fig. no. 2 Evolution of assented adoptions in Moldova, during 2009-2014

Source: Moldova, Ministry of Labour, Social Protection and Family

3. General provisions on adoption in Romania and Moldova

In Romania, the general provisions on adoption make reference to define terms, expressions and concepts, adoption principles, informing and opinion of the child (Law no. 273/2004). These provisions are also found in the Moldovan legislation (Law no. 99/2010) along with the specification of regulatory objective of the legislative acts. Similarities and differences regarding general provisions on adoption in Romania and Moldova are presented in Table no. 1.

Tab. no. 1 General provisions concerning adoption in Romania legislation (Law no. 273/2004) and Moldova legislation (Law no. 99/2010)

Provision	Romania	Moldova
Object of regulation	-	protection of child rights through adoption; establishing the legal status of adoption; cooperation between public administration authorities and non-governmental organizations to ensure of the child a healthy family environment; international collaboration in child protection through adoption

Provision	Romania	Moldova
Definition of certain terms, expressions concepts	adopter; internal adoption; international	adoption; adopter certificate
	adopted; Hague Convention; child; General Directorate of Social Assistance and Child Protection; adoptive family; family; extended family; substitute family; Romanian Office for Adoptions; natural parent; individualized protection plan; the receiving State; habitual residence in Romania of the adopter /adoptive family; habitual residence of the child in Romania	adoption; adoptable child; adoptable child without special needs; adoptable child with special needs; child domicile; case manager; adoptive parent/parents; visiting permit; matching adopter
The principles of adoption	the principle of child higher interest; the principle of continuity in the child's education, taking into account of his ethnic, cultural and linguistic origin; the principle of informing the child and taking into account its opinion in relation to his age and his degree of maturity; the principle of celerity in carrying out any acts relating to the adoption procedure; the principle of ensuring confidentiality regarding the identification of the adopter, or, as the case, the adoptive family, as well as regarding the identity of the natural parents	
	the principle of raising and educating a child in a family environment	respecting the rights and fundamental freedoms of the child; priority of national adoption as against the international adoption
Informing and child opinion	Throughout the adoption process, the competent authority for adoption in whose jurisdiction is the child's home is obligated to provide him clear and complete information and explanations, according to his age and level of maturity, concerning the stages and the duration of the adoption process, the effects of adoption, the adopter and his relatives.	
	-	During the adoption process will be considered the opinion, the wishes and feelings of the child, depending on his age and ability of understanding.

4. The substantive requirements of adoption in Romania and Moldova

Although the legislation of both countries subjected to the analysis contains a chapter with the same title, concerning the substantive requirements of adoption, the content of these chapters have multiple differences.

In this context, in the Romanian legislation, Law Nr. 273 of 21.06.2004 concerning the adoption procedure – republished, provides in Articles 6-15 aspects regarding:

- interdiction of the adoption by two people, unless they are husband and wife;
- the conditions for approval of a new adoption;
- the persons that can not adopt;
- the adoption of a child born out of wedlock;
- the cases in which the court can overrule the natural parents refusal of consenting to adoption of the child;
 - the consent of the child's natural parents or guardian, after informing about the consequences of expressing consent, which must be given in front of court, along with the settling for request to initiate the procedure of adoption;
 - the consent to adoption of the child who has attained age 10, which must be given in front of court, fulfilling by the adopter the moral guarantees and material conditions necessary for growth, education and harmonious development of the child; interdiction the adoption of a child whose biological parents have not reached 14 years old;
 - the expression of consent for minor parent who reached the age of 14 with his legal guardian assisting.

In Moldova, according to Articles 10-12 of Law no. 99 of 28.05.2010 concerning the legal status of adoption, for the substantive conditions is remarkable the following:

- a person may be adopted only until the age of 18;
- interdiction the separation of brothers by adoption, except where this requirement is contrary to the best interests of the child;
- the conditions for brothers adoption by the adopters from different states;
- interdiction the adoption among brothers;
- adoption is permitted only to persons who have full legal capacity, who are aged 25 years and are at least 18 years older than the one that they want to adopt, but by no longer than 48 years;
- adoption of the child by the spouses is only permitted if the marriage lasts at least 3 years until the moment of submission the application for adoption;
- the foreign citizens and stateless persons residing in Moldova may adopt children under the procedure of national adoption, if they are resident in the Republic of Moldova for at least three years before the application for adoption.

5. Some coordinates of national and international adoption procedure in Romania and Moldova

Both in Romania and in Moldova, the national adoption procedure has a separate chapter in specialized legislation. The analysis of the two procedures emphasizes multiple similarities (as shown in Table no. 2), the differences being found mainly in the deadlines until consent adoption and the substantive conditions of adoption.

Thus, for Romania, the adoption procedure is laid down in Chapter III of the Law no. 273 of 21.06.2004 on the procedure of adoption, with subsequent amendments, Art. 18 - Art. 38, and for Moldova the adoption procedure is laid down in Chapter IV of Law no. 99 of 28.05.2010 concerning legal status of adoption, Art. 13 - Art. 31.

Tab. no. 2 Regulations regarding national adoption in Romania and Moldova

	Romania	Moldova
Stipulations	<ul style="list-style-type: none"> • The attestation for adopter or adoptive family (evaluation of moral guarantees and material conditions; certificate for person or family fit for adoption) • Opening the internal adoption procedure (individual protection plan; permission for opening the adoption procedure) • Entrusting in view of adoption (selection and analysis of the adopter; conditions of entrustment; physical and psychological adjustment of the child in the new family environment; monitoring the child evolution) • Approval of the adoption 	<ul style="list-style-type: none"> • The application for adoption (how to apply, content, documents attached) • The adoption capacity of the adopter • The certificate of adopter • Record keeping and the preparation of adopters; • The status of adoptable child • Record keeping and information on adoptable children • Consent to adoption (from the biological parents, from the adoptive parents, from the child) • The matching of the adopter • Custody of the child in view of adoption; • Approval of the adoption

Source: author processing under the laws of Romania and Moldova

International adoption is adoption in which adopting person or family and the child that are to be adopted are habitually resident in different states and after the declaration of adoption, the child will have the same habitual residence of the adopter.

In Romania, international adoption is regulated by Chapter IV - International adoption procedure of Law no. 273 of 21.06.2004 on the procedure of adoption, amended and supplemented, by the content of Art. 39 - Art. 49, while, in Moldova, international adoption procedure is regulated by the provisions of Chapter V - International adoption of Law no. 99 of 28.05.2010 on the legal status of adoption, by the content of Art. 32 - Art. 39.

In both states subjected to the analysis, the procedure of international adoption of a child with habitual residence in Romania or Moldova are carried out in accordance with the provisions of the Hague Convention on Protection of Children and Cooperation in Respect of International Adoption.

If in Romania in 2000 the number of international adoptions exceeded the number of national adoptions, significant reform of the child protection system has brought major changes on the international adoption procedure, so that, in the period 2006-2012 has not been registered international adoptions.

Since the economy paper does not allow the presentation all of legal aspects regarding international adoption in Romania, we consider noteworthy the following (Romanian Office for Adoptions, 2015):

- A child with habitual residence in Romania may be adopted by a person/family with abroad habitual residence only in situations where: adopter or one of spouse from adoptive family is relative up to the fourth degree (including) with the child for whom was affirmed national adoption procedures; adopter or one spouse from adoptive family is also Romanian citizen; the adopter is the spouse of natural parent of the child whose adoption is requested.
- According to Italian law, a person habitually resident in Italy who wants to adopt a child from Romania must be married, and according to US law, the person with habitual residence in the US wishing to adopt a child from Romania must also have American citizenship, and for families, at least one spouse must also have US citizenship.
- In the international adoption initiative have priority persons/families with habitual residence in Romania, on the basis of the subsidiarity principle of international adoption in relation to national adoption.
- The age of children eligible for international adoption will be at least 3 years.
- The minimum number of meetings between the adoptable child and the adopter is 8, of which at least 4 meetings will take place in the presence of appropriate officer and/or a psychologist.
- Before the approval of international adoption by the court, in order to relate with the child, the adopter has the obligation to actually live in Romania for a minimum of 30 days.
- Relatives up to the fourth degree (inclusive) with the child having their usual residence in Romania have priority at adoption compared to relatives abroad. Relatives up to fourth degree (including) with the child having their usual abroad residence have priority at adoption compared to other adopters/adoptive families.
- After approval of the adoption, Romanian Office for Adoptions through the competent authorities of the receiving State has the obligation to follow the progress of the adopted child and its relations with the adoptive parents for at least 2 years.
- According to Romanian law, for international adoption procedure are not provided any taxes.

Although the legal status of adoption in Moldova is recently regulated by Law no. 99 of 20.05.2010, significant changes are observed in the field of international adoption based on Law no. 283 of 12.13.2012, changes that hinder the adoption procedure, as demonstrated by the low number of international adoptions registered in the period 2010-2014. It is noted changes concerning to: the conditions for international adoption; international adoption application and annexes; depersonalized dates and preliminary matching about adoptable children with special needs; the endorsement for international adoption (Law no. 283, 2012).

6. Conclusions

For Romania, 1997 is the beginning of significant reform of the child protection system. The EU accession has produced changes in Romanian legislation on children's rights and adoption, legislation which is now in full compliance with the UN Convention on the Rights of the Child and the European Convention on Human Rights and completes the reform of child protection (Euractiv, 2013).

Adoption Reform in Moldova is conducted quite difficult. The informational goal regarding the child proposed for adoption, late establishment of the State Register of Adoption, lack of an appropriate regulatory framework especially for international adoption, lack of monitoring fees charged by international organizations regarding the adopters, lack of transparency in the adoption process are just some of the shortcomings of the adoption process in Moldova (Bloguvern, 2013).

Without claiming an exhaustive approach, through this article we presented the essential coordinates of the adoption institution from Romania and Moldova. From the aspects submitted it can be identified both similarities and differences. We believe that the provisions of Romanian legislation on adoption, which are fully consistent with European law, might represent highlights for the legal status of adoption in Moldova.

7. References

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