

MINORS' PROTECTION THROUGH ADOPTION. CRITICAL ANALYSIS ON NEW REGULATIONS

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ABSTRACT

Adoption is one of the main measures to protect the minor in difficulty, which represents the minor who does not even benefit from the protection of one of his parents. Adoption is a measure of the minors' protection because it ensures a substitute family, being understood that the child develops best physically and mentally within a family. The adoption procedure in both its forms (administrative and judicial) is perfectible, having suffered many changes in recent years, the last change being made in 2016. Among other important changes, the new regulation emphasizes the importance of one of the principles of adoption - celerity, setting new deadlines to be respected in adoption procedures or reducing existing ones.

KEYWORDS: adoption, minor in difficulty, family, alternative care/protection.

INTRODUCTION

Adoption, as a measure of protection of the minor deprived of the care of at least one of his parents, is currently governed by Law no. 273/2004. Recently, this regulation was modified by the appearance of Law no. 57/2016. Regarding the new regulation on the adoption procedure [1], Law no. 57/2016 brought a number of changes and repeals, some of them desirable and other questionable.

I. THE CONDITIONS THAT ARE REQUIRED TO BE FULFILLED IN THE NAME OF THE PERSON OR OF THOSE WHO ADOPT

Regarding the conditions that are required to be fulfilled in the name of the person/of those who adopt, it can be noticed that the persons convicted of the crime of child pornography were added to those who have been convicted for a crime against a person, family or for drug trafficking. Of course, we agree with this option of the legislature, since it is inconceivable that such a convicted should become adopter. This is obviously inconsistent with the overriding interest of the child [2] that should govern the whole adoption procedure. However, if we analyse the elimination from the legal text of the interdiction to adopt by a person who has been convicted for consumption (not traffic) of illicit drug, this modification is open to criticism for two reasons. Firstly, it is obvious that the person who consumes drugs is not able to ensure harmonious growth for a minor, and secondly, by this disposal, it is ignored the correlation between the reasons why a person cannot adopt and those for which one parent is deprived of parental rights. According to Article 508 Civil Code, loss of parental rights can be issued by the court of guardianship if the parent endangers the life, health or development of the child by consumption of alcohol or drugs, among other things. Or, if a parent is liable to the penalty of loss of parental rights by the mere consumption, unaccompanied by traffic, why should another person be allowed to become a parent in cases where he/she is guilty of this consumption?

II. A NUMBER OF CHANGES AIM AT CARRYING OUT THE PRINCIPLE OF CELERITY IN THE ADOPTION PROCEDURE:

- a. As regards the consent expressed by the natural parents to adoption, according to the new regulations, the situation in which the natural parents or, where appropriate, the guardian, although duly summoned, did not appear at two consecutive deadlines fixed in order to express the consent may be considered as abusive refusal to consent to adoption. In the old regulation, the term was rather ambiguous (repeated failure of a person to appear). The consent to adoption may not be expressed in the name of natural parents/guardian of the child by the trustee, mandatory or other person authorized in this respect. Exceptionally, where one of the natural parents, although there had been made sufficient efforts, could not be found to consent, the consent of the other parent is sufficient. When both parents are in this situation, adoption may be terminated without their consent. The court may approve taking the consent from the one called to express consent at his residence, by a Judge, if the person, for good reason, is unable to appear before the court. The person who lives in the jurisdiction of another court expresses his/her consent through rogatory committee.
- b. The applicant's final assessment report of the ability to adopt, which contains the proposal on issuing or not issuing the certificate, too, shall be drawn up, under the new regulations, within 90 days (compared to 120 days as it was in the previous regulations) from the request demanding assessment and it shall be communicated to the applicant.
- c. As regards the validity of the effects of the judgment to initiate the procedure of adoption, these provisions shall subsist until the child turns age 14 and not just age 2, according to old regulations. Of course, this change is likely to ensure the principle of celerity to the adoption procedure, because according to the previous regulations, if the child was not adopted within two years after the irrevocable decision to initiate the adoption, the legal hearings would resume.
- d. International adoption of children with habitual residence in Romania when the adopter or one spouse of the adoptive family is a Romanian citizen is allowed for children for which the request to initiate the procedure of adoption has been granted and for which it could not be identified an adopter or adoptive family with habitual residence in Romania or one of the persons referred to, within one year from the date of the final judgment upholding the request to initiate the adoption procedure. In the previous regulations, the term was 2 years.

III. LIKEWISE, THE CHANGES AIM THE INTRODUCTION OF SOME PROVISIONS MEANT TO SUPPORT THE ADOPTERS' EFFORTS FOR ADOPTION.

The certificate of person/family able to adopt is no longer valid only for one year but for two, with the possibility of lawfully extension for cases expressly provided by law. Obviously, this change will support future adoptive persons, as the expiry of the certificate obliges them to restart the entire administrative procedure of adoption from the beginning.

After the period of validity of the certificate of person/family able to adopt (2 years) expires, attending the preparatory phase for knowingly taking to parenthood is no longer necessary in justified cases.

In terms of neighbourhood, legislative changes come again to support future adopters, recognizing the competence of the direction of his/their residence, if he/they lives/live there in fact [3].

For the stage match between the child and the person of adopter, the new regulation is more explicit, clearly stipulating the categories of persons with whom the child has enjoyed family life: guardian, professional caregiver, placement person/family or, where applicable,

other persons who lived/live together with the child, whether they were directly and immediately involved in his care and education, and the child has developed relationships of attachment to them.

Patrimonial facilities similar to those of natural parents are also stipulated, being obviously necessary in a modern regulation of the institution of adoption, given that it is attempted to assimilate adoption with parent-child relationship. Thus, according to the new regulation, the adopter or, optionally, either of the spouses of the adoptive family, earning taxable income[4] from employment activities and assimilated activities or, where applicable, independent activities or agricultural activities, may benefit from accommodation leave for maximum one year, which includes the period of custody of the child for adoption, as well as from a monthly allowance. On those rights no tax is due and no social security contributions provided by law, except the health insurance contribution. The length of the leave is assimilated to contribution stage in order to establish social security allowances and it may be used to obtain social security benefits.

Employers are obliged to grant the employee or, where appropriate, the employees (husband and wife) who adopt, time off in order to undertake the required assessments for obtaining the adoption certificate and assessing practical suitability, without salary reduction, up to a maximum of 40 hours per year.

IV. NUMEROUS CHANGES WERE ALSO MADE IN ENSURING THE PRINCIPLE OF CONFIDENTIALITY IN ADOPTION PROCEDURE:

- Unlike the previous regulation, according to which the adoptee could get information only on adoption and general aspects on the institutional itinerary and personal history that does not reveal the identity of the natural parents, now, those adopted have the right to request and obtain information about place of birth, institutional itinerary and personal history that does not reveal the identity of the natural parents/biological relatives. Information attesting adoption can be provided only to persons who have acquired full legal capacity.
- The provisions allowing natural parents or biological relatives of adopted persons to obtain general information regarding the person adopted were repealed. Currently, the natural parents or biological relatives of adopted persons may obtain information regarding this person about confirming adoption, the adoption year, national or international character of adoption, and whether the adopted person appearing in the records of the authorities is alive or deceased. Further information regarding the adopted person can be provided only to biological parents or biological relatives, and only if there is express consent of the adopted person who has acquired full legal capacity or, if the adopted person is a minor, there is the consent of the person or adoptive family. The consent is requested by the A.N.P.D.C.A., where appropriate, through the direction or the central authority of the receiving State or through the accredited foreign organization involved in the adoption.
- In order to authorize access to information regarding the identity of the natural parents, it is necessary to submit a request to the court for guardianship. The court accepts the request if, according to evidence, it finds that the applicant is a person adopted which had established affiliation to at least one of the biological parents, benefited from counselling, and the court has the conviction that the adopted person is psycho-emotional balanced.
- The adopters are obliged to inform gradually the child about the adoption, starting as early as possible. In carrying out this obligation, the adopters may benefit from support through the specialists of the department of adoptions and post-adoption of the direction or through private authorised organizations, individual offices, associated offices or social assistance and/or psychology civil professional societies that concluded agreements with A.N.P.D.C.A.

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- The identity of the natural parents of the adopted person may be disclosed before the reach of full legal capacity only for medical reasons, by the A.N.P.D.C.A. at the request of either of the adoptive parents, the adopted person or of a healthcare representative, accompanied by supporting medical documents. People who have information on the identity of the natural parents can directly address A.N.P.D.C.A. for making steps aimed at contacting the biological natural parents or relatives.

V. CONCERNING INTERNATIONAL ADOPTION, THE ADOPTION OF THE CHILD WHO IS HABITUALLY RESIDENT IN ROMANIA BY A PERSON OR FAMILY WITH HABITUAL RESIDENCE ABROAD HAS ALSO SUFFERED SOME CHANGES. INTERNATIONAL ADOPTION HAS RETAINED THE ACCESSORY CHARACTER TO THE INTERNAL ONE, BEING POSSIBLE IN THE FOLLOWING CASES:

- children are in the record of the Romanian Office for Adoptions; the adopter or one spouse of the adoptive family is relative up to the fourth degree with the child for whom the internal adoption procedure was opened;
- the adopter or one spouse of the adoptive family is a Romanian citizen, when he granted the application for the opening of the internal adoption procedure, but no adopter/adoptive family with habitual residence in Romania could be identified within one year from the date of the final judgment upholding the request to initiate the adoption procedure. Previously to the legislative amendment taken under consideration, the term was two years. Shortening the term greatly contributes to ensure the celerity of international adoption procedure, as it was done for internal adoption, too;
- the adopter is the natural parent's spouse of the child whose adoption is requested.

In the second form of international adoption, when the adopted person is ordinarily resident abroad, while the adopter/adoptive family resides in Romania, the applicants' requests for adoption are transmitted to foreign authorities only through the Romanian Office for Adoptions. Another change occurred in the initial and practical matchmaking of the child with the adopter/adoptive family with habitual residence abroad, which is achieved at the adoption and post-adoption section from the direction of the child's domicile. Selected person or family as a result of the initial matching is required to travel to Romania and actually live in the country for a period of at least 30 consecutive days in order to achieve practical suitability with the child.

The request to allow the international adoption shall be submitted by the Office to the court. Based on the final judgment of approval of adoption, the Office issues, at the request of the adopter/adoptive family, within 5 days, a certificate of adoption subject to the rules of the Hague Convention.

Finally, the movement of the adopted person from Romania in the state where the adopter or adoptive family has the habitual residence is possible only when the judgment of adoption is final. The adopted person can travel only accompanied by the adopter or at least by one of the spouses in the adoptive family, in safe conditions according to his/her needs.

CONCLUSION

Thus, the adoption procedure in both its forms – internal and international – is a procedure that over time has been improved by new European regulations. However, the adoption procedure remains a perfectible procedure, which, in relation to developments in civil society, must be continually improved. New legislative changes in the field refers to ensuring the principle of celerity (since the main criticism of this procedure is the slowness with which it is carried out both the administrative procedure and the judicial adoption; but what has not yet been submitted to the legislature is the introduction of penalties for

breaching the terms, existing the risk that a term in the absence of sanction for non-compliance will be considered by those involved in the procedure only as one of recommendation), the principle of confidentiality, international adoption and support of the adopters for their efforts during the adoption procedure. Even if the legislature steps are overall beneficial, in this paper we have also pointed out some critics that the legislator should take into account in a future regulation.

REFERENCES

^[1] For a detailed description of this procedure, see Cetean-Voiculescu L., *Dreptul familiei – note de curs și manual de seminar*, Editura Hamangiu, București, România, pp. 295-351, 2012.

^[2] For more details on children's rights, including rights to inheritance, see Tudorașcu M., Drăgoi A., *Dreptul asupra moștenirii*, Editura ProUniversitaria, București, pp. 38-59, 2016.

^[3] According to Article 17 paragraph (1) Law no. 273/2004, as amended by Law no. 57/2016, “if the applicant actually lives at residence, the assessment is done by the direction under the jurisdiction of which is established the residence or by a private body authorized to carry out activities within the internal adoption procedure”.

^[4] According to Law no. 227/2015 on the Fiscal Code, as amended and supplemented.