

## **THE EVOLUTION OF THE REGULATIONS RELATING TO THE JURIDICAL INSTITUTION OF THE ADOPTION IN ROMANIA**

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### **Abstract in original language**

This paper present aspects on the evolution of the regulations relating to the juridical institution of the adoption in Romania. In the Romanian law adoption is a traditional institution, being regulated even by the old legislative bodies (Ivan Gheorghe Caragea`s Ruling, Scarlat Calimachi`s Code). More complete regulations of the institution are found in Romanian Civil Code of 1865, Family Code, Law no. 11/1990, Government Emergency Ordinance no. 25/1997, Law no. 273/2004 with subsequent modifications.

### **Key words in original language**

Adoption, law; Family Code.

In Romanian law, adoption has been regulated since old laws. Therefore, the Calimach Code called it “affiliation” and the Caragea Code provided that “adopting children is a gift for the consolation of those that cannot have children”.

The Civil Code from 1864, amended in 1906, regulated adoption as a solemn contract concluded between the adopter and the adopted. The adopter had to be at least 18 years older than the adopted and enjoy a good reputation. In the initial regulation, only the persons that had no children or legitimate offspring were allowed to adopt. If the adopter was married, the spouse`s consent was necessary in order to adopt. The adopted could be major or minor. He could not be adopted by more persons, except for the case in which the adopters were spouses. The adoption consent was expressed in authentic form, and adoption had to be agreed on by the court of law sentencing on the adoption request through a resolution that was not motivated or appealed against in any way. Adoption was, basically, irrevocable. The adopted had still the possibility to ask for the annulment (revocation) of the adoption within a year from the coming of age, without being necessary to motivate the revocation request addressed to the juridical court.

Affiliation created civil kinship relations between the adopter and the adopted, as well as patrimonial relations between them similar to those resulting from the legitimate family, but it did not break the kinship relations between the adopted and its origin family; parental power was not passed over to the adopter and continue to belong to the natural parents of

the adopted. Later on, the Law no. 276/1944 established that, through the adoption effect, parental power passed to the adopter. The adopted came at the succession of its natural relatives and to that of the adopter, but not at the succession of the adopter's relatives. In return, the adopter had no right to the adopted succession.

By amending the Civil Code through the Decree no Prin. 131/1949 the right to adopt was also given to persons that had children or legitimate offspring, establishing, at the same time, that only minor children could be adopted and that adoption was to be made only for the best interest of the adopted. Also, it provided that through the adoption, the adopted and its offspring acquired the legal status of child and legitimate offspring of the adopter and at the same time, all the rights and duties between the adopted and its offspring ceased, on one hand, and the natural parents of the adopted and its relatives, on the other hand.

The Civil Code did not expressly regulate international adoption but it admitted that the adopter could be foreigner and because foreigners enjoyed all the civil rights in Romania and adoption was consider a civil law act<sup>1</sup>.

Distinct from the regulation from the Civil Code, the Decree no. 182/1951 regulated the institution of adoption that had all the effects of a natural filiation (art. 1 par. 1). In the regulation of the Decree no. 182/1951 only two spouses were allowed to adopt together and at the same time; they could adopt only the child that had not turned 5 years old (exceptionally admitting the adoption of children older than 5 years old if they had been adopted or taken care of the ones that wanted to adopt them) and only if both parents were unknown, deceased, missing or if they had left them for more than a year; the adopted and its offspring exit the natural family and completely entered the adopters' family becoming relatives to adopters and their relatives<sup>2</sup>.

Once with the enforcement of the Family Code from 1954 the provisions of the Civil Code that organized adoption were annulled, regulating it under the name of affiliation in the 3rd Chapter and the 2nd Title called "Kinship" from the Family Code. Including adoption in the Family Code was justified, except for its appurtenance to family law, and the need for a correlation between the regulations regarding the adoption and those regulating other institutions from this branch, respectively: filiation, support obligation etc. which are included in the same code<sup>3</sup>

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<sup>1</sup> Marieta Avram, *Filiation. National and International Adoption*, All Beck Press, Bucharest, 2001, p. 94.

<sup>2</sup> For details see Traian Ionaşcu, *From adoption to the affiliation established through the Decree no. 182 from 19th of October 1951* in „Justiția Nouă” nr. 7-8/1951, p. 745-752.

<sup>3</sup> Alexandru Bacaci, Viorica-Claudia Dumitrache, Codruța Hageanu, *Family Law*, 4th edition, All Beck Press, Bucharest, 2005, p. 219.

Family Code regulated material law aspects of affiliation except for its nullity, a matter in which the general rules regarding the nullity of civil legal acts applied regarding the nullity of individual administrative legal acts regarding the affiliation consent decision<sup>4</sup>.

In the system of the Family Code, adoption appears as a child protection means art. 66 of the Family Code stating the principle that affiliation could only be made for the best interest of the adopted. Adoption was conceived as a means by which the child may receive the family it needs<sup>5</sup> establishing the rule that only minor children could be adopted. Nonetheless, it exceptionally regulated the possibility to adopt a major person if it had been raised by the adopter during its minor years.

In the regulation of the Family Code, the lawmaker kept some of the interdictions from the Civil Code, like the maintenance of the impediment resulting from a previous adoption, waived some of them, like the negative condition that the adopter should not have any children or legitimate offspring or provided new ones like preventing adoption between brothers.

In order to conclude adoption, it provided the consent of the adopted, if it turned 10, along with the consent of its parents.

Adoption preserved its solemn character in the regulation of the Civil Code meaning that “ad validitatem” the consent had to be expressed in an authentic form<sup>6</sup>.

Adoption consent was given to the custody authority as administrative authority with attributions regarding minor children’s protection.

The Family Code regulated two types of adoption:

1. adoption with limited effects (art. 67-78) that had the following characteristics:

- the kinship relations between the adopted and its offspring, on one hand, and natural parents and its relatives, on the other hand, were maintained;
- kinship relations similar to those between natural parents and children were established between the adopted and its offspring, on one hand and the adopter, on the other hand.

2. adoption with full effects that had the following characteristics:

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<sup>4</sup> Ioan Albu, Ionel Reghini, Paul Andrei Szabó, *Affiliation*, Dacia Press, Cluj Napoca, 1977, p. 18.

<sup>5</sup> Emese Florian, *Children’s Rights Protection*, C. H. Beck Press, Bucharest, 2006, p. 207.

<sup>6</sup> Marieta Avram, *op. cit.*, p. 96.

- the kinship relations between the adopted and its offspring, on one hand, and its natural parents and their relatives, on the other hand, ceased, maintaining the impediment to marriage resulting from the blood kinship;
- kinship relations were established between the adopted and its offspring, on one hand and the adopter and its relatives, on the other hand.

As far as adoptions and affiliations existing at the enforcement date of the Family Code, art. 9 par. 1 of the Decree no. 32/1954 for enforcing the Family Code, established that they shall be applied the provisions of the Family Code, except for the validity conditions regulated by the old laws agreed upon. Decree no. 32/1954 also cancelled the Decree no. 131/1949 for adoption amendment and Decree no. 182/1951 that regulated affiliation with full effects of natural filiation (art. 49). Consequently, from the effective day of the Family Code, former adoptions became affiliations with limited effects regulated by the Family Code and former affiliations continued to have full effects regulated by the Family Code. The provisions of the Family Code regulated the transformation, at request, of the adoptions existing on the effective day of the Family Code, into affiliations with full effects of natural filiation (art. 78 Family Code as amended through the Law no. 4 from 04. 04. 1956 and the Decree no. 283 from 21st of June 1958).

International adoption was allowed, but according to the provisions of Decree no. 137/1956 it required the permit of the country's President in case of adopting a Romanian citizen by a foreigner or of a foreigner by a Romanian citizen.

Considering the practical need to especially protect the child that was to be adopted, beginning from 1990 this institution has received special normative acts.

First of all, through the Law no. 11/1990 regarding adoption consent, the ability to consent to the adoption was transferred from the custody authority to the court of law. Also, the subsidiary character of international adoption was established, in the sense that foreigners or Romanian citizens residing abroad were allowed to adopt only children recorded at the Romanian Adoptions Committee, incorporated through this law, and that cannot be entrusted or adopted in the country in the 6-month period from their registration (art. 3 par. 1). Law no. 11/1990 also established that if the adopter or the adopted were foreigners, each of them had to comply with, regarding the conditions for the conclusion of the adoption, to its national law, if the foreign law did not breach the public order of Romanian private international law and the fact that allowed to achieve material benefits for the adoption were incriminated. The Decree no. 137/1956 stipulating that international adoption was conditioned by the President's consent was abrogated.

Law no. 11/1990 was successively amended through the Law no. 48/1991 that replaced the term of affiliation from the Family Code and other

normative deeds, with the adoption one, as well as through the Law no. 65/1995 that amended and completed some provisions regarding international adoption, the most important amendment being the forbiddance of international adoption of children by the family, in order to mark the fact that international adoption was a means of protecting the child that was deprived of its familial environment<sup>7</sup>.

The provisions of the Family Code regarding the adoption as well as the other provisions existing in special laws in this matter were abrogated through the Government Emergency Ordinance no. 25 / 1997 regarding the legal status of adoption, approved with amendments through the Law no. 87/1998, that established a new legal and unitary in compliance with the international standards that Romania is a part of<sup>8</sup>. In the system of the Emergency Ordinance regarding the legal status of adoption no. 25/1997 adoption, international adoption included, was a means of protecting the child that established the filiation between the adopter and the child as well as the kinship between the child and the adopter's relatives (art. 1). This normative deed regulated only one type of adoption, adoption with full effects respectively, that had the following characteristics:

Filiation was established between the child and the adopter. Once with the establishment of the filiation through adoption, the filiation between the child and its natural parents ceased (art. 1 par. 4);

Kinship was established between the child and the adopter's relatives. Although the law did not expressly stipulate the doctrine, it underlined that kinship was also established between the adopted child's offspring and the adopter's relatives<sup>9</sup>;

The kinship between the adopted child and its natural relatives, as well as the kinship between the adopted child's offspring and its natural relatives ceased, preserving the impediment of marriage between the adopted and its natural relatives (art. 21 par. 3), as well as adopter's offspring and its natural relatives<sup>10</sup>.

The emergency ordinance regarding the legal status of adoption no. 25/1997 tried to align the internal legislation to international legislations in the matter, but in practice, it proved not to include enough guarantees for the adoption, especially the international one, to be able to occur, considering the superior interest of the child. The normative configuration of

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<sup>7</sup> Marieta Avram, *op. cit.*, p. 97.

<sup>8</sup> Emese Florian, *op. cit.*, p. 207; Marieta Avram, *op. cit.*, p. 98.

<sup>9</sup> Ion P. Filipescu, *Adoption and Protecting the Child in Difficulty*, All Beck Press, Bucharest, 1998, p. 2.

<sup>10</sup> *Idem* p.3

international adoption has generated certain discontents, especially from the European Union<sup>11</sup>

The Government Emergency Ordinance no. 121/2001 suspended, for 12 months from its enforcement, all the procedures with the object of Romanian children adoption by a foreign citizenship person or by a Romanian citizenship person or family residing abroad.

The Government Emergency Ordinance no. 121/2001 was approved, with amendments, through the Law no. 347/2002, that provided that the demands for adoption pending at law courts on the enforcement date of the Government Emergency Ordinance no. 121/2001 shall be settled according to the relevant regulations at their submission date. At the same time, it was provided that, in exceptional circumstances, required by the superior interest of the child, at the proposal of the National Authority for Child Protection and Adoption, certified by the General Secretariat of the Government, the Government may approve to submit some international adoption consent applications to the relevant courts of law.

The term for temporarily suspending all the procedures regarding international adoptions was successively prorogued through the Government Emergency Ordinances no. 123/2001 and no. 151/2002, Government Ordinance no. 16/2003 and Government Emergency Ordinance no. 7/2003, by 1st of June 2003. Law no. 233/2003 adopted Government Emergency Ordinance no. 7/2003, but with the amendment according to which the term in discussion was prorogued “until the enforcement date of the new regulations regarding the legal status of adoptions”.

The Government Emergency Ordinance no. 1/2004 cancelled art. 11-15 from Government Emergency Ordinance no. 121/2001, approved, as amended and completed through the Law no. 347/2002, as further amended. The Government Emergency Ordinance no. 1/2004 stipulates: “Applications for the consent on the adoption of Romanian children, submitted by a person or a family with foreign citizenship or by a person or a family with Romanian citizenship, residing abroad, for whom the Government approved the submission of the files to the relevant courts of law until the enforcement of this ordinance, shall be settled according to the relevant regulations on their submission date”.

At present, adoption is regulated by the Law no. 273/2004 regarding the legal status of adoption, as amended and completed through the Government Emergency Ordinance no. 102/2008, approved through the law. 49 from 20th of March 2009. Adoption is today the legal operation that allows to create the filiation connection between the adopter and the adopted as well

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<sup>11</sup> Dan Lupaşcu, *Legal theoretical and practical aspects regarding adoption with special reference to the Law no. 273/2004*, Law Magazine no. 12/2004, p. 9.

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as a kinship relation between the adopted and adopter's relatives (art. 1 of the law).

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