PRACTICAL IMPACT OF CHANGES IN THE ADOPTION EFFERVESCENCE

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Abstract

Institution adoption witnessed lately a real reform, as a result of legislative changes. Dysfunctions encountered in practice were substantiated over time changes on the procedure to be covered. This paper aims to identify what was the real impact of the transformations occurring with the adoption of the new Civil Code and the new provisions of Law 273/2004 in relation to the time frame in 2009, 2012 and 2016. The reaction surprised the adoptive families, statistics and opinions of specialists in the field behind a brief analysis that will capture the evolution of the procedure. Changing optics in terms of determining the extent of adoption as a target of individualized protection plan is undisputed winners of procedure. Providing real families-the adoptive one- for minors at risk is a real opportunity, given that bureaucracy tends to be minimized. Monitoring post adoption is also an important support for the two poles of adoption: adopter and adopted extremely well fleshed new philosophy brought by the latest legal provisions on procedure.

Keywords: adoption, schimbari legislative changes, procedure, monitoring.

Adoption has been regarded until recently as a backup solution to the principle of reintegrating the child in his/her family. Not only his/her fostering with a person who was part of the extended family but also his/her institutionalization in a residential centre in the public sector could be a real solution. Adoption could be achieved extremely hard as the individual plan of protection rarely determined such a solution. The impediments caused by the biological parents' consent or the compulsoriness of the public institutions

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involved in the adoption procedure to identify their most closely related family members have further complicated an already cumbersome procedure.

The present research started from the analysis of some statistical data to conclude the same margin in finalizing adoptions in Romania in the period 2011-2016. Although the framework law underwent three important changes in 2009, 2011 and 2016 one finds that adoption is reflected in numbers at the same level. The proposed objective is to identify the legislative obstacles or the administrative barriers that determine the same number of completed adoptions despite the substantial changes in the framework law. A questionnaire applied within the specialized service DGASPC Argeș reflected a number of practical drawbacks, while most of the aspects that are legal barriers arise from the discussion held in the Bureau of adoption and post-adoption within DGASPC Argeș.

In 2011 the adoptable children had a much better chance to be subject to a successfully completed procedure because the entitled people to adopt were twice more than the number of the minors viewed by the procedure (Buzducea and Lazar 2011). Today instead, nationwide, there are more adoptable children as compared to the number of the adopters that are to be found in the records of the national authority in the field.

The ***legislative*** can find an abundance of regulations on the adoption institution which overlap or which are not correlated with each other. Thus, we remind the fact that in 2011 the appearance of the new Civil Code and its implementing law (71/2011) repealed some provisions of the law 273/2004 republished in 2009. Among them, articles 5-13 and 16 stipulated the basic conditions of adoption, whereas the bill of that time did not mention it. Another mismatch is represented by the introduction of some articles such as 13 index 1 and index 2, given that article 13 had been repealed. (Dobre 2011) After the modification in 2011 and the republication in 2012 these inaccuracies were adjusted. However, the only noticeable difference that occurred due to the double regulation – the Civil Code and Law 273/2004 – consists in" the principle of raising and educating children in respect of their religious origin" (Jora 2012).

The successful finalization of the procedure takes place only when the new environment in which the minor is introduced is provided with those factors favourable to building the relationships child-parent: "a good support network made up of the extended family or the congregation of the church frequented by the adoptive mother" (Muntean et al. 2010).

"Given the fact that a large number of children are subject to different

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measures of protection under the form of family or residential services, the beneficial solution is to shift the process towards internal adoptions that legally have much more chances to be completed in the shortest time possible and would support the integration process in the same socio-professional environment in terms of the harmonious development of the child" (Nicolescu 2013).

2011 is a milestone in the field of adoption, especially due to the changes in the special law on the content of Article 26. It stated that the individualized protection plan may end with the internal adoption if: a) one year after the imposition of the special protection measure the child's natural parents and relatives to the fourth degree cannot be found or do not cooperate with the authorities in order to integrate or to reintegrate the child in the family; b) after the implementation of the special protection measure, the child's parents and relatives up to the fourth degree of kinship that could be found declare in writing that they do not want to be in charge of the upbringing and the childcare and within 60 days they have not withdrawn this statement; c) the child was registered as of unknown parents, a case in which the adoption is established in PIP within 30 days after his/her birth certificate is released. As the regulation stated at that time, DGASPC was required that within one year to arrange to identify and contact the children's natural parents / relatives to the fourth degree, to inform them periodically about the place where the child actually is and about the concrete ways they can maintain a personal relationship with the child and the necessary steps to reintegrate or integrate them. The child over the age of 14 years can be adopted only if there is his/her express consent and the child's interests justify the initiation of the domestic adoption procedure.

Although these provisions have removed many situations which in practice assumed discussions and implicitly the fear of not violating the rights of the biological family to decide on the destiny of their child, the statistical impact was not an overwhelming one. A substantial increase in completed adoptions appears in the county of Argeș only in 2014 (35 cases), but this value is the same as in 2009 and still below the recorded ones in 2008 (41 cases) and 2010 (43 cases). These results certify that the decision-making must be fully justified, especially when the main concern is on the protection of the minors that run a risk or on the procedure regarding the opening of the internal adoption (Neamtu 2010). The distance appeared between the positive and not yet registered in practice effect and the above-mentioned legislative changes is justified by the duration of the adoption procedure.

Given the realities of real practice, based on the reports provided by the

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county structures within the specialized directions, the national authority in the field of adoption (ANPCA) underlay therefore a new legislative change. By virtue of this proposal new legislation appeared in 2016. Thus, Article 28 of the Law 273/2004 stipulated that the individualized protection plan may end with the internal adoption under the same assumptions as in the previous (the form of the normative act adjusted in 2011), but decreasing the terms from one year to six months in the first case described by the old text; from 60 days to 30 days in the period of receding the declaration of renouncement of the minor's upbringing and education. The 6-month term describes a situation in which the biological parents' fault prevails: they (or the relatives up to the fourth degree of kinship) could not be found or they do not cooperate with the authorities in order to reintegrate the minor in the family.

On the other hand, a new hypothesis arises (letter a): the natural parents are separated in fact from the minor for reasons beyond their control, fostering is set for at least one year, and all this time they do not initiate an action to reintegrate the minor in the family. Initially this hypothesis does not imply the natural family's fault, but after the implementation of the special protection measure of the placement, the natural parents' attitude will be assessed. Their disinterest towards the reintegration of the child in the family - actually ensuring the necessary conditions for the child's growth - will amount to their negligence in performing the obligation of raising and educating the child. Setting adoption as a measure in the individualized protection plan is a consequence of sanctioning the biological family's misconduct: their lack of reaction to remove the causes which led to the minor's separation after the implementation of the placement.

A particular situation can occur when, although they do not raise and educate the child, the natural parents still refuse to give the necessary declaration that would allow the adoption. This can be certified by the secretary of the locality where the biological parents reside. This new provision from 2016 removes another inconvenience of practical nature: the impossibility of the authorities to prove the biological parents' lack of consent to open the adoption. As is well known, the biological parents can express their opposition to the adoption before the court, and this gesture should be supplied by the judge by qualifying this manifestation as abuse. This change leads to the differentiating way of harnessing the biological parents' consent from that of the adoptive family within the procedure. Until now the two categories were regarded in the same way in terms of the legal conditions required for the expression of consent to adoption (Bodoasca 2009).

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In 2009 the law (Article 13) mentioned the unjustified refusal on the biological parents' consent to adoption however without explaining what it could consist of. In 2011 the amendments to the normative act of reference assimilated the unjustified refusal to consent to adoption with the repeated failure to be present before the court when the biological parents were cited in this regard.

Finally, in 2016 the law described even more concisely the situation regarding the assimilation of their failure to appear before the court and the refusal to give their consent to adoption: failing in two consecutive terms. All this should lead to an interesting evolution of adoption in the near future as a number of other administrative barriers were eliminated: the disappearance of the 12 forms used in the procedure and the simplification of a total of four such documents, removing the obligation to present a certificate from the work place by the person concerned to obtain the certificate for adoption, two-year validity of the certificate in view to adoption until the procedure is completed if the practical matching was started etc.

In practical terms, we conducted a series of studies within DGASPC Argeş trying to correlate the legislative development with the effects felt in the current activities.

In January 2017 the structure of the beneficiaries of the Adoption and Post-Adoption Bureau within DGASPC Argeş aims at a total of 70 adoptive families, a number of 64 children respectively included in the procedure. Of course, one should analyze the stage of the procedure too, since the adoption knows four stages - three of them of jurisdictional nature and one administrative, each with its specific effects. Thus, a total of six minors are adoptable and have completed the first stage of the internal procedure. In the third stage, the jurisdictional one, the consent to adoption namely, there are 11 children. They have gone through the initial administrative step that included the theoretical matching and later the practical suitability after being placed in the adoptive family in order to integrate form a socio-emotional point of view. Finally, 47 minors are at the post-adoption monitoring stage, that is, from a procedural point of view beyond the last jurisdictional phase, namely the approval of the adoption.

As a consequence of a questionnaire applied to the families undergoing the post-adoption monitoring phase, the adoptive family can be portrayed as follows: approximately 40 years old, mainly higher education, with an income above average. Regarding the dominant reason that determined the adoptive family to participate in this procedure one can mention the couple's infertility. None of the families included in the study regretted having chosen this

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way to fulfil their dream of having children, although there were quite a lot of administrative obstacles. A very small number of adopters also chose to change the child's name during the proceedings, although such an attitude usually potentiates the affection relationship within the new family. Since the adopters are those who have the obligation to inform the child that he/she was adopted, it is important when and how this task is performed. The conclusion of the case study on the practice within DGASPC Argeş is that the overwhelming majority of adoptive parents engaged in the post-adoption monitoring stage have started communicating with the children on the subject of adoption. The children's reflection on the reality that they have been informed of led to an increased sense of emotional security.

The discussions with the experts from the department for adoption brought to light a number of other issues. The legislative amendment of 2016 introduced a new chapter "***Monitoring and Post-Adoption Activities***" which specified the real manner in which these activities could be done (before August 2016 there was no legal framework to bring under regulation the post-adoption services or the way how to benefit from them).

The post-adoption activities are performed according to a plan and their target is to provide support and expert assistance both to the adoptee and the adopters. These needs can be identified both during the post-adoption monitoring stage or can be reported directly by the adoptees or by the adoptive person/family and after the expiry of this period. During the post-adoption stage some specialists assess the evolution of the child in the new family and the child-family relationship, they identify any difficulties in the child's development, they inform the family about the particularities of the child's development stages, the development of the family's attachment and dynamics, as well as on other topics of interest, depending on the needs of the child and of the respective family.

In the case of the adoption of the child by the natural parent's partner, the guardian or the child's relatives to the fourth degree of kinship, the child's integration into the family is already done before the adoption so that, in point of the pursued aim, the implementation of the post-adoption monitoring appears as unjustified (emptied of contents) in these situations.

Although the biological parent's partner, the guardian or the child's relatives up to the fourth degree of kinship go through the same legal operation of adoption as others that previously did not have any relationship with the child, the situations are not similar: both the natural parent's spouse and the child's guardian or relatives up to the fourth degree of kinship (in most cases the relatives

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were foster parents prior to adoption) requires the adoption of a particular child with whom they had connections before starting the procedures for adoption, they have involved / have ensured the child's upbringing and care before the adoption procedures started, as there are the prerequisites of family life between the child and these persons before the adoption operation began. In such cases, the consent to the adoption legally sanctions the already existing ties between the child and the adopters before they started the adoption procedures. Since the situations are not similar, as far as the post-adoption monitoring is concerned, the legislator does not assimilate the situation of the child adopted by the natural parent's spouse, guardian or relative up to the fourth degree of kinship to the situation of the children adopted by others who do not fall into these categories. Therefore, one should strictly consider the legal definition that we find in Article 95 of the Law (the amendment of 2016). The legislator's intention to exempt from the post-adoption monitoring the categories previously invoked also results from the broad interpretation of the provisions of Article 77 of the Methodological Norms approved by GD nr. 579 / 2016 in the sense that it provided that no final closing report is drawn up in the situation of the children adopted by the natural/adoptive parent's spouse, guardian or relative up to the fourth degree because it was assumed that the post-adoption monitoring activity is not done with these categories. An interesting problem is represented by the governing of the way in which the adoptees can gain access to information about their natural parents and can make efforts to contact them and their biological relatives. For a long time, the Romanian internal law did not offer viable solutions on this assumption, widely debated. The most credible mark was the ratification of 1993 of the Strasbourg Convention, which contains provisions addressing this issue in Article 20 (these issues were resumed and detailed in the revised version of this Convention, namely art. 22). Incidental regulations to this issue could be drawn from the Law no. 119/1996 on the civil status documents. In general, however, the interested adoptee could get information of this nature from exclusively private sources, the state authorities having no obligation to support his/her efforts. Recently we have noticed the international trend of widening the adoptee's right to access to information on his biological parents or natural relatives. The values that are weighed are on the one hand the adoptee's right to information and on the other the right to privacy of the other pole of this relationship: the biological parent. The proportionality of measures to limit or restrict the right or fundamental freedom requires not to exceed what is strictly necessary, given the defense of another person's right (Andreescu 2007).

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In most cases, the legislative solutions also consider the biological parents' possible wish to remain anonymous or not. From this point of view, the proposed variations on the content of the biological parents' declaration of willingness are often divergent. Some legislation presumes that unless otherwise noted, the biological parents wished to remain anonymous. On the contrary, others believe that if they want anonymity, the parents must state this expressly. The legislative solution proposed in 2011 was intended to ensure an appropriate balance between the biological parents' right to have their identity kept confidential and everyone's right to have access to information that concerns their past and origins, particularly in the case of adopted persons whose intent aimed at shaping their own identity.

At present, following the provisions of 2016 the disclosure of their biological parents' identity can be done ANPDCA only for reasons of medical nature at the request of any of the adopters, of the adoptee or of the representative of a medical institution, which also requires the annexation of supportive medical documents. A particular situation is represented by the adopted persons who know the identity of their biological parents and that can appear directly at ANPDCA for this institution to exercise the due diligence in order to contact the biological parents and relatives.

Prior to the referral to the Court by the adopted person with full legal capacity, it is imperative that ANPDCA should be requested to issue a written document to prove the effectiveness of the adoption and if the adopted had established their affiliation at least towards one of their biological parents before this judicial approach.

Another obligation is represented by the adoptee's participation in at least one counselling session to describe the psycho-emotional balance; this can be conducted by DGASPC/authorized private bodies/individual cabinets or social work/ psychology SCPAS. It is natural that adopted persons should be afforded the opportunity to regain their identity or to (re)discover themselves by knowing their origins and past.

In conclusion, we can say that the adoption is intended to be the preferred embodiment of the special measures of protection of children, although it is more difficult for the casuistry to record the positive effects of the legislative changes that have been analyzed in this article in detail.

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