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THE FUNCTIONING OF THE NEW LEGISLATION ON
ADOPTIONS AND PROVISIONS ON DEFINING THE
PROCEDURES IN THE MORATORIU

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Summary

Starting with May 2001, Romania has undertaken a long, painful and difficult institutional process of completely restructuring its childcare system.

At the beginning of 2001, the newly formed government found a complex reality in one of the most sensitive parts of the executive power: childcare system. Romania was known as being one of the most important “suppliers” of the international adoptions market, by 3,000 children being internationally adopted only in 2000 (Annex 1).

In the same time, by 90,000 children were living in state institutions under a system characterized by independent auditors as being focused on institutionalisation, isolation and quasi-imprisonment.

Based on a deep analysis of the field context and recommendations issued by the High Level Group for Romanian child protection (the European Parliament Rapporteur for Romania, Mrs Emma Nicholson, the Romanian Prim Minister Adrian Nastase and the Commissioner Gunther Verheugen, as well as experts, civil servants and representatives of the civil society), the Romanian Government established a Moratorium on international adoptions in October 2001, set up an Independent Group for analysing the childcare system, took into consideration all recommendations delivered by this Group¹, completely reformed its childcare system as practices and legislation.

Although still lacking some human and financial resources, the new legislation and the new administrative institutions are jointly improving the quality of life of children under public administration care.

All legal requests for international adoptions submitted before the 2001 Moratorium were solved by Romanian authorities up to December 2003, through Government memoranda.

However, the Romanian administration was not legally in the position to deny to international and domestic agencies specialised in international children adoption the right to submit new requests, up to the moment when the new legislation came into force (1st of January, 2005).

As a consequence, the relevant Romanian authorities have to find a solution to these requests, which were submitted after the Moratorium came into force.

In July 2005, the Romanian Government set up an Inter-ministerial Working Group which shall inform the international applicants regarding the new legislation and the new conditions imposed by laws to adopting children from Romania.

Restructuring the children care system in Romania is not finished yet, but tangible results are already visible.

The 2001-2004 Government, as well as the current government, should be congratulated for the proven resilience and determination in resisting the pressure of lobby groups and firmly undertaking the restructuring process.

Brief history of the legislation on adoption (October 2001 – January 2005)

The context of the new legislation in the field of adoption, respectively Law no. 273/2004 regarding the legal status of adoption, Law no. 274/2004 regarding the organization and function of the Romanian Office for Adoptions as well as of the secondary legislation in the field was generated by the fact that during 2000 and the beginning of 2001 the international adoption of Romanian children was continuously and almost constantly associated to corruption and criminality in a direct or indirect manner.

On different occasions the international community expressed various criticisms regarding the system of international adoption in Romania and the existing legislative framework in the field in our country especially regarding the Emergency Government Ordinance no.25/1997 on the legal status of adoption approved with modification by Law no. 87/1998.

Those criticisms viewed, among other things, the indefinite/ambiguous nature of some legal provisions and the lack of transparency regarding the procedural stages of international adoption, including from a financial viewpoint, elements that led to the corruption in the system. At the same time, the flagrant inconsistency between certain provisions in the Romanian law and the stipulations of the UN Convention on the child's rights and of the Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption was invoked.

Those criticisms also viewed the lack of concordance between the provisions of this emergency ordinance with the stipulations of the Emergency Ordinance of Government no. 26/1997 concerning the protection of the child in difficulty, with the provisions of the Law no. 47/1993 on Court decrees concerning child abandonment, as well as the ignorance of certain dispositions in the international conventions ratified by Romania.

Ascertaining the limited effect of the administrative decisions viewing the control on the adoption of Romanian children by foreign citizens, effect likely to be differently interpreted from a legal point of view, the Government of Romania established a Moratorium on international adoptions by Government Emergency Ordinance no. 121/2001 for the temporary suspension of all the procedures regarding the international adoptions.

Regarding the concept of "moratorium", the Permanent Bureau of the Hague Conference on private international law, in the Guide of Good Practices on the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Inter-country Adoption, specifies that the states can establish moratoriums suspending international adoptions for an exact or indefinite period on account of well-grounded reasons regarding the child’s protection, when corruption and fraudulent practices have become widespread in the system of international adoption, when a branch reform is needed and this cannot be achieved while the present structures for inter-country adoption remain in operation.
The Moratorium had initially been established for a period of 12 months when the entire legislation regarding the protection of child’s rights should have been revised in order to correspond to the requirements regarding the superior interest of children.

Since this major revision was not carried out during the period initially provided, the Moratorium was prolonged till the coming into force of the new regulations regarding the legal status of adoptions.

The Emergency Government Ordinance no. 121/2001 provided that “all the procedures regarding the adoption of Romanian children by a person or family with foreign citizenship or by a person or family with Romanian citizenship having the domicile or residence abroad are suspended for a period of 12 months starting with the coming into force of the present emergency ordinance”. This normative act came into force in October 2001.

This normative act was modified by Emergency Government Ordinance no. 161/2001 that came into force in December 2001 (and subsequently approved by Law no. 347/2002)

Following the modifications and completions the normative act provided: “the pending cases at the moment the moratorium came into force are solved under the existing regulations at the moment of their submission”.

The 2nd point provided: “in exceptional situations, required by the best interest of the child, at the proposal of the National Authority for Child Protection and Adoption, approved by the General Secretary of the Government, the Government can approve the transmission of certain applications for entrustment of international adoption to the competent courts”.

A commission for the analysis of the applications submitted by foreign persons/families in view of adopting Romanian children was established by order of the Secretary of State of the National Authority for Child Protection and Adoption. This commission judged on the exceptional nature of the adoption in conformity with the criteria for exceptional cases and working methodology approved by order of the Secretary of State of the National Authority for Child Protection and Adoption. In the framework of the administrative procedure, the Government approval of the memorandum represented “the approval of adoption application” in order to be forwarded to the Court (in the context of a Moratorium on international adoption). The Memorandum contained the list of children and families willing to adopt that met the criteria for exceptional situations.

During the moratorium, 08.10.2001 – 18.12.2003, at the proposal of the National Authority for Child Protection and Adoption, with the approval of the General Secretary of the Government, the Government approved, by 12 memorandums, the transmission of 1115 international adoption applications to the courts. The courts approved the adoptions, with very few exceptions.


By Emergency Government ordinance no. 1/2004 that came into force on 6th February 2004 the provisions regarding the exceptional cases representing the
applications that could have been transmitted to the court by Government approval were abrogated. At the same time, “the application transmitted to the competent courts by Government approval till the coming into force of this normative act are solved under the regulations in force at the date of their submission”, adoptions approved by irrevocable and definitive Court decisions.

The effect of the successive prolongation of the moratorium was the transformation of the provisions regarding the moratorium to “transition legislation”. As consequence to this prolongation the pressure associated to this differently interpreted, understood and accepted subject increased progressively. In this context, the necessity to substitute those provisions with a firm and appropriate regulation of the adoption issue was evident.

*Though a moratorium was established the applications for international adoptions submitted before October 2001 as well as the adoption applications submitted after this date were analysed.*

The last category includes the adoption applications registered before October 2001 that did not nominated a certain child and the name of the child was added after the coming into force of the moratorium.

The international adoption applications now analysed by the Romanian Office for Adoptions were not approved by the commission for analysis in the National Authority for Child Protection and Adoption. The National Authority for Child Protection and Adoption registered those applications in a common register together with other petitions and materials in the field before and after the coming into force of the moratorium on international adoptions. At the same time the data base regarding the evidence of applications was not secured.

During this period the foreign central authorities were informed on the existing cases but the families/persons that submitted adoption applications did not receive a firm answer regarding the specific situation of each file and the files have not been returned.

*On 1st January 2005 Law no. 272/2004 on the Protection and Promotion of the Rights of child and Law no. 273/2004 regarding the legal status of adoption came into force.* These normative acts contain provisions in accordance with the international conventions ratified by Romania.

The most important modification is the approach of adoption as an institution of civil law and not as a child protection measure. Certain adoption procedures (the entrustment in view of adoption, the consent of the biological parents) are not carried out in a sensitive to corruption administrative framework but in a judicial one, in Courts.

The adoption presents the advantage of offering a permanent family to the child that can not benefit of an appropriate environment within her/his biological family and for whom such an alternative meets the needs identified following the evaluation carried out by professionals in the field.

The new legislation in the field emphasizes the necessity to provide support to biological families and help them be fully aware of the necessity to assume the responsibility as parent.

At present the qualified persons in the General Directions of Social Assistance and Child Protection re-evaluates the psychological, social and legal situation of the
children and the circumstances the Commissions for Child Protection in each county established the protection measures under the previous legislation.

Depending on the evaluation outcome, an individualized protection plan is achieved for each child. On the basis of the plan all the necessary measures are taken in order to reintegrate the child within the biological or extended family.

The 2005 Group established on the basis of the memorandum approved by the Prime Minister of Romania in view of auditing the pending files at the Romanian Office for Adoptions

Introduction

Since its establishment in July 2005, the working group for the audit of the files the Romanian Office for Adoptions (R.O.A.) overtook from the Romanian Committee for Adoptions has convened in 5 meetings.

The working group is coordinated by the Secretary of State of the Romanian Office for Adoption and is composed of representatives of R.O.A., the Government’s General Secretariat, the Prime Minister Office, the Ministry of Administration and Interior, the Ministry of Justice, the High Level Group and the organization “Save the children!”

The analysis of all the information regarding the children solicited in inter-country adoption by foreign families takes as a principle the best interest of the child. The working group considers this principle, alongside the respect of the legal provisions in force in the field (Law no. 272/2004 on the protection and promotion of the rights of child and Law no. 273/2004 on the legal status of adoption) the main criterion that must guide all the decisions regarding each child.

Working methodology

The analysis of the files is based on the information existing in:

1. the database the Romanian Office for Adoptions (ROA) overtook from The Romanian Committee for Adoptions
2. the files submitted by foreign citizens in order to adopt Romanian children (during the period when the moratorium on international adoptions was in force)
3. the answers received from the General Directions for Social Assistance and Child Protection (DGASPC) in the counties regarding the situation of each child, following the official letters sent by ROA in this respect; by the official letters mentioned above, ROA solicited to the DGASPCs to provide information on each child for whom a request of international adoption was formulated. This information refers to:
3.1. the current situation of the children (if they are reintegrated within their biological family, integrated in the extended family, entrusted in view of adoption, adopted by domestic adoption, in placement etc);
3.2. the elaboration of the individualized protection plan for these children and its finality;
3.3. the modality used by the foreign families to meet the children, including the organization or the intermediary persons and if those organizations still develop activities in the field;
3.4. if the foreign families also adopted brothers/sisters of the child they wanted to adopt;
3.5. the modality used by the foreign families to maintain their relationship with the child (visits, letters/phone calls, if there are affective bounds between families and children etc.)

ROA considers that this information requested at county level is very important for a correct and complete analysis of the situation of each child.

In consequence:

1. On basis of the current legal situation of the children the working group will decide on returning certain files to the foreign families who solicited to adopt Romanian children that meanwhile have been:
a. reintegrated in the biological family
b. integrated in the extended family (up to 4th degree relatives)
c. adopted by domestic adoption
d. entrusted in view of adoption
e. placed to a family/person/professional foster that have already submitted a domestic adoption request for the child they have in placement or children for whom the tutelage was established or who reached the age of 18.

We mention that under the legislation in force, the re/integration in the biological/extended family and, when possible, the domestic adoption is a priority for the children separated from their parents and who benefit of a special protection measure. The entrustment in view of adoption is a preliminary stage in view of approving the adoption in Court.

2. In accordance with the existing legislation, each child separated from his/her parents shall be re-evaluated in view of elaborating the individualized protection plan. This plan is an instrument used in order to achieve the planning of services and special protection measures in view of integrating the child in a permanent stable familial environment as soon as possible.

The adoption can be established as finality of the plan after all the measures for the reintegration or the integration of the child within his/her family or within the extended family have been taken.

The child thus becomes adoptable when the Court initiates the domestic adoption procedure on basis of the plan that provides adoption as a final measure and of the proof that the DGASPCs took all the measures to reintegrate or integrate the child within the family as well as on basis of the necessary consents.
The biological family must consent to the adoption of its own child in court when the domestic adoption procedure is initiated. Thus the consent under the previous legislation is no longer valid according to the new legislation and the consent of the parent is not obligatory at present. The professionals of DGASPC have the obligation to provide counselling to the parents so that they understand the consequences of consenting to adoption.

In consequence, at this moment, the individualized protection plans have not been elaborated for all the children as they are in the process of re-evaluation.

3. It is extremely important to know how the foreign citizens met the children in order to achieve the analysis of each case.

Taking into consideration the provisions of The Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption, ratified by Romania, the child must be declared adoptable in order to be solicited in view of adoption, provision mentioned as a first condition in this respect.

In consequence, the Hague Convention is violated if the child, her/his parents or the legal representative of the biological family are met previously to the establishment of the child’s adoptability.

The child must have a clarified legal situation in this respect, as the decision of a family to adopt the child expressed before the child is declared adoptable can influence the decision of the biological family to consent to adoption in exchange of all sorts of advantages. On the other hand, the child can be perceived as “an object of transaction” between two or more persons, his/her rights being infringed.

Though Romanian ratified the Hague Convention in 1994 its provisions were not totally respected. Its approach was many times inverted. In the first instance, a family willing to adopt met the child. Afterwards, if the family had expressed the wish to adopt the child, he/she was declared adoptable. Many times this approach could be detrimental to the child; the child was told that the persons he/she had met would be his/her adoptive parents though the child had not been declared adoptable and the matching between the child and the family had not been done.

We consider that the lack of firmness proved by the Romanian authorities and the varying approach of different procedural stages of the international adoptions led to

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2 We mention that the reevaluation of children was delayed because of the reunification of the former Directions for Child Protection with the Public Services of Social Assistance at each county and district level as well as of the insufficient number of specialized employees necessary to cope with all the existing needs, though the legislation provides that this process shall be finalized in the first 6 months of this year and implicitly the individualized protection plans shall be elaborated.
misunderstandings regarding the administration of those cases and to the violation of
the provisions in force. The needs and the characteristics of the adoptive adults/
families were emphasized to the detriment of those of the child.

4. In the analysis of the cases, the information about the existence of brothers/sisters adopted abroad by the same family is very important. It is also important to analyze the cases when the child has brothers/sisters in Romania and what is their individual legal situation. This information is necessary for clarifying the situation that led to the separation of brothers, the reasons of this separation and if the separation was in the best interest of the children.

5. The information regarding the modality used by the foreign citizens to maintain their relationship with the children they solicited in view of adoption is extremely important in order to have information on the relationship they established, on the way this relationship has developed and on the implications that result of the specific situations including the negative consequences affecting the development of the child in case the adoption is not approved.

Ways of solving the pending cases

By all its actions, the working group makes certain that all the necessary measures are taken in order to respect the legally acknowledged rights of each child.

Every decision must be taken to the best interest of the child respecting his/her opinion and must not be detrimental to his/her human integrity.

By this analysis, the working group analyzes all the aspects regarding each child:

1. current legal situation
If the legal situation is clarified (the child was reintegrated or integrated within the family/adopted/entrusted in view of adoption/reached the age of 18 or had the tutelage established) the files submitted by foreign families will be returned. Otherwise, their re-evaluation in socio-familial and cultural context (social, psychological, medical, educational, legal aspects) under the new legislation in the field is verified;

2. elaboration o the individualized protection plan
If the individualized protection plan was elaborated the stage of the process of reintegration within the biological or extended family or of adoption is identified depending on the finality of the plan.
If the individualized protection plan was not elaborated (the evaluation of the child was not carried out in socio-familial and cultural context) official letters are sent to DGASPCs soliciting the drawing up of those plans and the information of ROA in this respect.

3. initiation of the domestic adoption procedure
If the measures for the reintegration or integration of children in the biological or extended families have failed the procedure of domestic adoption as well as the subsequent measures are verified.

The new legislative package

In Romania, adoption is regulated according to the following normative acts, which came into force on January 1, 2005:

- Law no. 273/2004 on the legal status of adoption;
- Government Decision no. 1435/2004 for the approval of the methodological norms for implementing the law no.273/2004 on the legal status of adoption;
- Government Decision no. 1442/2004 on the services and activities carried on by the Romanian private organizations within the domestic adoption procedure;
- Government Decision no.1441/2004 on the authorization of the foreign private organizations for carrying on activities in the inter-country adoption field;
- Government Decision no. 1436/2004 for dividing by expense categories of the exclusive flat tax for services provided by the Romanian Office for Adoptions for the completion of the international adoption procedure on the Romanian territory;
- Order no.45/2004 of the Secretary of State of the National Authority for Child Protection and Adoption for approving the compulsory minimum standards on the domestic adoption procedure.

The new legislation in the field of adoption starts from the decisive role that family has in the harmonious development of the child personality. This legislation is in keeping with the framework established by the Law on the protection and promotion of child's rights (Law no.272/2004), as well as by the provisions of the international conventions ratified by Romania.

The changes brought by the new legislation in the field of adoption are:

- The adoption is dealt with as an institution of civil right and not as a protection measure (as it was regulated in the previous legislation) meaning that it doesn’t address automatically to all children that need a protection measure, but only to those cases where such a legal operation corresponds to the particular needs and situations of the child,
- The situations and the procedure that establish that a child becomes adoptable, respectively the case when the individualized protection plan of the child establishes as finality the domestic adoption, are explicitly regulated; the domestic adoption as a finality should be established only if the measures taken for reintegrating the child into the biological family or integrating him/her in the extended family have failed,
- The initiation of the procedure of domestic adoption is made only by the law court and only after it carried out a rigorous control on the measures taken in order to reintegrate the child into the family of origin or to integrate him/her in the extended family,
- The parent deprived of parental rights or upon whom was enforced the penalty of prohibiting parental rights maintains his/her right to consent to the child’s adoption under the new legislation,
- The situations where domestic adoption intervenes, which is explicitly encouraged, are expressly stipulated,
- The situations where international adoption may be taken into consideration are distinctly established: “international adoption of the child who lives in Romania may be approved only in cases where the adopter or one of the spouses of the adopting family that lives abroad is the grandparent of the child for whom was approved the procedure of internal adoption”,
- Accredited Romanian private bodies are no longer involved in international adoption process and they can develop activities only within the pre and post adoption services in domestic adoption,
- Law no. 47/1993 regarding the judicial declaration of abandonment that was criticized because it had not stimulated the activities of child reintegration in the family, the child being declared adoptable, thus giving priority to adoption and not to the return of the child to his/her family, is abrogated,
- In view of constituting the evidence in the adoption field at national level, the National Adoption Record is elaborated at the level of Romanian Office for Adoptions. It contains the data regarding the adopter and the adopting family, Romanian or foreign, as well information on children for whom the internal adoption procedure has been initiated, and on children for whom a court degree for entrustment in view of adoption or for adoption approval or annulment has been issued.

**The institutional structure**

The Law no. 274/2004 on the establishment, organization and operation of the Romanian Office for Adoptions (ROA) came into force on January 1, 2005.

ROA took over all the responsibilities in the field of adoption held by the National Authority for Child Protection and Adoption and by the Romanian Committee for Adoptions, being held accountable for all the obligations of the former Committee, under the legal regulations and under the legal acts issued by the Committee or to which the Committee has been a part of.

At the same time, ROA is the central authority appointed to carry out the obligations stipulated under the Convention on protection of children and cooperation in respect of inter-country adoption, concluded in the Hague on May 29, 1993.

**Activities/actions initiated/developed by the Romanian Office for Adoptions**

1. **Elaboration of the Plan of action on the implementation of the primary and secondary legislation in the field of adoption**

In order to implement the legislation in the field of adoption, the Romanian Office for Adoptions has elaborated the Plan of action on the implementation of the primary and secondary legislation in the field of adoption; this plan of action, as well as the
The setting up of the Working group for auditing the cases taken over by the Romanian Office for Adoptions, were approved through a Memorandum in the Government meeting on the 29th of June 2005.

The objectives of the Plan of action are the following:
- The clarifying of the existing situation regarding the files submitted between October 2001 and December 2004 by foreign citizens for adopting children from Romania and the manners of meeting Romanian children, taking into account that the moratorium on international adoptions was into force during that period;
- Establishing, at the national level, of an evidence of children who have adoption as finality of their individualized protection plan;
- Strengthening the institutional capacity of the Romanian Office for Adoptions;
- Strengthening the institutional capacity of the adoption services within the General Departments for Social Assistance and Child Protection;
- Informing the courts on the importance of judgment the adoption cases with celerity;
- Development of a cooperation system with authorities/institutions from other states which have attributions in the field of adoption;
- Establishing and implementing a coherent policy in accordance with the EU requirements in the field of adoption.

In view of achieving the objectives provided in the Action Plan ROA initiated the following measures:

- **The elaboration of a questionnaire regarding the needs of services** provided to the adopting families, **the need of an adequate number of employees** and the need of training in the field of adoption. It was sent to the General Departments for Social Assistance and Child Protection (DGASPC).

The outcomes on account of information obtained from the application of the questionnaire in 44 DGASPC are the following:

a. the number of the employees that work in the framework of the adoption services is not sufficient for covering the existing needs at county level (27,2 % of the inquired counties mention they have a sufficient number of employees and 68,1% of the counties don’t have enough employees);

b. 175 of the employees work in the framework of adoption services provided by the DGASPCs in the 44 inquired counties (including the department, office, service heads); 41,1% are social assistants and 21.1% are psychologists;

c. the needs of training of the professionals occur in the implementation of the new legislation in the field, including of the compulsory minimum standards regarding the procedure of internal adoption (38,6% of the counties specified this need): counselling the child and the family pre and post adoption (38,6% of the counties need training in this sense), the psychology of the child, the organization of groups able to provide support for the adopting families, the organization of training programmes regarding the parental abilities, the evaluation and the training of the potential adopting families;
d. regarding the services most frequently requested by the families willing to adopt that DGASPCs are not always able to provide (52,2% of the counties do not have enough employees in order to provide these services, 47,7% mentioned the reticence of the families about receiving these services, 31,8% do not have specialized employees and 31,8% do not have enough financial resources);

e. regarding the services most frequently requested by the families that adopted children and that DGASPCs are not always able to provide (54,5% mentioned the reticence of the families in receiving these services, 47,7% of the counties do not have enough employees in order to provide these services, 40,9% do not have enough financial resources and 22,7% do not have specialized employees);

f. the implementing of the compulsory minimum standards regarding the procedure of internal adoption implied the necessity of adequate human and financial resources (68,1% of the counties do not have enough human resources and/or specialized human resources and 47,7% do not have enough financial resources).

- The organization by ROA of a meeting with the participation of DGASPCs on the implementation of the new legislation in the field and the identification of the existing needs at the level of each county/district in July.

- The elaboration of a project regarding the evaluation of the children that were adoptable under the previous legislation in view of identifying the children that have the adoption as finality of the individualized protection plan.

Taking into account that the evaluation of the children that benefit of a protection measure is at its beginning at the level of each county the measures meant to identify the most adequate family for each child is imperiously necessary.

ROA is currently initiating measures in order to obtain some international financing for the implementation of such a project.

- The elaboration of a project regarding the setting up and the development of pre and post adoption support services provided to the adopting families at local/county level.

The setting up and the development of these services is based on the need of providing support to the adopting families in view of growing and educating children as well as on the promotion of national adoption for children that benefit of special protection measure and whose reintegration in their biological family or their integration in the extended family failed.

ROA is currently initiating measures in order to obtain international financing for the implementation of such a project.

2. **The initiation of measures in view of elaborating the National Register for Adoptions** in an electronic version in view of drawing up and organizing the evidence in the field of adoption at national level. The electronic system will
assure the security and the confidentiality of the registered data in accordance with the existing standards at the level of the European Union.

At present 1206 persons/families certified to adopt, 292 decisions on the initiation of internal adoption procedure and 956 adoptions approval are registered in ROA database.

3. The requirement addressed to the Embassies in Romania in order to provide information regarding the transmission of post adoption reports for Romanian children adopted internationally adoption in accordance to the approved memorandums based on the previous legislation.

4. The requirement addressed to DGASPCs in order to provide information on the number of post-adoption reports as well as the number and date of the definitive and irrevocable court decision for adoption approval. The requested information regarded the adoptions approved during 1997 – October 2001 which lacked in the data base of ROA taken over from The Romanian Committee for Adoptions.

5. Legal representation of ROA in the Court in 4 cases and in other 3 cases the transmission of written notes to the Court in view of backing the admitting the adoption approval for children that have not been communicated in view of registering on the lists of the former Romanian Committee of Adoptions. The Court has admitted all these 7 actions.

6. The requirement addressed to DGASPCs in order to provide information regarding the persons/families foreign citizens that live in Romania and have children in the protection system in placement/entrustment in view of adoption.

ROA requested support to the Authority for Aliens in view of obtaining domicile in Romania for 21 persons/families foreign citizens that live on the Romanian territory and have had children entrusted for many years. There are 27 such cases: 12 from USA, 10 from Italy, 2 from Spain, 1 from Canada, 1 from Cyprus, 1 from Greece.

7. The requirement addressed to DGASPCs regarding the existence of 19 international adoption cases when the adopters did not take the children out of Romania.

The following situations came out of the analysis of the received information:

- In some cases these adoptions were subsequently revoked in Romania at the request of the former Directions for Child Protection; ROA informed the Ministry of Foreign Affairs about these cases so that it inform the Romanian Embassy in that state as well as the Embassy of that state in Romania.
- In some cases these adoptions were not revoked in Romania and ROA informed through the Ministry of Foreign Affairs the Romanian Embassy in that state as well as the Embassy of that state in Romania. Following the received information ROA will take measures in order to clarify the legal situation of the children.
**Progresses achieved**

Romania actively works for establishing a *genuine framework for the protection of the child*, in order to eliminate any abuse to their welfare, which could occur in their biological or adoptive family, or in the institutionalized form of care.

Since January 2005, Romania enforce a comprehensive and rigorous legislative package on the rights of the child, which is based on an integrated and enlarged vision: the rights of the child, whether he/she lives in a family or is protected in an institution, are the same.

The procedure for the adoption of a child in difficulty can be started only if all endeavours for family reintegration have failed. In this case, *the finality of the individualized protection plan is to ensure the national adoption of the child.*

*International adoption is regarded as a measure of an exceptional nature,* and very restrictive criteria are stipulated in the law with regard to it.

For implementing the legislation in the field of adoption, the Romanian Office for Adoptions (ROA) has elaborated the Action Plan on the implementation of the primary and secondary legislation in the field of adoption.

ROA continues taking measures in view of elaborating the National Register for Adoptions in an electronic version, in view of drawing up and organizing the evidence in the field of adoption at national level.

During this year, until the end of August 2005 a number of 655 national adoptions were approved, according to the previous legislation. Also, since the beginning of the year, 33 national adoptions have been approved according to the present legislation, for 192 children the procedure for internal adoption was initiated by the courts and files have been deposited with the courts for 217 children in order to open the procedure for internal adoption.

**Challenges as identified in the 2005 EC Comprehensive Monitoring Report:**

“Inter-country adoption, which is strictly limited to relatives, is no longer foreseen as a child protection measure. This represents a firm reaction to past irregularities and distortions and a measure conducive to developing intra-country alternatives in the best interests of each child. An action plan for the implementation of the new legislation has been drawn up. As regard petitions for inter-country adoption registered before the entry into force of this new law, responses should be given without delay based on the best interest of the child and in accordance with the relevant legal provisions. The already existing working party established with the task to screen pending cases should inform the families concerned of its decisions.”

**Measures:**

- Clarifying the existing situation regarding the files submitted during October 2001 December 2004 by foreign citizens in view of adopting Romanian children.
- Elaboration of a record at national level of the children that have the adoption as finality of the individualized protection plan.
- Configuration and implementation of a coherent policy meeting the demands of
the European Union in the field of adoption.

Note regarding the situation in the adoption field in Romania

When the communist regime fell in 1989, Romania inherited a very difficult situation of abandoned children, a system overburdened with institutionalized children. In the following years, efforts have been started towards creating a comprehensive and functioning child protection system. At the same time, thousands of domestic and international adoptions were concluded. The abuses of the system of inter-country adoption in place in Romania became the subject of international criticism and the Government decided to introduce a moratorium on international adoptions, which came into effect in October 2001.

The criticism referred to the ambiguous nature of some legal provisions regarding adoptions, lack of transparency regarding the procedural stages of an international adoption, including the financial aspects of these procedures, elements that led to widespread corruption in the system. The flagrant inconsistency between certain provisions in the Romanian law and the stipulations of the UN Convention on the child’s rights and of the Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption was also invoked.

In spring of 2001, ABC’s 20/20 broadcasted a story called “Children for Sale” which clearly depicted how special interests and money were generating and even encouraging new situations of child abandonment instead of finding families for children already waiting in state institutions. Romania had started to be viewed as a market for international adoptions, where financial considerations prevailed over the humanitarian dimension, which is assuring the best interest of the child. This is why the Romanian Government had decided to institute a clear policy of finding a national solution for the children and to impose a moratorium on international adoptions.

The purpose of the moratorium on international adoption was to provide the time needed to develop appropriate new legislation and the administrative capacity to ensure that inter-country adoption would be restored exclusively in the best interest of the child, if no other suitable form of care was available in Romania.

Nonetheless, foreign families continued to file requests to adopt Romanian children, based on false expectations that the ban on international adoptions would be lifted after the approval of the new Romanian law. Also, it is important to stress that the registration of a petition for international adoption during the moratorium represented a mere administrative act and did not signify approval of the request.

Irregularities involving international adoptions registered during the moratorium were observed:
- Many requests for adoptions were referring to children who did not have an “adoptable” status. All efforts focused on declaring the child adoptable, without any
previous effort to integrate him/her within the biological or extended family, thus eluding the provisions of the Hague Convention.

- There are situations when the adoptive family/person nominated several children or situations when a child was nominated by several adoptive families/persons
- The majority of the foreign families have submitted applications for children younger than three years old. Those children could only be adopted nationally even according to the former methodology in force at that time, only children older than the age of three could have been considered for international adoption.

All these shortcomings basically led to the conclusion that the system failed to act constantly in the best interest of the child. It prioritized the identification of a child for a family, not a family for a child.

The new legislative framework that regulates the current status of adoption in Romania came into effect on January 1st, 2005 and is based on the principle of promoting the best interest of the child. It was drafted together with a group of European Commission experts that provided permanent consultancy, taking into consideration the provisions of UN Convention on the child's rights, the Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption and the European practices in the field. The final version of the new legislative framework included the recommendations of the Council of Europe as well.

The UN Convention on the child's rights states that the best interest of the child shall be the most important reasoning in the field of adoption. This implies that no other interest, economical, political, state safety or of the adoptive persons will have priority and will be considered equal to the interest of the child, the rights of the child being primordial compared to the rights of adults. Thus, it is necessary to emphasise that the new Romanian legislation in the field of adoption provides as a final goal the identification of a family for a child and not the identification of a child for a family.

The existent legislation approaches the child in the context of all his/her rights, basically in the context of his/her biological family, trying to raise awareness of the primordial nature of the parental role and responsibility towards one's own child.

The new legislation regulates the following aspects that were not regulated by the previous legislation:

- **procedure and situations in which a child can be adopted.** The individualised protection plan identifies domestic adoption as the final solution for the child's welfare, provided that all the efforts to reintegrate the child within the biological family and to integrate the child within the extended family have failed. According to the previous legislation, the activities meant to reintegrate the child in the biological family were not stimulated, thus giving priority to adoption and not to the reintegration of the child in his/her family. This was in contradiction with the provisions of the UN Convention on child’s rights.

- **only the Court decides the initiation of the domestic adoption procedure** after rigorously checking that all means of reintegrating the child in the biological family or
integrating the child in the extended family have been exhausted; the procedures under the previous legislation encouraged the identification of a child for a family willing to adopt and not the identification of a family function of the specific case of each child after exhausting all means of reintegrating the child into its biological family. In practice many families met the children before they could be adopted, thus violating the regulations of the Hague Convention; the child became “the object of a transaction” between persons/institutions and his/her rights were infringed.

- maintenance of the right of the parent withdrawn of his parental rights or to whom the punishment to forbid parental rights was applied to consent to the adoption of the child; this provision results from the temporary, reversible nature of the measure of withdrawing parental rights and from the permanent and irreversible nature of adoption regarding the natural descendants; even in the mentioned conditions, the previous law did not emphasised the rights and the responsibilities of the parents towards their own children.

- the obligation to counsel the biological parents or the legal representatives previously to their consent to adoption; the Court has the certitude that the parents freely consent to the adoption and no payment or advantage intervened in order to obtain the consent; the previous legislation did not stipulate this provision and the child could be declared abandoned “ex officio” if the family had not maintained a relationship with the child for more than 6 months (under the Law no. 47/1993);

- adoption is approached as a civil law institution and not as a measure of protection (as it was regulated in the previous law) meaning it does not address automatically to all the children needing a protection measure but to all the children to which such a legal operation meets his/her needs and specific situation.

Regarding the results registered in the field of child protection during 1998-March 2005 (based on the information indicated in the attached annexes) the following observations can be noted:

- the number of national adoptions increased simultaneously with the diminution of the number of international adoptions every year after 2001. Since the Moratorium on international adoptions entered into force, the efforts focused on identifying Romanian families for children declared adoptable. Romania’s domestic capability to protect its own children, by reintegrating them in their natural family, extended family or by national adoption has improved.
  - during January-March 2005 a number of 1312 children were reintegrated within the biological family;
  - the number of children protected in substitutive families (extended family, foster families, other families/persons) has increased while the number of children protected in placement centres decreased starting with 2000;
  - the number of alternative services increased during 2002-2004 (services to prevent child’s separation from his/her family as well as support services for the integration of the child within the family). As a result of
the development of these services, the number of the children
protected in the system decreased; we have increased the number of
day care centres (by 40), the number of services providing counselling
and support for parents (by 30) and the number of centres to support the
reintegration or the integration of the children in the family (by 17).

- The alternative services had also a positive impact on addressing the problem of
child abandonment in our country. During 2004, out of 4,614 children left in the
maternity hospitals and paediatric sections a number of 2,389 children were
reintegrated within their biological family and 940 children were placed within foster
families.

- regarding the age of the children protected in the residential system, starting with
2002, the number of under 1 year-old children has decreased significantly from
1028 children in 2002 to 436 children in 2004 meaning that the number of children
entered in the residential system has decreased significantly starting with 2002; at
the end of 2004, under 10 year-old children protected in the residential system
represented almost 22% of the total of children in the residential system, tendency
noted also in 2002. In conclusion, the number of children entered in the system
decreased significantly as a result of the development of the services to
prevent child's separation from his/her family.

- since the beginning of 2005, 1356 Romanian families soliciting the adoption of a
child have been registered in the National Register for Adoptions. 1005 domestic
adoptions have been approved by now. The Courts initiated the domestic adoption
procedure for 391 children.

The general conclusion of those analyses:
- the number of children that entered in the residential care system decreased
following the development of services to prevent child's separation from his/her
family;

- the number of children protected in the family care system increased compared to
the number of children protected in the residential system and the total number of
children benefiting of a special protection measure decreased as a result of the
development of services to prevent child’s separation from his/her family and of the
services for the integration of children within their families;

- the number of national adoptions increased while international adoptions
decreased.

The mentioned results indicate the progresses obtained in this respect,
progresses noted by the European Commission in the periodical reports that monitor
the evolutions registered in Romania in view of joining the European Union. Also,
according to the European Parliament’s report of December 3, 2004 (rapporteur Pierre
Moscovici), the EU Parliament "congratulates Romania on responding to international
appeals and Parliament’s requests by introducing national child protection standards
and strict rules to govern inter-country adoption; considers that this new legislative
framework should serve to protect children’s rights even more effectively and must be
properly enforced”.

Also, in May 2005, the EU Commissioner for Enlargement, Mr. Ollie Rehn, wrote
to the Romanian Government: "I take note of and appreciate your willingness to explore
any possible solutions to respond to the various concerns expressed, as long as such solutions are not contradicting the current legislation in force in Romania. I am convinced that your position should be solely based on the best interest of the child. We also naturally expect you to fully implement the new Romanian legislation, which is in line with international standards. To deviate from these principles would require amendments to your new legislation which would re-open the debate and whose results could become worse than the initial objective..."

Romania engages to take all the measures required by the new legislation in view of respecting the rights of the child.

The implementation of the new legislation in the field is a proof of maturity and responsibility of the Romanian institutions in their actions to cope with this issue and of the major interest for the welfare of the Romanian children.

The present legislative framework assures the premises for the prevention of the abuse and corruption that may occur in the adoption system. All the institutions and public authorities involved in the adoption procedure as well as those with an important role in preventing child’s separation from his/her family shall improve the function mechanisms according to the new legislation in view of respecting and guaranteeing the rights of the child.
<table>
<thead>
<tr>
<th>Number of children in public or private placement centres</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>January-March 2005</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>38,597</td>
<td>33,356</td>
<td>57,181</td>
<td>49,965</td>
<td>43,234</td>
<td>37,660</td>
<td>32,679</td>
<td>32,456</td>
</tr>
<tr>
<td>Number of children protected in substitute families</td>
<td>16,565</td>
<td>20,673</td>
<td>25,415</td>
<td>29,183</td>
<td>32,157</td>
<td>32,943</td>
<td>34,405</td>
<td>33,739</td>
</tr>
<tr>
<td>Number of children protected in foster families (public or private professional foster caregivers)</td>
<td>479</td>
<td>3,058</td>
<td>5,157</td>
<td>8,370</td>
<td>10,935</td>
<td>13,625</td>
<td>15,834</td>
<td>16,360</td>
</tr>
<tr>
<td>National adoptions</td>
<td>840</td>
<td>1,710</td>
<td>1,291</td>
<td>1,274</td>
<td>1,346</td>
<td>1,383</td>
<td>1,422</td>
<td>357</td>
</tr>
<tr>
<td>Inter-country adoptions</td>
<td>2,017</td>
<td>2,575</td>
<td>3,035</td>
<td>1,521</td>
<td>407</td>
<td>279</td>
<td>251</td>
<td>15</td>
</tr>
</tbody>
</table>
In Romania there are approximately **5,000,000** children aged 0 to 18 years, from which approximately **2.2%** are in the evidence of the Social Assistance and Child Protection Directorates.

<table>
<thead>
<tr>
<th>Number of children residing with their biological family or with the [national] adoptive family</th>
<th>26,162</th>
<th>100.00%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beneficiaries of prevention activities - active cases (31 of March, 2004):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- maintaining the children in their biological family</td>
<td>20,045</td>
<td>76.62%</td>
</tr>
<tr>
<td>- beneficiaries of day care centres/services</td>
<td>7,166</td>
<td>28.77%</td>
</tr>
<tr>
<td>- beneficiaries of mother and baby centres</td>
<td>393</td>
<td>1.55%</td>
</tr>
<tr>
<td>- pre-natal care services to prevent child abandonment</td>
<td>1,880</td>
<td>7.19%</td>
</tr>
<tr>
<td>- beneficiaries of mother and baby centres</td>
<td>20,045</td>
<td>76.62%</td>
</tr>
<tr>
<td>- pre-natal care services to prevent child abandonment</td>
<td>1,880</td>
<td>7.19%</td>
</tr>
<tr>
<td>Children reintegrated in their biological families - (January- March 2005)</td>
<td>1,312</td>
<td>5.01%</td>
</tr>
<tr>
<td>- from family type protection</td>
<td>558</td>
<td>2.13%</td>
</tr>
<tr>
<td>- from public and private institutions</td>
<td>405</td>
<td>1.55%</td>
</tr>
<tr>
<td>- from emergency protection</td>
<td>349</td>
<td>1.33%</td>
</tr>
<tr>
<td>National adoptions (March 2003 - March 2005)</td>
<td>2,925</td>
<td>11.18%</td>
</tr>
<tr>
<td></td>
<td>Number of children residing with substitute families or in institutions (31 of March 2005)</td>
<td>82,555</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>------------------------------------------------------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td><strong>out of which,</strong></td>
<td><strong>Children protected in substitute families</strong></td>
<td>50,099</td>
</tr>
<tr>
<td></td>
<td>- professional foster caregiver (public)</td>
<td>15,999</td>
</tr>
<tr>
<td></td>
<td>- professional foster caregiver (private)</td>
<td>361</td>
</tr>
<tr>
<td></td>
<td>- extended family</td>
<td>26,701</td>
</tr>
<tr>
<td></td>
<td>- other persons / families</td>
<td>6,081</td>
</tr>
<tr>
<td></td>
<td>- entrusted for adoption</td>
<td>957</td>
</tr>
<tr>
<td><strong>Children protected in institutions</strong></td>
<td>32,456</td>
<td>39.31%</td>
</tr>
<tr>
<td></td>
<td>- public placement centres</td>
<td>27,039</td>
</tr>
<tr>
<td></td>
<td>- private placement centres</td>
<td>5,417</td>
</tr>
</tbody>
</table>
06/12/1997 – the beginning of the reform of the child protection system in Romania, through Emergency Ordinance no. 26/1997 regarding the protection of children in difficulty; Law no. 3/1970 was abrogated;
<table>
<thead>
<tr>
<th>Service Description</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>March 2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mother and baby centre</td>
<td>41</td>
<td>49</td>
<td>54</td>
<td>57</td>
<td>58</td>
</tr>
<tr>
<td>Day care centre/service for children from families in difficulty</td>
<td>50</td>
<td>85</td>
<td>110</td>
<td>125</td>
<td>118</td>
</tr>
<tr>
<td>Continuing support service for young people over 18 in further education</td>
<td>11</td>
<td>50</td>
<td>50</td>
<td>51</td>
<td>50</td>
</tr>
<tr>
<td>Counselling centre/service for parents/carers</td>
<td>23</td>
<td>40</td>
<td>64</td>
<td>70</td>
<td>70</td>
</tr>
<tr>
<td>Counselling and family planning mobile service</td>
<td>6</td>
<td>14</td>
<td>21</td>
<td>22</td>
<td>23</td>
</tr>
<tr>
<td>Pre-natal care service to prevent child abandonment</td>
<td>13</td>
<td>17</td>
<td>20</td>
<td>23</td>
<td>23</td>
</tr>
<tr>
<td>Family placement/rehabilitation (reintegration) preparation centre.</td>
<td>15</td>
<td>30</td>
<td>42</td>
<td>47</td>
<td>48</td>
</tr>
<tr>
<td>Day care centre/service for handicapped children</td>
<td>16</td>
<td>37</td>
<td>80</td>
<td>89</td>
<td>92</td>
</tr>
<tr>
<td>Emergency service for children with behaviour disorders</td>
<td>6</td>
<td>6</td>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Supervision service of children who have committed offences</td>
<td>6</td>
<td>9</td>
<td>14</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>Support service for children in exercising their right to free expression</td>
<td>8</td>
<td>5</td>
<td>9</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>Support service for children in exercising their rights</td>
<td>8</td>
<td>13</td>
<td>13</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>Counselling centre for abused/neglected children-prevention and treatment</td>
<td>3</td>
<td>5</td>
<td>8</td>
<td>11</td>
<td>12</td>
</tr>
<tr>
<td>Supervision service for street children</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Centre/services for street children</td>
<td>1</td>
<td>5</td>
<td>9</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Centre for counselling and prevention against drug addiction</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Counselling centre for abused mother and baby (domestic violence)</td>
<td>0</td>
<td>2</td>
<td>3</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Therapy and support mobile service for disabled children in foster care</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Emergency and support service for mothers with children with special needs</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Prevention and supervision service for children/students in schools who may commit offences</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Other services-unspecified</td>
<td>18</td>
<td>21</td>
<td>22</td>
<td>19</td>
<td>20</td>
</tr>
<tr>
<td>Number of children abandoned in hospital units in the year 2004:</td>
<td>4,614</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>--------------------------------------------------</td>
<td>------</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>in care:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- in maternities</td>
<td>2,804</td>
<td>60.77%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- in pediatric units</td>
<td>1,810</td>
<td>39.23%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Number of children abandoned in hospital units reintegrated into biological family (through support services: - mather and baby center- 145 children,</strong></td>
<td>2,389</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Number of children abandoned in hospital units and placed at substitute families</strong></td>
<td>940</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Number of children abandoned in hospital units and protected in public and private centres</strong></td>
<td>768</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
DINAMICS OF NUMBER OF CHILDREN IN PUBLIC PLACEMENT CENTRES
BY AGE GROUPS