

THE NEW CHANGES IN ADOPTION' SETTLEMENTS. CONTROVERSIAL ASPECTS

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Abstract

The Constitutional Court Decision no. 369/2008, published in the Official Gazette of Romania Part I no. 238/27 March 2008, were declared unconstitutional the provisions of 35 article, 2nd paragraph, I letter, the first these and 63 article, the third and fourth paragraph of the 273/2004 Act (regarding the adoption procedure), on separate quotation natural parents in opening the adoption procedure and, respectively, of the future taken custody procedures for adoption and consent to adoption.

In jurisprudence, through the procedural rules of common law application, was reached, because the texts of the two articles, the citation in the same file of the natural parents and prospective adopter, so leading to the mutual knowledge of their identity and data of strictly personal nature likely to affect the interests of the child and the right to protection of privacy and personal data on the natural parents and the adopter, which conflicts, on the one hand the Romanian Constitution (26 article) and, secondly, the European Convention on adoption of children done in Strasbourg in 1967, to which Romania acceded by 15/1993 Act.

Alongside the five principles of adoption provided by the law, has been added the sixth principle for ensuring confidentiality regarding particulars of the adopter or, where applicable, the adoptive family and regarding the identity of the natural parents. We believe that this confidentiality concerns both the third persons, but especially those involved in adoption proceedings (the person or family wishing to adopt, the child's natural parents and relatives, children etc.).

Of expression contained in the provisions of paragraph f of the second article, 273/2004 Act, falls off the idea that the only data of the identity of the person or family wishing to adopt, and details of the identity of the child's natural parents, no other data on the adoption procedure regarding this confidentiality. Therefore, individual and family wishing to adopt, on the one hand and the parent / natural parents, on the other hand must remain strangers to each other, do not know their physical identity or identification data (name, surname, nationality, domicile). We could even add to other data that would be identifiable indirectly a specific person.

The major problem arising from this obligation of confidentiality is the children's rights, recognized and provided by the 272/2004 Act regarding the protection and promotion of child rights.

First, the child is entitled, according to 8th article of law mentioned above, to establish and maintain his identity (the first paragraph), has the right to retain nationality, name and **family relations**, as provided by law, without any interference (the fourth paragraph) and in case it is finds that a child is deprived, unlawfully, of the the elements of his identity, the institutions and public authorities are obliged to immediately take all necessary measures to restore the identity of the child (the fifth paragraph).

Secondly, according to the 14th article of the same Act, the child has the right to maintain personal relations and direct contact with parents, relatives and other persons to whom the child has developed relationships of attachment, has the right to know their family and personal relations with these and other persons with whom the child has enjoyed family life, to the extent that this is not contrary to own higher interest. Parents or other legal representative of the child can not prevent his personal relationships with grandparents, siblings or other persons with whom the child has enjoyed family life, than in cases where the court decides in this regard, considering that there grounds such as to endanger the physical, mental, intellectual or moral development of children.

Keeping a secret identity to the natural parents assume, however, the same privacy and close relatives or friends group to which he belonged before, therefore the break will be a general. I have stated before that adoption does not involve a sharp break between child and natural family; the child can maintain normal family relations, of course, if not contrary to the interests or education. But this principle is contrary to this situation.

The law also covers what makes the meaning of the concept of personal relationship, providing that this can be achieved through:

- meetings with a child with parent or other person who has under this Act, entitled to a personal relationship with the child,
- the child visiting his home
- the baby hosting on determined periode by the parent or by another person the child does not normally lives
- the correspondence or other form of communication with the child
- the child transmission of information about the parent or other person who, under present law, has the right to maintain personal relationships with the child
- The transmission of information on child, including recent photos, medical or school evaluation, for the parent or other person entitled to maintain personal relationships with the child.

Most relevant are the provisions of 16th article which settled that the child who was separated from both parents or one of them through a measure ordered under the law, has the right to maintain personal relations and direct contact with both parents, unless this is contrary to the best interests of child. The Court, taking into account the priority interests of the child, may limit this right if it is reasonably likely to endanger the physical, mental, spiritual, moral or social development of children.

Another legal provision that conflicts with the principle of confidentiality is provided by the 26th article, the second paragraph according to which within 30 days from the date of the final and irrevocable court decision which was nodded opening of domestic adoption, the direction in whose territory is the residence of the child analised the priority the possibility of entrusting a child to adoption of extended family relatives, except the brothers, the professional foster parents that the child or another person or families where the child is in placement.

But the alternative, if these people were not requests for adoption, the direction in whose territory the residence of the child will make steps to identify the range of a person to administrative territorial or certified family and in the official record¹.

It is obvious that the effects of confidentiality do not apply even in cases where one spouse adopts the child of a spouse.

In conclusion, the introduction of this principle of confidentiality between the provisions of the Law on adoption, will have effects on several provisions of this Act, came into conflict with them and affect the core elements of family relations and child rights.

If the above amendment of Law no. 273/2004, for adoption by the spouse parent child its natural parent consent form to express the genuine, by notarial act, now no longer distinguish between this situation and that of others in the event consent adoption procedure, and therefore in this case the natural parent's consent be given before the court, upon settlement of the declaration of adoption.

Regarding the summons, all to ensure the confidentiality, the 102/2008 Governmental Ordinance repealed paragraphs 2-5 of the 63rd article, which refers to

- judging applications for the opening of the internal adoption of the child or, where appropriate, the guardian and direction in whose territory the residence of the child
- trial applications of custody for domestic adoption and the adoption of the declaration is made by citing the direction in whose territory the residence of the child, the direction in which the adopter is domiciled or territorial area adoptive family and the person or adoptive family
- Judging applications for declaration of international adoption is summoning the direction in whose territory the residence of the child, the person or the adoptive family and the Office
- Judging applications for consent to adoption referred to in the 5th article the 3rd paragraph is made by citing the adopter or adoptive and adoptive families and adoption proceedings for a declaration of applications provided by 20th article points b) is made by citing the adopter and the natural parents of adoptive

Also, the applications for opening of the internal adoption will be summoned child's natural parents or guardian and appropriate direction in whose territory the residence of the child.

A further appeal is governed by the new amendment to the law, namely **reviewing**, the application for review could be inserted if after the irrevocable decision disappeared the cause because of which is impossible to express by one of the natural parents consent to adoption.

The prosecution claims of custody for domestic adoption is summoning the direction in whose territory the residence of the child, the direction in which the adopter is domiciled or territorial area and of his adoptive family or adoptive family, and requests for a declaration of international adoption is summoning the direction in whose territory the residence of the child, the person or the adoptive family and the Office.

Instead, the new ordinance to make adjustments that were not made, in our opinion, the omission. Thus, the 18th article provides in the second paragraph that for good reasons, the court can countenance adoption even if the difference in age between adopted and adopted more than 18 years, but up and the possibility of exceptions, but with a difference of more than 15 years. Reason, the adoption law, was referred this difference was that previously married minor change Family Code by Law no. 288/2007, interest and can fully exercise capacity, together with her husband or alone, to adopt a child, even if the age difference with the child was only 15 years minimum.

¹ The extended family, the law on adoptions means parents, child and its natural relatives to the fourth degree inclusive. It is clear, however, that the regulatory concerns of the child's natural parents, who are unable to adopt their own child. Also, adoption among brothers is prohibited according to 8th article of the 273/2004 Act.

However, following the entry into force of this amendment, we believe that it is a default of this text amendment bill, which would have amended *"for good reasons, the court can countenance adoption even if the difference in age between adopted and the adopter / adopted is less than 18 years, but in no event less than 16 years."*

Bybliography

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