

# THE PROCEDURE INTERNATIONAL ADOPTIONS

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*Abstract:*

*Phenomenon adoption is an international legal and social phenomenon which provide for children in risk situations, vulnerable and without parental care corresponding to the integration into another family. UNICEF granted in respect short the following definition: "The Adoption adoption is a legal institution of public order and the social interest which allows the creation, by a court ruling issued in this respect, a voluntary family ties between persons who do not possess natural". Thus, the adoption is a term used to describe a personal and legal act, but also a service office.*

**Key words:** *international adoption, adopted, the best interest of the child.*

As regards the adopting institution, the following principles must be complied with in general during the adoption procedure:

- a) the principle of the best interests of the child;
- b) the principle of raising and educating the child in a family environment;
- c) the principle of continuity in the education of the child, taking into account its ethnic, cultural and linguistic origin;
- d) the principle of informing the child and taking into account his opinion in relation to his or her age and degree of maturity;
- e) the principle of celerity in carrying out any acts on the adoption procedure;
- f) the principle of confidentiality regarding the identification data of the adopter or, as the case may be, of the adopter of the family as well as the identity of the natural parents.

According to art1. Article 2 D) of the Act<sup>2</sup>, the international adoption is the adoption in which the adoptive parent or adoptive family and the child to be adopted have their habitual residence in the different state and, after the adoption of the adoption, the child has the same habitual object as the adopted child.

According to art. 52 of the Law, the international adoption of a child with a habitual residence in Romania by a person / family having their habitual residence abroad can only be approved for children who are registered with the National Adoption Office and only in the following situations:

- a) the adopter or one of the spouses of the adoptive family is related up to the fourth degree including the child for whom the adoption of the internal adoption procedure was approved;
- b) the adopter or one of the spouses of the adoptive family is also a Romanian citizen;
- c) the adopter is the spouse of the natural parent of the child whose adoption is sought.

International adoption is permitted for children for whom the application for the adoption procedure has been admitted and an adopter or adoptive family having their normal residence in Romania can not be identified within one year from the date of the final judgment which allowed the adoption of the adoption procedure.

The application for approval of adoption shall be transmitted to the court by the Office after completion of the preliminary administrative steps.

International adoption has the effects prescribed by the law and involves the movement of the child on the territory of the receiving state, following the adoption of the adoption by the Romanian court.

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<sup>2</sup> Law no. 273/2004 on the adoption procedure, updated by Law no. 273 of 21 June 2004 on the adoption procedure, updated by Law no. 57/2016.

In the case of international adoptions in which the adopter is habitually resident abroad and the adopter or adoptive family is habitually resident in Romania, the applicants' adoption requests shall be transmitted to the competent foreign authorities only through the Office.

Requests of persons or families who are habitually resident in the territory of another State Party to the Hague Convention and wishing to adopt a child from Romania shall be transmitted to the Office through the competent central authority of that State or its accredited organizations.

In the case of States not party to the Hague Convention, requests shall be submitted to the Office through the designated authority responsible for international adoption or through organizations accredited to that effect in the receiving State.

The application of the adopter or adoptive family shall be taken into account by the Office only if the competent central authority of the receiving State or its accredited and authorized organizations under the law attest that:

- a) the adopter or adoptive family fulfills the eligibility conditions for adoption and is fit to adopt in accordance with the applicable law in the receiving State;
- b) the adopter or adoptive family benefited from the necessary counseling for adoption in the receiving State;
- c) it is ensured the follow-up of the child's evolution after adoption for at least 2 years;
- d) Post-adoption services for the child and family in the receiving State are provided.
- e) the adopter will benefit in the foreign country from the same legal situation as that of a adopter's biological child<sup>1</sup>.

Applications submitted by A.N.P.D.C.A. must be accompanied by the documents proving the fulfillment of the conditions stipulated by the law, as well as by the documents stipulated in the methodological norms for law enforcement.

The documents will be submitted in original or, if necessary, in a certified copy, and accompanied by an authorized translation into Romanian. Documents drafted or legalized by an authority or a public agent of the receiving State may be transmitted and submitted to the Romanian courts without the need to carry out the legalization / apostillation formalities.

The initial and practical matching of the child with the adopter or adoptive family with their usual residence abroad is done by the adoption and post-adoption department of the child's direction department.

The person or family selected as a result of the initial matching has the obligation to travel to Romania and live effectively on the territory of the country for at least 30 consecutive days in order to achieve a practical match with the child.

Upon expiration of the 30-day period, the direction in which the child's domicile is located shall produce a report on the evolution of the relationship between the child and the adopting person or family.

The Office shall notify the competent central authorities or accredited organizations in the receiving State of the selection of the adopter or adoptive family.

Upon notification, the Office shall request the competent central authority or accredited organization in the receiving State to communicate the following:

- a) the consent of the adopter or adoptive family regarding the selection stipulated by the law;
- b) agreement on the continuation of the adoption procedure.
- c) the act from which it appears that there are guarantees that the adoptee has the possibility to enter and live permanently in the receiving state.

The application for the approval of the adoption, accompanied by the documents provided by the law, shall be submitted by the Office to the court.

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<sup>1</sup> Article 57 of Law no. 273/2004 on the adoption procedure, updated by Law no. 273 of 21 June 2004 on the adoption procedure, updated by Law no. 57/2016.

The examination of applications for the approval of international adoption shall be made by quoting the direction in which the child's domicile, the person or the adoptive family, and the Office are domiciled.

On the basis of the final decision on the approval of the adoption of A.N.P.D.C.A. at the request of the adopter / adoptive family, issue a certificate certifying that the adoption complies with the Hague Convention rules within 5 working days.

Movement of the adopted person from Romania to the state in which the adopter or adoptive family has his habitual residence is possible only when the decision to grant the adoption is final. The adopter moves only with the adopter or at least one of the adoptive family spouses, in a safe manner consistent with the needs of the adopted person.

Adopted people have the right to know their origins and their own past, and they have the support to take steps to contact natural parents or biological relatives<sup>1</sup>.

Adopted people have the right to request and obtain information about birthplace, institutional path, and personal history that do not disclose the identity of natural parents / biological relatives. Information attesting to adoption may only be provided to persons who have acquired full exercise capacity.

After acquiring full exercise capacity, the adopter may apply to the tribunal in whose territorial jurisdiction his or her domicile or, if he is not domiciled in Romania, to the Bucharest Tribunal, to authorize his access to the information in the possession of any public authority regarding to the identity of his or her natural parents or biological relatives.

Prior to the referral to the court, the addressee has the obligation to ask A.N.P.D.C.A. the issuance of a document attesting to the adoption, and if prior to adoption, he had established a relationship with at least one biological parent, as well as attending at least one counseling session to show whether the adopter is balanced from the point of view of psychoemotional view.

Counseling can be done by the headquarters in which the adopter is domiciled, by authorized private bodies as well as by individual cabinets, associated cabinets or professional social welfare and / or psychological societies that have concluded conventions with A.N.P.D.C.A.

If the adoptee does not have a domicile in Romania, the counseling may be carried out by the foreign authorities / bodies empowered in this respect, according to the law of the state on whose territory he resides.

The carrying out of the counseling activity is attested by the elaboration of a counseling report, which is communicated to the adopted.

The application to the court for authorizing access to information regarding the identity of the natural parents shall be submitted to the court accompanied by the copy of the applicant's identity document, the document certifying the adoption and establishment of the affiliation with at least one of the natural parents, as well as the report proving the accomplishment counseling.

In case the counseling activity is carried out by the authorized foreign authorities / bodies, the report shall be submitted to the original court or certified copy, accompanied by the authorized translation in Romanian.

Judging requests for authorization of access to information regarding the identity of natural parents is made with the quote of the adopted and A.N.P.D.C.A.

The court accepts the claim if, according to the evidence administered, it establishes that the applicant is an adopted person who has established affiliation to at least one of the biological parents, has received counseling and the court has formed the belief that the adoptee is balanced from the point of view psycho-emotional.

Natural parents or biological relatives of the adopted persons can obtain information regarding the adopted person regarding the confirmation of adoption, the year of his or her

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<sup>1</sup> Article 66 of Law no. 273/2004 on the adoption procedure, updated by Law no. 273 of 21 June 2004 on the adoption procedure, updated by Law no. 57/2016.

admission, the domestic or international character of the adoption, and whether the adopted person appears in the records of the authorities as being alive or deceased.

Other information concerning the adopter may be provided to biological parents or their biological relatives only if there is explicit agreement of the adoptee who has acquired full exercise capacity or, if the minor is the adoptive person, the consent of the adopting person or family. The agreement is requested by the NPAA, as the case may be, through the headquarters or the central authority of the receiving state, respectively of the accredited foreign organization involved in the adoption.

Adopters are required to gradually inform the child that they are adopted, starting at the earliest possible age. In fulfilling this obligation, adoptive parents can benefit from support through specialists in the department of adoption and post-admissions of the department, or through authorized private bodies, individual cabinets, associated cabinets or civil societies of social and / or psychological assistance have concluded agreements with ANPDCA.

The identity of the adoptive parent's natural fathers may be disclosed before he or she acquires full exercise capacity, for medical reasons only, at the request of any adopter, the adoptee or the representative of a medical institution, accompanied by supporting medical documents.

Adopted persons who have information on the identity of their natural parents can directly address the A.N.P.D.C.A. to take steps to contact natural parents or biological relatives.

Relevant information on adoption, the origin of the child, especially those concerning the identity of natural parents, as well as data on the medical history of the child and his / her family shall be kept for at least 50 years from the date of the irrevocable decision to approve the adoption.

Romanian courts are competent to hear claims provided by law if at least one party has its habitual residence in Romania.

Romanian courts are exclusively competent to hear claims provided by law if the child to be adopted is habitually resident in Romania and is a Romanian citizen or a stateless person.

The applications provided by law, as well as those concerning the cessation of adoption, are within the jurisdiction of the tribunal in whose territorial jurisdiction the adoptee is domiciled. The reasons for the trial of which the competent court can not be determined shall be heard by the Bucharest Tribunal.

By receiving the request, the president of the court shall take steps to fix the first time of the trial, which shall not exceed 15 days from the filing date of the application, as well as for the citation and the communication of the application.

Welcome is not obligatory. The parties have the opportunity to draw up notes on their claims and their submission to the file until the first hearing. In the case of adjournment of the application, the term may not exceed 15 days.

The first instance shall pronounce by judgment on the basis of the documents and, insofar as such evidence is insufficient or the circumstances of the case so require, other evidence may be administered.

The decision may be postponed for up to 48 hours and the drafting of the decision shall be made within 7 days of the pronouncement. The ruling shall be communicated to the parties within 48 hours of the drafting.

Decisions to resolve applications are only subject to appeal within 10 days, except for the court decisions whereby the application for the opening of the adoption procedure is settled, where the time limit for appeal is 30 days. The appeal may be brought by either party or by the prosecutor.

The reasons for ending adoption are judged by quoting:

- a) the adopter or, as the case may be, the adoptive family;
- b) personally adopted or, as the case may be, by a legal representative;
- c) the direction in which the adopted person's domicile is situated and A.N.P.D.C.A.