

6. THE INSTITUTION OF ADOPTION IN SOCIETY

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ABSTRACT:

THIS INSTITUTION WAS ALWAYS DESIGNED AS HAVING A FAMILY PURPOSE, THAT OF ESTABLISHING THE ADOPTIVE FAMILY WHERE THE ADOPTEE CAN FIND AN AFFECTIONATE ENVIRONMENT, LOVE, WARMTH AND HARMONIOUS FAMILY LIFE, PROPER CONDITIONS TO BE BROUGHT UP AND EDUCATED IN ORDER TO ACQUIRE PROFESSIONAL TRAINING, CONDITIONS NECESSARY FOR ITS EXISTENCE, AND THE ONE WHO ADOPTS TO BE ABLE TO SATISFY THE DESIRE TO BE A PARENT.

ADOPTION REPRESENTS THE IDEAL SOLUTION FOR THE INSTITUTIONALIZED CHILD, IT BECAME AN INTERNATIONAL PHENOMENON AND HAS DRAWN NOT ONLY NATIONAL BUT ALSO INTERNATIONAL BODIES' ATTENTION.

KEYWORDS: MONOGAMY, BIGAMY, ADOPTION, POLYGAMY, ADOPTER.

Adoption is, undoubtedly, one of the most current and controversial phenomena of contemporary law. It is a complex, sociological and legal phenomenon, and also a means for solving the child's family problems, as it can source of family and social problems, if the rights of those involved in the adoption process and, especially, if the child's fundamental rights and interests are not met.

Since adoption represents the ideal solution for the institutionalized child, it became an international phenomenon dealt with by both national and international bodies. In recent years particular attention has been paid to the need to develop a coherent system of protection of children in difficulty, with emphasis on the primacy of the family in raising and educating children.

The most important measures to protect children in situations of risk until 2004 were: Emergency Ordinance no. 26/1997 on the protection of children in difficulty and a number of alternatives to institutionalization, namely:

- a child's placement with a family or person who consents to the situation and produces moral guarantees and material conditions to raise a child;
- child placement under emergency conditions;
- entrusting the child in view of adoption.

As a measure of child protection, adoption is considered a definitive solution for the child who for various reasons cannot live with their biological families. The purpose of this institution was, that of establishing the adoptive family where the adoptee can grow up in an affectionate, loving, harmonious environment, benefiting from proper existence and upbringing conditions necessary to acquiring his/her professional training, and where the adopters are able to satisfy their desire to be parents.

The year 2004 was a very important step in terms of child protection who, for various reasons, cannot be raised and cared for by their biological parents, because they

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have drawn up two laws: Law no. 273/2004 on the judicial regime of adoption and Law 272/2004 on the protection and promotion of child's rights. They are considered as being amendments and completion of the previous law.

One of the main elements that the law brings on the legal status of adoption is the fact that the steps taken to arrive at the finality of the adoption process are presented, in other words the law shows all substructures that must be met for a child to be adopted: issues concerning the child and issues that refer to the person or adoptive family.

First regulations regarding adoption are found in Roman law, which create "patria potestas". The main purpose of adoption was to allow families or individuals without legitimate descendants receive in their environment children who thus used to take the name of the adopter, continued the family tradition and ancestors and had equal inheritance rights with natural children.

The crucial transformation of the institution of adoption occurred when the its purpose changed from the idea of taking into account mainly the adopter's interest to the interest of the adoptee (child without parental care). The idea of entrusting a child to a family with no children converted to that of offering a child, deprived of a family environment, to a family or a parent. Given the above we found out that legislation evolved consecrating principle according to which adoption must take place to the child's interest, as a measure of his/her protection.

Since 1851 on the American continent, in Massachusetts there appeared the first modern law on adoption, which consecrated the principle of the child's welfare and the rule according to which parental rights and duties are incumbent upon adopters and the child's kinship with his/her natural biological parents ceases. Instead, in Europe, the French Civil Code (1804) maintained for a long period of time the Roman, traditional conception about adoption.

Adoption was also known in old Romanian law, under the name of *înfială* (art. 236 of Calimach Code) and, according to Caragea Code, as "giving birth to adoptive sons is a gift for salvation of those who do not have children" (Article . 1, part IV, Chapter 5).²

The 1864 Civil Code regulated adoption as "a solemn contract" subject to "ratification of justice", concluded between the adopter and the adopted. According to this civil code the adopter could be male or female and had to meet two conditions: to have neither children nor no legitimate descendants; it was enough that the child be conceived for the adoption to be no longer possible. Sometimes even the existence of a grandson or great-grandson could render adoption impossible.

The second condition was that the adopter be 18 years older than the prospective adopted child, but no further special condition was set. Finally it was a condition that the adopter enjoy a good reputation, and in case he/she was married adoption was possible only with the spouse's consent.

Although the Civil Code stipulated nothing concerning international adoption, the adopter could even be a foreign citizen, so, any foreigner who wanted to adopt one or more Romanian children, could do it as long as the legislation allowed this.

In principle, adoption was irrevocable, art. 311 par. (3) provided that it could be cancelled at the request of the person adopted only if this happened a year before the adoptee reached 18. Adoption could also be cancelled for non-fulfilment of the conditions stipulated by law.

The Family Code of 1954. In this Code adoption is called "înfier" and unlike the Civil Code of 1864 it brings further provisions about adoption. The Family Code sets the

adopted interest on the first place and adoption is seen as a means of child protection. It provides that only the minors can be adopted, but considers that if a child has reached the age of consent and was raised by another family than the natural one, the former family is entitled to adoption.

Herein they also stipulated that adoption was prohibited between siblings and they introduced consent to adoption of natural parents and the child if he was older than 10. International adoption was allowed, but only with the authority of the President of the country, where the issue was adoption of a Romanian citizen by a foreign citizen and vice versa. Interestingly, until 1990 international adoption cases were very rare.³

By Law no. 11/1990 on adoption, the approval of adoption was no longer the competence of guardianship authority but of the courts of law. The decree that conditioned international adoption by the country's president agreement has been repealed. They founded the Romanian Adoption Committee, which still exists and whose role is to contribute to the minors protection through adoption and to achieve international cooperation in respect of international adoption.

Law no. 55/1995 amended and completed some provisions regarding international adoption. The most important change was banning international adoptions within families, in order to mark that international adoption is designed to help children deprived of family environment.

Romania acceded after 1990 to some international conventions that regulate adoptions. In 1990 they ratified the *United Nations Convention on the child rights*. In 1993, they ratified the *European Convention on the Adoption of Children*, in 1994 the *Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption*, concluded in the Hague on 29 May 1993; the Romanian Adoption Authority was designated as central authority charged with the enforcement of provisions of this Convention.

In 1997 they approved the *Government Emergency Ordinance no. 25 on the legal status of adoption*.

Currently, *Law No.273 / 2004 of 21.06.2004* published in the Official Gazette, Part I no. 557 of 23.06.2004 regarding the legal status of adoption, is in force.

For a proper mental and social development the child should grow up in a family, which must provide the bare necessities conditions, happiness, love and understanding. Whenever possible, the child should be kept and raised in his/her natural family. Sometimes this is not possible and so they try to find the child a permanent family to help him/her integrate into society and become useful to it. Adoption offers child this chance. Following adoption the parentless child finds an adoptive family where to be raised without taking into account that the new parents are not the natural ones.

Adoption is a special measure for the protection of child rights which establishes the connection between the adopters (adopter) and child (adopted) and kinship between the child and the adopter's relatives. In order that family relationship between the child and its new parents can start, there must cease the former family relationship with natural parents.⁴

³Ibidem, p.96

⁴ Art. 1 alin (1) din O.U.G. nr. 251/1997

Therefore after adoption, adopters accept any obligations and responsibilities of biological parents.

To best describe the adoption process we will briefly present the key terms involved in this process and their meanings.

- (minor) child

"Everyone who has not reached the age of 18, except in cases where, under the law applicable, age of consent is attained at different ages".⁵

- adoption

"The act by which one becomes the legal parent of a child who is not his own natural descendant".⁶

- family

In broad sense, "the family is a social group whose members are bound by relations of age, marriage or adoption and who live together, cooperate under economic report and care for children"

In the narrowest sense, "the family is a social group consisting of a married couple and their children."

Adoptive family and its importance in society throughout history has evolved in different forms, these changes in the family being due to its dependence on legislative framework. Relations between sexes, conceptions about marriage and family, their legal foundation, relationships between partners in a couple's life, the complexity of family relationships in general are closely linked to the development of society, the mode of social organization, phenomena and processes that characterize society. So, with the evolution of society and of the way phenomena and processes that characterize the family and society evolve, its development evolve too. "The family is a product of society that develops parallel to it and changes depending on economic , social, moral changes."⁷

Family is a community consisting of several individuals united by ties of marriage. By marriage the two persons united combine the biological with the social. The biological side of the family is essential because it ensures reproduction. By the descendants' existence family solve their sundry problems such as inheritance, but also support for old age.

History demonstrates that evolution of the family took place when biological economic, social, moral and cultural factors conjoined.

Family as the sole normal reproductive group is the only embodiment of natural and cultural continuity of the species, of transmission of the biological characteristics of species, but also of language, customs, spiritual values, behaviour patterns, etc. Therefore family can be considered a nucleus of society, it is "the cell" that relates parents to their offspring.

As known, every human being needs affection, love, family is the one that can meet these basic needs, the need for confession or achievements of dissatisfaction appeared in various fields, offering its members the feeling of safety.⁸

⁵ *Conventia privind Drepturile Copilului*, art.1

⁶ Catalin, Zamfir, Lazar, Vlasceanu, *Dictionar de sociologie*, Editura Babel, București,1998, p.19

⁷ Voinea, Maria, *Sociologia familiei*, Editura Universitatii Bucuresti,Bucuresti, 1993, p. 14

Family is closely related to society evolution and with its evolution or regression changes occur in the family. The first stages of society development, when man barely depart from its animal instincts, relationships were dominated by natural instinct, something which led most thinkers to the hypothesis of promiscuity. This was supported by Morgan, Bachofen, Engels.⁹

All of them concluded that family beginnings, as a form of social organization, are imperceptible in time. A major change became noticeable in this perspective with the accentuation of labour division when more pronounced differentiation of relations between the sexes occurred.

A. *Group marriage*, is the oldest form of the family. This type of marriage is based on kinship of blood. Morgan believes this type of marriage existed in certain parts of the world until the end of the nineteenth century. In some African tribes group marriage is still practiced.

In this type of family the father remains unknown, the mother is the one who has to care for the child's upbringing; she also calls sons and daughters the other group members. Herein lineage is maternal as in the case of short term monogamy. However marriage by group reflects a backward state of relations between sexes and a low level of socio-economic and cultural development.

B. *Polygamy* means a man's marriage with several women. This is also influenced by economic factors, representing in fact the possibility to provide for several wives. In terms of economic N. Petrescu says that "polygamy reflects not only the husband's prosperous state but also his intention to increase his workforce". So polygamy affects a man's material and social position but also paternity establishing. Polygamy does not depend so much on economic possibilities and aspirations of man as on traditions, habits and natural tendencies.

C. *Monogamy* is, unlike polygamy, the union of a man with one woman and appears as a primitive form of marriage. Monogamy is considered as the most natural union suitable to human species. It is the most sustainable form of union between sexes in the history of family and represents a real process of regulating the relations between sexes in transmission of wealth and name to offspring with definite paternity.

Over time this type of family has recorded various shades depending on the evolution of history the society; nevertheless its basic, very healthy principle remained that of monogamy where partners have only each other and not extramarital relationships.

"In contemporary society family has to adapt itself to the specific social phenomena, economic influences of progress, the effects of industrialization and urbanization, as well as all processes of change. Family has specific resources to adapt itself to new, to preserve its fundamental characteristics, its basic tasks, finding - at the same time - ways to keep pace with modernization."¹⁰

Family is the basic unit of society, as several sociologists named it, and hence follows that a society founded on something else other than family is an obsolete or unhealthy one.

⁹ Ibidem, p.16

¹⁰ Ibidem, p.18.

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