

The doctoral thesis **Adoption – Romanian and compared law** – is a theoretical and normative presentation of a very complicated and yet beautiful phenomenon - *adoption*. It can be considered complicated due to the various interfering factors, such as those political, human, social, cultural, and psychological, as a result of the huge responsibility to respect the best interests of the child; and beautiful, due to the final purpose of adoption, that is – offering a family to any child who is deprived of it. Although this phenomenon – as it was defined and as I also prefer to name it – has already been researched during the years by many experts, I decided to take a different approach to it, taking into account the permanent updating of the legislation in this field, and considering the fact that, after the issue of the body of law of 2004, no detailed study has been published in the field. The novelty of the present paper lies in the attempt to offer an overview analysis on adoption, and to present some noteworthy elements in the adoption process from other countries.

The doctoral thesis is composed of 10 chapters, with each chapter presenting the most significant elements in the field, based on the classical structure already established by earlier theorists, along with the latest provisions in the field.

CHAPTER I GENERAL CONSIDERATIONS ON ADOPTION

CHAPTER II DOMESTIC AND INTERNATIONAL ADOPTION. LEGISLATION

CHAPTER III LEGAL CONDITIONS IN ADOPTION

CHAPTER IV FORMAL PROVISIONS IN ADOPTION

CHAPTER V EFFECTS OF ADOPTION

CHAPTER VI NULLITY (ANNULMENT OF ADOPTION)

CHAPTER VII DISSOLUTION OF ADOPTION

CHAPTER VIII STATISTICAL DATA REGARDING THE ADOPTION

CHAPTER IX INTERNATIONAL CONVENTIONS ON ADOPTION

CHAPTER X ADOPTION REGULATED BY LEGISLATION OF OTHER COUNTRIES

As any approach to adoption must account for various factors, of which one of the most important are the psychological implications of the adopted child, the adoptive family, and of all those who interfere in this complex process of adoption, these elements will also be shortly analysed.

The present thesis proposes a more thorough research on an important issue – international adoption, a very controversial topic, which has also been very much influenced during the last years by all the political changes in our country. The thesis will not complete the study of adoption because, undoubtedly, there are still a lot of things to say and to analyse in this field.

The technical and scientific support of the thesis relies on a detailed analysis of theoretical, practical and legislative materials. The analysis of legislation and literature in this field aims at higher legislative implications that could facilitate the time reduction between the time an adoption application is submitted and the time a real family is made up of the adoptive parents and the adopted child.

I elaborated my study based on both the latest provisions in the field of adoption and child protection, and the old legislation, trying in some parts of the paper to make a comparison meant to highlight the evolution of this phenomenon.

Apart from the literature and judicial practice in the field, I also made an analysis of this phenomenon, especially at international level, using a relatively new and practical technique – the Internet. Also, as a novelty in the field, I studied the reflection of some provisions or their practical applications (*e.g.* some cases of adoption) in the Romanian and international press.

The study of other countries' legislation on adoption is a quantum leap, considering that an increasing number of countries have lately joined the Convention of Hague on the Protection of Children and Cooperation, a document which indicates the guidelines in international adoption. As presented in chapter X, the study of other countries' practical and theoretical approach to adoption could determine some very useful conclusions for a future improvement of the national legislation.

The research methods used in this paper were the usual ones, namely juridical, historical, systematic, statistical and dialectical.

The introduction of some practical cases - although many of them are judgments issued by different courts of law prior to the adoption of Law no.273 of 2004 regarding the legal status of adoption - comes to advocate the importance of juridical practice as a source of law and to determine the principle of a unitary practice for all courts of law.

There were also approached some psychological aspects of adoption, documented by studies published abroad.

Therefore, adoptees are most of the times children who suffer from various diseases determined by their mother's use and abuse of alcohol, drugs, cigarettes, and they are often underfed and virus-infected. Considering this, in the U.S.A. there has been an increasing interest toward creating a new branch of medicine, that is - the international adoption-related medicine.

Research studies in Great Britain, Israel, Poland, Sweden, and U.S.A. have found out that adoptees are 2-4 times more exposed to psychological treatment than ordinary people. According to the specialty literature, these children have usually been adopted when infants and integrated in families with no other children. The common behavior of these children is offensive, impulsive, aggressive and anti-social.

As there is already a great controversy going on especially abroad, about the confidentiality of adoption and its effects on adoptee, I found it particularly important to approach this theme in the present thesis. Many psychoanalysts have suggested that, if possible, adoption should be kept a secret from the child, at least until the latter reaches a certain maturity to facilitate understanding of the situation, or until he overcomes childhood problems. Parents must first of all help the child to understand that adoption is an issue that can be discussed. If parents adopt a baby, all discussion on adoption must start from a very early age, so that this information be easier assimilated. Some children may not even be very interested in the adoption details, so there is no need to insist on it, because this way adoption might not be perceived as a positive phenomenon, but it would induce the child the feeling of being in need of a special treatment. Studies have shown that 85% of adoptions are considered "successful" by the family members and their counsellors.

Just as I mentioned before, the doctoral thesis is structured in 10 chapters, and divided into sections and sub-sections, each analysing specific adoption elements.

Chapter I *General considerations on adoption*

This chapter introduces the notion of adoption, the historical evolution and its juridical nature. Those sections are of the utmost importance as they are the milestone for a good understanding of this phenomenon.

The notion of adoption has several connotations, depending on its uses in the legislation, the literature in this field and the juridical practice.

This chapter presents a timeline of the most relevant aspects in the evolution of adoption, from the old roman and Romanian law to the current provisions in the field. There are reviewed here all the legal provisions on adoption, from the Calimah Code to the Civil Code of 1864, the Law no.273 of 2004, and its latest amendment, G.E.D. no.102 of 2008.

As for the juridical nature of adoption, several opinions were analysed in this paper, dating back before the adoption of Law no.273 of 2004. Since the adoption of Law no. 273 of 2004, adoption has been considered a complex juristic act, as all deeds – be it related to Family law, Administrative law, and Procedural law – have the same importance in the completion of the juristic act of adoption. The current legislation considers adoption a body of judicial proceedings, vital for the completion of adoption, but of different juridical nature: legal deeds of those who must consent to the adoption; legal deeds of public authorities (*e.g.* the certificate issued by the General Direction for Social Assistance and Child Protection), which are all a prerequisite to the adoption assent; the consent to proceed to legal action in the adoption process, the Court's final judgment on adoption.

Thus, adoption is a complex juristic act, combining an administrative procedure and a non-litigating judicial one.

Chapter II *Domestic and international adoption. Legislation*

First section “Juridical settlement of domestic adoption” contains all the legal provisions on adoption and child protection.

Second section analyses the evolution of Romanian legislation in respect of adoption, the shortcomings of old legislation, and how the new body of law has improved certain aspects, such as: activity of various bodies involved in adoption, child's displacement abroad or in his native country, return procedure to his country of the unaccompanied child, interdiction to separate the child from his parents for economic reasons, introduction of the personalized protection plan, different aspects regarding the child abandonment in maternity hospitals, etc. Yet, the main drawback of these regulations is the quite long adoption proceeding.

A comparative research on domestic adoption procedure, ordered by the Romanian Office for Adoptions, has shown that the adoption legislation in our country is similar to that of other E.U. countries. In many cases, its provisions are even easier to enforce. The target countries of this study were: Great Britain, Ireland, the Czech Republic, Denmark, Austria, Germany, Italy and the Netherlands. But in practice, the adoption procedure is still considered long and bureaucratic. Moreover, many people continue adopting children illegally, thus obtaining undue benefits and revenues. The

sanction application is considered more than questionable, in lack of any Children's Court, specialized in child protection and adoption in the entire country.

There are though some provisions in favour of our country, that is – an adopter can also be a single person, with no age limit required.

As for the period of the child's entrusting prior to adoption, our country imposes the shortest one, namely 90 days. In other countries, this period can be extended to 6 months or even 3 years. In Romania, the evaluation period to get an adoptive family certificate is of 60 days, while in other states it ranges from 6 months to 2 years. In other countries, only families whose members have up to 35 years old can adopt infants, whereas in Romania there is no such restriction. This could explain why foreign families used to adopt in large number children from our country before the moratorium. Austria imposed the highest minimum age limit for adoptive families (28 years for the mother and 30 for the father), and in the Netherlands only persons under 40 years old can adopt children. Concerning the number of adoptions, in 2006, there were recorded 1272 such cases. In France, there are on average 800 adoptions every year, and in Finland and Belgium about 25-50 adoptions.

This chapter also includes an analysis of the current legislation on adoption, with an emphasis on its harmonization with international legislation.

My attention was also drawn by the legislative activities of the Romanian Office for Adoptions, which is about to promote a new draft law containing measures to facilitate the child integration in the adoptive family. This stipulates provisions on the practical matching between adopters and the adoptee entrusted in view of adoption or the child whose domestic adoption was already assented by the court. An allowance of 200 RON was established for each adopted child, along with a 3-month integration leave, and a monthly allowance. The objective of this leave is the adoptee's social and family integration, which represents a complex process of the child's incorporation, assimilation by the social and family environment, adjustment to the new life and family conditions.

Currently, our legislation on adoption does not stipulate any provision to facilitate the child's integration in his new family, which has practically brought about a series of difficulties in child integration and paternal obligations fulfillment. Furthermore, a similar measure, namely the granting of a paid leave for adoption, can be found in the legislation of other countries like: Germany, Belgium, Spain, Great Britain. There is also a new draft order in view of modifying the foster parent certification procedure.

A distinct section in this chapter deals with the international adoption and its legal framework in our country after 1990, including the adoption of the most important provision after the moratorium imposed by G.E.D. no.121 of 2001, that is – the provision of art. 39 of Law no. 273 of 2004, which stipulates that an international adoption can be completed only in case the adopter or one of the spouses in the adoptive family is the adoptee's grandparent.

A highly important issue in the old legislation, still unsettled by the legislation adopted in 2004 and further on, is the absence of binding obligation to entrust the child in view of international adoption. The decreasing number of foreign persons entitled to adopt a child from Romania has not solved the problem at all. *De lege ferenda*, I would like to propose this binding obligation to entrust the child in view of adoption, even in case of an international adoption.

The international adoption moratorium is a section dedicated to the entire process after the adoption in 2001 of the Governmental Emergency Decree no. 121 (modified by Emergency Decree no.7 of 2003 concerning the extension of the deadline stipulated by this provision) on the temporary suspension of all international adoptions as a result of the E.U. response to child trafficking or illegal adoptions. Before the adoption banning of 2001, Romania had held the pole position among the former communist countries on the international adoption market, where child was considered merchandise that brought about considerable amounts of money. The increasing corruption in this field prevented many children from being adopted, with diverse and severe consequences for them.

Numerous articles from the national and international press were used in this thesis, which depict real cases of flagrant adoption law infringement in our country. Also, there were mentioned all insistencies from those countries whose citizens have expressed their wish to adopt Romanian children and could not do that due to the moratorium and then to the modification of the legislation in force.

The principles of adoption are minutely analysed in Chapter II, Section V, with an emphasis on the most important of them all, that is – the principle that the best interests of the child must be paramount, which is the milestone of the adoption process and generates all the other principles. Therefore, art. 2 of Law no. 273 of 2004 stipulates the enforcement of the following principles:

1. The principle that the best interests of the child must be paramount
2. The principle of the child's entitlement to be raised and educated within a family environment
3. The principle of continuity in the child's education
4. The principle of the child's entitlement to have access to information and be involved in decision-making depending on his/ her age and maturity
5. The principle of celerity in any adoption-related legal proceedings
6. The principle of confidentiality on the personal data of the adoptive parent or, if the case may be, of the adoptive family, and on the identity of the biological parents (this principle was introduced by G.E.D. no.102 of 2008, which amends and completes Law no.273 of 2004, as a response to the decision no. 369 of 20.03.2008, issued by the Constitutional Court).

Chapter III *Legal conditions in adoption*

This chapter tackles with different other aspects such as: categories of children who can be adopted, based on a personalized child protection plan and its final objective, and also the legal conditions in adoption, which can be categorized as follows: legal conditions regarding the person of the adopter, the person of the adoptee, and both the adopter and the adoptee.

Thus, several categories of children can be legally adopted: children whose parents irrevocably consented to adoption (considering as well the new provisions imposed by G.E.D. no. 102 of 2008), children whose parents are deceased, are placed under interdiction, or whose identity is unknown.

As a distinct section, Section II outlines the requirement that the best interest of the child must be paramount, considering that no competent authority shall pronounce an adoption unless it ascertains that this is in the best interest of the child.

The legal conditions in adoption can be thought of as certain circumstances favoring the adoption granting, and are grouped differently as compared to the impediments in adoption, which are negative legal conditions. Therefore, Section III analyses the legal provisions regarding the person of the adopter, which according to Law no.273 of 2004, are the following: consent, legal capacity, sex, age, compliance with the moral warranties and material requirements needed for the complete and harmonious development of adoptee`s personality, special provisions regarding the persons residing in other countries who wish to adopt a Romanian child. For comparison, this section also contains some requirements to be fulfilled by an adopter in France.

Section IV describes the different legal provisions regarding the person of the adoptee: consent of the adoptee, consent of the adoptee`s biological parents, adoptee`s age and medical condition, siblings to be adopted together and other legal provisions to grant the international adoption. This section also contains some requirements to be fulfilled by an adoptee in France.

Section V deals with several other stipulations like the legal age difference between an adoptee and an adopter, or different impediments in the completion of adoption, such as: the impediment resulting from kinship, spousal relations, a prior adoption, the child`s adoption by several persons, from the adopter who suffers from a mental illness or disorder, and the lack of confirmation of the adoption application submitted to the Romanian Office for Adoptions.

All these legal conditions and impediments in adoption are analysed by means of various cases presented in the old or current judicial practice.

The first section of **Chapter IV Formal provisions in adoption** is an analysis of the entire range of legal deeds required to ensure the lawfulness of adoption, from those enclosed to the evaluation application submitted to obtain the certificate of adopter, to those filed with the petition of adoption. Also, an entire series of other deeds were herein enumerated, which must be enclosed to the applications submitted to the Romanian Office for Adoptions in order to complete an international adoption. The provisions of Law no.273 of 2004 were completed in this chapter with those of Law no.105 of 1992 on the regulation of legal relations in the Private International Law, which shows that any adoption shall comply with the legislation of the country on whose territory it is completed (“*locus regit actum*”).

All legal and formal conditions required to legally complete an adoption, as well as the lack of impediments in adoption shall be met on the completion day of each legal deed and on the day of the adoption judgment issued by the court of law.

The legal completion of adoption - be it domestic or international, involves a series of administrative and judicial proceedings.

The administrative proceeding is analysed in Section II and involves the preparation of a wide range of legal deeds, issued by specialized bodies from public administration. The first step is the commencement of the domestic adoption proceeding, which can occur only in case some other protection measure was unsuccessful, e.g. family reintegration based on a personalized protection plan (Law no.272 of 2004 stipulates that the personalized protection plan is a document aiming at planning services, benefits, and special child protection measures based on the child`s and his family`s

psycho-social evaluation, in view of reintegrating as soon as possible a child who had been separated from his family in a stable and permanent family environment).

The General Direction for Social Assistance and Child Protection (G.D.S.A.C.P.) shall make proof of the fact that following the implementation of the personalized protection plan, the child's adoption is the only sustainable solution.

The person or persons who wish to adopt a child must obtain a certificate of adoptive family. These persons must submit a written application, in compliance with art.1 of the Standards of Methodological Rigour for the enforcement of Law no.273 of 2004, adopted by G. D. (governmental decree) no.1435 of 2004. G.D.S.A.C.P. will make an evaluation of the moral warranties and material resources of the adopter or adoptive family, following the application submission in this respect. According to art. 5 of Law 273, the certificate is not required in case the adoptee is a person over 18 years old, or the adopter is the spouse of the child's natural parent or the spouse of the child's adoptive parent.

G.D.S.A.C.P. shall notify the jurisdictional court to commence the domestic adoption proceeding within 30 days from the completion of the personalized protection plan, pursuant to art. 22 paragraph 3 of Law no.273 of 2004. The Direction shall verify every 3 months the grounds which have entailed the special child protection measures. If the case may be, the Direction can review the personalized protection plan.

The court of law, especially the jurisdictional court from the child's domicile, shall assent to the commencement of adoption proceeding by irrevocable court order. The assent to commence a domestic adoption proceeding shall comply with art. 23 of Law no.273 of 2004, only in case the personalized protection plan ascertains the necessity of the domestic adoption, provided that the child's biological parents or guardian have legally consented to it, and the court of law holds that adoption is in the best interest of the child. The consent of the child who is already 10 years old is also mandatory. In some cases, the court may decide against the child's will, on condition the decision is strongly motivated. If the petition for the adoption commencement is admitted, the court order shall contain the adoption consent of both parents, of only one parent, of the guardian, or, if the case may be, a substitute for the consent, under art. 13, and shall assent to the commencement of the domestic adoption proceeding (G.E.D. no.102 of 2008 to amend Law no.273, chapter 4, art. 23, paragraph 21). If after the irrevocability of the court order the grounds which had prevented one of the parents to consent to adoption disappeared, a petition for a judicial review can be filed (G.E.D. no.102 of 2008, chapter 5, art.231).

The second stage in the administrative proceeding is the child's entrust in view of adoption for a time span of 90 days, to the person or family who wish to adopt him. The adoption services shall determine the compatibility between the adoptee and the potential adoptive family, based on the child's needs and opinions. The person in charge of the case will identify and register the child's needs and opinions (pursuant to Order no. 45 of 2004 to approve the minimal binding standards on domestic adoption proceeding).

Finally, an adoptive family shall be selected based on the formal compliance. Art. 19 of the Standards of Methodological Rigour of Law no.273 stipulates that the selection proceeding of the adoptive family must include information on the child's age, sex, nationality, ethnic group, race, temperament, special needs, medical history, along with personal data of the biological parents and of the persons who wish to adopt. In the U.S.A., a successful adoption depends largely on the matching between the child and his

adoptive parents. Adoption agencies require that both parties –adoptee and adopter – shall match psychologically, emotionally and culturally. Of the utmost importance are also the religious and racial characteristics. The Child Welfare League of America (CWLA) considers in its Standards for Adoption Service (SAS) that the matching between adoptee and adoptive family is an important stage in the adoption process.

Under the provisions of art. 26, paragraph 2 of Law no.273 of 2004, the Direction shall be in charge of evaluating the possibility to entrust the child primarily to a relative of the expanded family, a professional foster parent or to any other person who takes care of the adoptee. In case no such application has been submitted, the Direction shall identify a potential adoptive family registered in the Romanian Office for Adoptions in the child's jurisdiction. The child's entrusting in view of adoption is decided for 90 days by the court of law in the jurisdiction of adoptee's domicile, according to art. 28 of Law no.273 of 2004. The entrusting shall not be completed in case an 18-year old person is adopted by those who have raised him until that age, or by the spouse of his biological or adoptive parent, in case a child is adopted by his guardian or foster parent after 90 days of guardianship.

The judgment of the adoption petition is pronounced after previously summoning the jurisdictional Direction governing over the child's domicile and the adoptive family's domicile (point 6 of G.E.D. no.102 of 2008 to amend the Law no.273 of 2004 - art.28, paragraph 1). The adoption judgment (adoption completion) can be appealed, and its submission shall suspend its enforcement, according to art.61, paragraph 5 of Law no.273. If the child cannot fit in his new family, or other reasons prevent the adoption from being completed, the Direction shall inform the court of law, in order to revoke or extend the child's entrusting, in compliance with art. 32, paragraph 1 of Law no.273 of 2004.

The adoption petition, along with all the legal acts that fall under the provisions of art.35, paragraph 2 (child's birth certificate, medical certificate on the child's health condition, valid certificate of the adoptive family, the irrevocable court order of child entrusting in view of adoption, the adopters' birth certificates, marriage certificate, criminal records, medical certificates, irrevocable court order to commence the domestic adoption proceeding), and the final report of the Direction are altogether a prerequisite to the case judgment. From the procedural perspective, the petition is non-litigating. All the arguments supporting this issue were minutely analysed within the present doctoral thesis.

In compliance with G.E.D.no.102 of 2008, point 8, art.36, paragraph 1, subpoenas shall be sent to the jurisdictional Direction governing over the child's domicile and the adoptive family's domicile, and to the adopter or adoptive family. In case the adoptee is a person over 18 years old, subpoenas shall be sent only to the adoptee and the adoptive family, according to G.E.D.no.102 of 2008, point 8, art.36, paragraph 2. If the adopter is the spouse of the child's biological parent, only the adopter and the adoptee's biological parents shall be summoned (G.E.D.no.102 of 2008, point 8, art.36, paragraph 2).

Pursuant to art. 61, paragraph 5 of the Adoption Law, the adoption judgment (adoption completion) can be appealed, and its submission shall suspend the order enforcement. Within 5 days from the irrevocable court order to entrust the child in view of domestic adoption, the Direction shall notify in written form the biological parents on the adoption judgment, according to art.37, paragraph 2.

The Direction governing over the child's domicile shall monitor and make reports every 3 months on the evolution of the child and the relationship with his adoptive parents for a period of at least 2 years from the adoption judgment. These reports are provided by the Adoption Service – After-adoption Department within the Direction. A very important aspect - yet not met with international adoption, is that in some cases and based on the findings and conclusions of the after-adoption monitoring, this process may continue even after the legal period, at the proposal of the person who is in charge of the case, provided that it is in the best interests of the child and receives the approval of the Direction.

For comparison, another element was analysed in the paper, that is - the adoption proceeding stipulated by the French Civil Code.

Likewise, for a better understanding of the administrative proceeding, I found it very important to outline the duties of the main public administration authorities which have an influence on the adoption process (General Direction for Social Assistance and Child Protection, Romanian Office for Adoptions, National Child Protection Authority, Commission for Child Protection, National Agency for Family Protection, Child Protection Coordination Board, Public Services of Social Assistance, Romanian private adoption-accredited Bodies, private foreign organizations, General Register Office).

The judicial proceeding involves the preparation of all necessary documents to be presented before the civil court, which eventually decides upon the adoption. This special proceeding shall regulate aspects regarding the competence of different courts of law in the matter of adoption, the proper judgment of the adoption petition, the decision-making to entrust the child in view of adoption, the adoption effects.

Law no.273 of 2004, art.61 stipulates that Romanian Courts of law have the competence to judge all petitions in their jurisdiction provided that at least one of the parties is domiciled in Romania. According to art. 63, paragraph 1 of Law no. 273 of 2004, the judgment of petitions under art. 61, paragraph 3 is made by specialized judge panels. These are made up of a judge in the first instance and 3 judges in the action of appeal. Pursuant to art 63, paragraph 1, the petition adjudication in the Board Room is an exception from the provisions of art 336, paragraph 1 of the Code of Civil Procedure, which stipulates that the Board Room shall be used to judge only the appeal of non-contentious matters.

The petitions under Law no. 273 of 2004 shall be judged by the court which retains jurisdiction over the adoptee's domicile. In case no jurisdictional court can be named to judge these matters, they shall be attributed to the Bucharest Court of Law, according to art.61, paragraph 3 of the same law. The prosecutor's participation is mandatory in judging on the merits or in appeal, as compared to the old legislation which stipulated the prosecutor's presence only in judging matters of adoption assent.

At the same time, the adoption-related duties of the trial court were herein enumerated.

The objections raised by parties during the civil trial are liable to be qualified as objection to proceeding or *exceptio in rem*, with regard to the matter that is subject to objection. The entire pleading falls under the law, which stipulates its terms and conditions. The decision pronounced by the court is a judgment that can be challenged in court by ordinary or extraordinary stages of review, with one exception – that is, these judgments can be challenged only by review and not by appeal. This provision of art. 61,

paragraph 5 of Law 273 of 2004 is part of the principle of celerity in any adoption-related legal proceeding. According to art. 299, paragraph 2, of the Code of Civil procedure, the action of review falls under the competence of the Court of Appeal. This judgment brings about additional rights, as it facilitates a new juridical situation which modifies both the child's and his future parents' civil status, through new family relationships.

Section III focuses on the administrative and judicial procedures in international adoption. A very important issue has been raised in specialty literature, that is – the restriction of the number of potential adopters, with an emphasis on the exclusion from this category of the biological parent's spouse, in case their domicile is abroad. The introduction of this category of persons who can adopt internationally is natural and normal considering that the child would never have a real family, thus determining the infringement of the principle that the best interests of the child must be paramount. Therefore, the introduction of this provision in the future amendment of the adoption law shall be proposed *de lege ferenda*.

The jurisdictional General Direction from the child's domicile must demonstrate that it has searched for an individual or adoptive family from the extended natural family.

In order to assent the international adoption, the Romanian Office for Adoptions shall issue a certificate which certifies that the international adoption complies with the provisions of the Convention of Hague (art. 47 of Law no.273 of 2004).

The adopted child must be domiciled in Romania, and his adopters can be, pursuant to the latest regulations, only the child's grandparents, who live abroad. There are certain conditions to be met, along with the principle of the international adoption subsidiarity to the national adoption. The court of law may assent to the international adoption only after the General Direction for Social Assistance and Child Protection files a report on other similar petitions received from the child's relatives, up to the 4th degree, and domiciled in Romania.

The petitions of the individuals or families domiciled in other country, which is signatory to the Convention of Hague, shall be submitted to the Romanian Office for Adoptions through the central competent authorities of that state or its accredited organizations, and in case the country is not a member of the Convention of Hague, they shall be submitted to the Office by the different authorities in charge of the international adoption or by accredited and authorized organizations in the receiving state. As far as the competence is concerned, it belongs generally to the court, and in particular to the jurisdictional court of law from the adoptee's domicile, or in case jurisdiction cannot be determined, the matter shall be judged by the Bucharest Court of Law.

If the adoptee is a foreign citizen domiciled in Romania, the foreign adoptive family shall comply with the same procedure as with international adoption, stipulated by Law no.273 of 2004. In this case, Romanian courts of law do not retain exclusive jurisdiction.

Further to the irrevocable judgment delivery, the Romanian Office for Adoptions shall issue a certificate which certifies that the adoption complies with the provisions of the Conventions of Hague.

The court judgment which assents to the international adoption can be challenged by appeal, which shall suspend its execution. The child shall be taken to the adopters' country only after the judgment has become irrevocable. The adoptee shall be accompanied by the adopter or adoptive family in safety conditions depending on the

child's needs (art. 48 of Law no.273 of 2004). In case the individual who adopts a child domiciled abroad is a person or family with his own domicile in Romania, the adoption shall be qualified as international. In this situation, the provisions to comply with are those of Law no.105 of 1992, which regulates relations in private international law, pursuant to art. 42 of Law no.273 of 2004. The provisions of Law no. 105 of 1992 shall also be applied in case a person over 18 years old, domiciled in Romania, is adopted by a person or family domiciled abroad, on condition that the adoptee has been raised by the adopters during his childhood.

Chapter V Effects of adoption approaches various aspects such as: filiation and adoptive kinship, parental rights and obligations, legal maintenance obligation, rights and obligations of adoptee, citizenship, full name of adoptee, domicile and residence of adoptee, entitlement to succession, adopter's obligation to offer the adopted child all information on adoption, impediments to marriage. Some examples of judicial practice were also introduced in this chapter.

The effects of international adoption make the object of a distinct section and are subject to Law no.105 of 1992, and also to some provisions stipulated by the international treaties signed by Romania. The main effect of adoption is the creation of kinship between adoptee and his descendants on one hand and adopter and his relatives on the other hand. This effect is constituting, while the dissolution of the natural kinship on the day of adoption assent is extinctive. A special case in this respect is when the adoptee and adopters are relatives. The most relevant example is that of grandparents who adopt their own grand-child. In this situation, the adoptee and his descendants become by adoption relatives with the adoptive parent and his kindred, although the adoptee is already naturally involved in kinship with them. Yet, the change lies in the degree of kinship, e.g. the biological parent of 1st degree kinship becomes 2nd degree relative (adoptee's brother by adoption). Adoption does not affect the filiation between adoptee and his descendants.

Paternal child protection involves two aspects: personal and patrimonial, that is - protection of the child as a person, and his patrimonial assets.

Art.10, paragraph 2 of the European Convention on the Adoption of Children, signed in Strasbourg on April 24th 1967 stipulates that in his relation with the adopter, adoption grants the adoptee all the rights and obligations of any kind of a rightful child toward his parents.

Art. 6 of Law no. 21 of 1991, republished, on the Romanian citizenship, stipulates that Romanian citizenship shall be granted to any adopted child, be it a foreign citizen or without citizenship, only if the adopters are Romanian citizens. In case only one of the adopters has a Romanian citizenship, adoptee's citizenship shall be decided by common consent, and in case of disagreement, this aspect shall be decided by the jurisdictional court. If the child is at least 14 years old, his consent is also required. In case the child is adopted by a sole adopter, who is a Romanian citizen, the adoptee shall acquire the adopter's citizenship. If the minor Romanian child is adopted by foreign citizens, on their demand, the child shall lose his Romanian citizenship.

Art. 53 of Law no.273 stipulates that by adoption, the adoptee shall acquire the adopter's name. In case the adopters are a married couple or a person who adopts his spouse's child, and the two bear the same name, this name shall also be given to the

child. In case the two spouses do not bear the same name, the court of law shall request a name to be given to the child after adoption.

In France, for instance, by lack of a common statement of the parents before the General Register Office on the name to be given to the child, the latter shall take his father's name.

A very controversial issue in the doctrine has been the name to be taken by a person who is adopted after getting married. Thus, if the adoptee is a married person who bears a common name during marriage, the adopted spouse might be given his adopter's name, with the consent of the other spouse. If the adopted spouse bears the name acquired by marriage prior to adoption and finally gets divorced and loses this name, the adoptee might be granted the family name acquired by adoption. The entire proceeding must be supervised by the court of law which assented to adoption. The same Law no. 273, by art. 53, paragraph 3, stipulates that the adopter or adoptive family may even request the change of the adoptee's first name. If the adoptee is at least 10 years old, his consent is necessary in this matter.

Law no. 273 of 2004, art.30, paragraph 1 also refers to the adoptee's domicile, that is – during the child's entrust in view of adoption, his domicile shall be that of his adopter or adoptive family.

Just like a natural child, the adopted child has the same rights to succession when it comes to inheriting his adoptive parents or his adoptive parents' relatives.

Art. 52 of Law no.273 of 2004 stipulates that adopters shall inform the child on his adoption as soon as adoptee's age and maturity allow it.

At the request of the adopters, the adoptee, his spouse, his descendants, or any representative of some medical institution or hospital, the court might be asked to reveal the identity of adoptee's natural parents, before the child's maturity, only for medical reasons.

An important aspect must be mentioned here, as after the assent to adoption, an impediment to marriage arises in the adoptee's kinship with his natural parents, that is - the adoptee and his descendants cannot marry their biological kindred.

The present chapter is also marked by examples of court judgments regarding the effects of adoption in general and in France particularly.

Section II describes the effects of international adoption. The adoption of a child domiciled in Romania by adopters residing in foreign countries has the same effects as a domestic adoption. If the adoptee resides abroad and is adopted by a Romanian family, the effects of adoption comply with the adopter's national legislation. The Romanian child who is adopted by a foreign citizen shall lose Romanian citizenship, if the Court ascertains that the child acquired his adopters' citizenship according to Romanian Law no. 21 of 1991. There are also some other international treaties signed by Romania, which stipulate precisely the law to apply when it comes to the effects of international adoption. Art. 26 of the Convention of Hague states that an international adoption acknowledgment involves acknowledgement of a filiation between adoptee and his adoptive parents, the adopters' paternal responsibility toward the adoptee, the dissolution of any filiation between the child and his biological parents, prior to adoption, if adoption creates this effect in the state which granted it.

Chapter VI Nullity (Annulment of Adoption) contains some provisions regarding this penalty which dissolves the juridical deed when this was signed without considering its validity conditions. Law no.273 of 2004 states that adoption shall become null in case it was concluded in other purpose than to protect the best interests of the child, and if it infringed the legal and formal provisions covered by law.

Section II analyses various types of nullity and the causes which determine them.

Thus, absolute nullity is established in the following situations: lack of consent of the child's biological parents or guardian, lack of consent of the adopted child who is 10 years old, lack of consent of the adopter, lack of legal conditions to be fulfilled by the adopter, adoption of a person in full capacity of action who has not been raised by adopter, adoption between siblings, separate adoption of siblings by different individuals or families if it is not in their best interest, adoption between spouses, adoption of a child by his biological parents, adoption of a child by two persons who are not married, adoption assented without accounting for the age difference condition between an adoptee and an adopter, adoption of children who have not been previously entrusted in view of adoption, adoption by persons who do not comply with the moral warranties and material requirements needed for the complete and harmonious development of adoptee's personality, lack of medical certificate stating the adoptee's medical condition, adoption by persons who suffer from mental illness or are mentally retarded, adoption completed without stating its grounds.

Relative nullity shall be pronounced in the following situations: lack of consent of adopter's spouse, mistaken physical identity of adoptee or adopter, mistaken legal deed of the adoption, *mala fide* (bad faith) of the persons invited to consent to adoption or of third parties, violence.

A distinct section analyses the competence of the Court in adoption annulment, because during the years, there have been various opinions on the body entitled to have competence over the adoption nullity. The Supreme Court has intervened in this dispute and under art. 35, point 2 of Law no.58 of December 27th, 1968 regarding the court setting, and by the guiding decision no.2 of February 17th, 1967, finally held that the competent body to declare the adoption nullity should be in all cases the court of law. Law no.273 of 2004 regarding the juridical system of adoption states, as previously mentioned, that petitions stipulated by the current law enter the competence of the jurisdictional court from the adoptee's domicile (art.61, paragraph 3). Those cases for which no jurisdictional court can be established shall be judged by the Bucharest Court of Law. The petition for adoption annulment falls under the provisions of administrative proceeding.

The effects of adoption nullity are discussed in Section V under the following aspects: kinship, paternal rights and obligations, legal maintenance obligation, full name of adoptee, domicile, residence and citizenship of adoptee.

The nullity of international adoption can be pronounced only if the law which governs the effects of adoption allows it. Law no.105 of 1992, which regulates the relations in the international private law states that formally, adoption nullity shall comply with the legislation of the state which granted adoption. As for the legal conditions, they fall under the law governing them.

Chapter VII Dissolution of adoption approaches this penalty by comparison with the old legislation, offering numerous examples from the juridical practice prior to the adoption of Law 273 of 2004. Thus, adoption dissolution was some sort of compensation in those cases where after the adoption assent, it came out that its continuation would no longer be in the interest of the adoptee.

Art. 54 of Law 273 of 2004 stipulates that adoption can be terminated by dissolution (or following its nullity). The only situation when the Romanian court of law cannot dissolve an adoption is in case the adopter or adoptive family is deceased. In this case, the court can assent to a new adoption. A particular issue debated by the specialty literature has been the adoption dissolution following the death of only one parent, be it biological parent or his spouse. As such, if the deceased parent is the adoptive one and the surviving parent - biological parent - later on remarries, the latter can file a petition for adoption dissolution with a view to conclude another irrevocable adoption. But if the deceased parent is the biological one and adoption is dissolved because the adoptive parent remarries, all kinship between adoptee and his biological parent's relatives shall cease. If a new adoption was not concluded after the death of the adoptive parents, the adoption shall not be dissolved.

Even though there is a only one case stated by the new legislation when an adoption can be dissolved, it is highly interesting to study how judges had approached this aspect prior to the adoption of Law no.273 of 2004. Furthermore, all cases prior to the adoption of the body of law of 2004 are still being judged at present, taking into account the provisions of that time. Therefore, numerous examples of juridical practice on adoption dissolution were presented within the present thesis.

Different aspects like grounds for adoption dissolution (with practical examples), persons entitled to initiate the adoption dissolution, and competence of the Court in the adoption dissolution were all discussed in this chapter.

The next section deals with the effects of adoption dissolution, describing the following aspects: kinship and filiation, legal maintenance obligation, full name of adopted child, domicile and citizenship of adoptee, paternal rights and obligations, entitlement to succession. If adoption is dissolved, and the court decision remains irrevocable at the date of a new adoption, the child shall no longer benefit from his right to inheritance, to bear his parents' name, and the right to all other effects of adoption which cease once with the adoption dissolution.

The dissolution of international adoption is not possible unless foreign legislation allows it, and thus, basically, dissolution is mostly applied with domestic adoption. Although the international adoption has a subsidiary character as compared with the domestic one, and it is restricted by the provisions of Law no.273 of 2004, there have been many petitions filed for the dissolution of this kind of adoption.

Section VII tackles with different aspects (resolved or pending) of the court proceedings in judging petitions for adoption nullity and dissolution. I found it necessary to approach all these aspects, considering that the settlement of these problems determines the reduction of all legislative shortcomings in the matter of adoption.

Chapter VIII Statistics regarding the adoption presents some statistical data on the number of adoptions concluded in some counties from Romania, mostly in recent years, along with some studies on the number of adoptions in other states.

Chapter IX International Conventions on Adoption is a very vast chapter which treats adoption as a fundamental human right.

International adoption, as a means to protect the child who cannot be offered a family in his native country, must aim at adoptee's best interests only, without involving moral or material interests of other persons, be it adopters or public or private institutions. In order to implement a solution of this kind, the countries worldwide have set a legal framework by adopting and ratifying various international conventions, agreements treaties and covenants, meant to harmonize all legislations, and particularly to avoid rendering more difficult the adoption process, which would harm to adoptee's interests.

The Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and other international conventions on the human rights in general, and the rights of the child in particular are all official documents which focus on child protection and adoption as a measure of this kind.

Likewise, a particular emphasis was put on the international conventions on adoption, to which Romania is signatory: European Convention on the Adoption of Children (Strasbourg), Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption (Convention of Hague), Convention between Romania and Italy on child adoption, Treaty between Romania and the Republic of Moldova on legal counseling in civil and criminal law, Treaty between Romania and Poland on legal counseling and judicial relations in civil actions, Treaty between Romania and the Czech Republic on legal counseling in civil law.

Chapter X Adoption regulated by legislation of other countries is a study on the international adoption legislation in other countries, which were categorized as follows: E.U. countries, other European countries, African countries, Asian countries, American countries, U.S.A. and Canada. A corner point was established once with the Convention of Hague, which imposed a legislation to be enforced by the signatory states. Many of these provisions on adoption are very much like those of our country. Other aspects were herein analysed, such as: legal and formal conditions in adoption, corresponding charges, juridical nature of adoption, post-adoption requirements, adoptive parents' residence in that country during the adoption proceeding, various bodies in charge of adoptions.

The national legislations of other countries have different approaches to adoption. This diversity is determined by family traditions, religious conceptions, history, social and political context of all those states. For instance, there are some countries which require that the race or/and religion of adoptive parents be the same with those of adoptee. Yet, the lawfulness of all these restrictions has seriously been questioned recently.

As a legal measure to protect abandoned children, adoption has a fairly recent tradition in Europe. While the adoption legislation for the child's benefit was introduced in the U.S.A. in the mid-19th century, some of these laws were not adopted by Europeans than centuries later. For example, the first law of Sweden – *Swedish Adoption Act* was adopted in 1917, but it was only in 1959 that the adopted child became a rightful member of the adoptive family. In Germany, more precisely, the Federal Republic of Germany,

the modern adoption laws were not implemented before 1977. Yet, the inter-race adoption is quite recent. After World War II, a lot of American families adopted orphans, especially from Asian countries. In other countries, domestic adoption regulations are organized in a variety of governmental decrees, such as: Civil Code in Germany, Austria and the Netherlands, or specific laws in this matter, like in Great Britain.

The present thesis demonstrated that there are some countries which require the adopters' mandatory residence in that country during the international adoption proceeding (Greece, Spain). As a particular aspect to be mentioned, in some countries people can adopt internationally only disabled children or several siblings at the same time, due to the reduced number of adoptable children in that country.

The legislation of other countries requires the adoptive families to pay adoption charges, some of which really high, while other countries only impose notary public fees or lawyer and translator fees.

In some countries, international adoption is irrevocable (Nigeria, Tunisia).

Adoption is pronounced by court judgment (Slovakia, Russia, Ukraine, Tunisia), concluded by contract (China, Ethiopia, Austria), or by administrative deed (Vietnam, Guatemala, Hungary) (or the special case of Bulgaria, where not long ago, adoptions were concluded by direct negotiation between adoptive families and orphanage managers).

About the structures responsible for adoption, there is an administrative structure to select potential adopters, their matching with the adoptee, and adoptee's previous entrust, and a court structure, with decision-making attributions. Locally, most countries have social services in charge of adopters' selection and evaluation (Great Britain, Denmark, Ireland); in other countries, these responsibilities fall on private bodies involved in adoption. In Italy, the evaluation and certification of potential adopters is made by the court based on the social services evaluation.

Regarding the child's consent to adoption, the minimum age for the child's opinions to be taken into account ranges from 12 years old (Netherlands, Denmark) to 14 years old (Germany), or whenever the child is mature enough to understand the effects of adoption (Czech Republic); in Italy, the opinions of the child under 12 years old are also considered, depending on his maturity.

As for the interdiction of adoption, in the Netherlands, the persons who cannot legally adopt are those who are not allowed to get married or grandparents who cannot adopt their own grand-children; in Germany, a child cannot be adopted by his legal parents; in Austria, the child cannot be adopted by persons who are officially in charge of managing his property, gay couples or persons who have sworn to stay celibate.

Most of the analysed countries also have some legal provisions on the evaluation of potential adopters. There are some countries where the medical certificate must be backed by an extremely detailed medical condition evaluation. The child's matching with the adoptive family is explicitly included in the domestic adoption legislation of some countries (Italy, Great Britain, Germany). The period of the child's entrust in view of adoption ranges from 3 months in the Czech Republic and Great Britain, to 6 months in Ireland, 1 year in the Netherlands, and 3 years in Italy for single persons.

The thesis closes by offering some conclusions on this real institution of adoption, which has determined thousands of pages of specialty literature written both in our country and abroad.