

BRIEF CONSIDERATIONS REGARDING THE SETTLEMENT OF THE ADOPTION THROUGH A LEGAL DECISION OF THE MINOR (APPARENTLY) ABANDONED BY THE MOTHER [1]

Associate Professor Mădălina-Elena MIHĂILESCU, PhD.

Faculty of Law and Administrative Sciences, "Dunărea de Jos" University of Galați,
Romania

madalina.mihailescu@ugal.ro

Abstract:

The best interest of the child / minor is often invoked by both the defenders and by the courts in cases involving adoption. Moreover, art. 2 par. (2) and (3) of law no. 272/2004 mentions that this type of interest "it is imposed also in connection with the rights and obligations of the child's parents, other legal representatives, as well as any persons to whom it has been legally placed" and "is limited the child's right to a normal physical and moral development, to socio-affective balance and to family life. That is why it is an extremely sensitive issue to balance, as a result of the analysis of these issues, the legal possibility for this child to be taken over by an organized, united family, which will provide him an environment conducive to his mental and physical development that of maintaining contact / remaining with his forest parents, especially the mother, even if she finds herself in a difficult life situation that makes it impossible for her to keep the permanent contact with the minor.

Keywords: *minor, adoption, mother, interest, decision.*

Introduction

In the system of the Family Code, adoption was a means of protecting the child, as art. 66 of the Family Code laid down the principle that the adoption could be approved only in the interest of the adopted. Adoption was conceived as a means by which the child could receive the family he or she needed [2], with the rule that only minors could be adopted [3],[4].

According to article 263 of the New Civil Code entitles "The best principle of the child" provides in paragraph. (1) the fact that *"Any measure concerning the child, regardless of its author, must observe the best interest of the child"*.

Although not expressly provided for in the European Convention on Human Rights, the best interest of the child is a determining factor in the settlement by the European Court of Human Rights (ECHR) of cases in which children are involved. They fall under the scope of the right to private life and family relations (art. 8 of the European Convention) and may cover relations between parents and children after divorce, the

preservation of personal ties and direct contact with both parents, the right of visiting the minors, the conditions adoption, assigning the child's name, heirship, the rights of the child born out of the marriage, etc. [5].

Family reunion has specific regulations in European Union law (art. 21 TFEU, Directive 2004/38, EU Charter of Fundamental Rights). Without going into details, we emphasize that art. 24 of the EU Charter of Fundamental Rights. must be read as having the same content as art.8 of the European Convention and thus, in all actions regarding children, taken by public authorities or private institutions, the best interest of the child must be taken into account. Every child has the right to maintain normal personal relations with his or her parents, except in cases where this is contrary to his or her interests"[6].

Since the case analyzed by us in this article examines the opening of the adoption procedure, we will mention the fact that "adoption is a complex phenomenon, with legal and psychosocial implications. From a social point of view, adoption is a complex phenomenon, focused on the child, concentrated on integrating him into a family and providing him with a home that will help the child develop harmoniously from a physical, emotional and intellectual point of view"[7].

According to the new legislation, legal experts are no longer the only ones who decide whether adoption is a suitable solution for a child or not. The specialists of the General Directorate for Child Protection suggest national adoption as a solution for the child in question, based on a new, mandatory work tool, i.e. the individualized child protection plan, for well-founded and thoroughly analyzed reasons [8].

In the light of the new regulations, the involvement of the courts in all phases of the adoption process ensures the "transparency" necessary to verify all the actions of the factors involved. [9].

The opening of the adoption procedure established by the court at the request of DGASPC and the best interest of the child

The principle of the best interest of the child will prevail in all actions and decisions concerning children, undertaken by public authorities and authorized private bodies, as well as in cases decided upon by the courts, and the principle of the best interest of the child is also compulsory in relation to the rights and the obligations of the child's parents,

other legal representatives of the child, as well as any people to whom the child was legally placed.

The best interest of the minor is a complex notion related to the particular situation of each minor, taking into account his or her age, the possibility of the parents to ensure a good physical, intellectual and moral development, the mutual attachment of the parents and the child, the care shown towards the child during cohabitation until the moment of initiating the action to open the adoption procedure, ensuring the material resources for a decent living, etc.

Jurisprudence correctly noted that "The measure of adoption is the last of the measures of alternative protection to which the minor is entitled in the event that he or she cannot be left in the care of the natural parent, as is the case, and precisely for that reason according to art. 26 from Law no. 273/2004 republished and with subsequent amendments, two cumulative conditions must be fulfilled for the opening of domestic adoption: the existence of the individual protection plan to establish the necessity of domestic adoption and the adoption consent of the natural parents [10].

What is more, in certain specialty articles regarding this subject (the best interest of the child) it was appreciated that "the best interest of the child is for both parents to be close to them as long as they have the capacity to exercise their incumbent rights and obligations " [11].

In the case analyzed herein, the petitioner DGASPC Galati sought the approval of the President of the County Council with regard to the application to open the adoption regarding the minor P.G., based on the provisions of art 28 of law no. 273/2004.

Through the petition submitted to the Galati Court of Law, DGASPC requested:

- Opening the adoption procedure;
- Exercise of parental rights and obligations taking into account the fact that for a long time there have been no effective links between the minor's parents and the latter, and during the entire period while the minor was in foster care, no relative up to the fourth degree was interested in taking her over and raising her, not even her grandparents. Moreover, the maternal grandparents also gave their consent regarding the opening of the adoption procedure.

Returning to the situation of this minor`s mother, it was noted that she has not had a stable residence for a long time, she also has other minor children and was constantly assaulted by both the minor's father and the other concubines.

Although the trial court noted the fact that the child's parents and relatives up to the fourth degree who could not be found and therefore, did not cooperate with the authorities in order to take steps to reintegrate the child into the family, we believe that the defendant (the mother of the minor in question) couldn`t have possibly arrive on time, and the procedure of repeated summons, through publicity, did not completely cover the defendant's chance to appear in the process pending before the Galati Court and to clearly state her position in relation to the opening of the adoption procedure.

These arguments were also supported by the reports of the social investigation of DGASPC G., where it emerges that the minor's mother, in a cohabiting relationship with her father, was periodically physically assaulted by him, which caused her to leave their shared residence.

According to the provisions of art. 28 para. (1) from law no. 273/2004, related to the provisions of law no. 272/2004, the adoption procedure appears as being concluded if 6 months have passed after having instituted the measure of protection and the child's natural parents do not cooperate with the authorities in order to carry out the measures for the reintegration/integration of the child into the family.

Also, according to the provision Art. 464 Civil Code "if one of the parents is unknown, dead, declared dead, or, for any other reason, is unable to express his or her will, (in the case of opening the adoption – n.n.) the consent of the other parent is invalid. When both parents are in one of these situations, the adoption can be concluded without their consent", and according to article 465 of the Civil Code, it states that the natural parents of the child must consent to the adoption freely, unconditionally, after being properly informed regarding the consequences of adoption. The court will override this consent only to the extent that the parent abusively refuses to give his consent, and it considers that the adoption is in the best interest of the child.

In this case, in our opinion, we did not find ourselves explicitly in any of the situations set forth in art 464 and the only manifest, repeated position regarding the

refusal to maintain relations with his own daughter was that of the minor's father, not the mother.

Moreover, in our opinion, there was no evidence of bad faith on the part of the defendant, an effective agreement of the mother regarding the opening of the adoption procedure, and its absence from the court could be precisely the result of the fact that she was forced, in time, to find a new home, and her partners have all shown themselves to be aggressive, something shown in the court file, including by DGASPC.

In the situation presented herein, we consider that it cannot be a question of an abusive refusal on the part of the mother, but of her impossibility to present herself and show her position in the present case, the only statements actually taken into the file being those of the father and the grandparents' mothers, all of them disagreeing with maintaining relations with the minor. [12].

As a result, we consider that, above all, it will be necessary that, by virtue of this principle, the authorities insist on maintaining the child's relationship with the natural parents and in particular with his mother, the relationship between these two being a sensitive and defining one (see the case from file no 4738/121/ 2021, Galați Court of Law) for the evolution and harmonious development of a minor. The court, however, laid more emphasis, in this case, on the idea that the minor needs emotional and material stability that cannot be granted by the natural family or through a form of special protection, so it is necessary to identify a family that could potentially adopt the minor and the opening of her adoption procedure [13].

In this regard, in the jurisprudence it was appreciated that, "on the contrary, the situation evoked by the appellants - namely the fact that the minor ... is effectively deprived of the protection of her parents, unable to be left in their care -, represents a valid reason for ordering one of the measures of special protection provided by art. 59 of Law no. 272/2004, republished (placement, emergency placement) or for opening the adoption procedure" [14].

At the foundation of such decisions were, for example, the family conditions of the respondents, respectively "the domestic violence to which the respondent ... is imperiled by her husband, the poor material conditions, the lack of education, the state of mental health of the mother who would not allow her to make sure that the minor is safe ...

parental protection, the suspicion of sexual abuse that would have taken place between other minor siblings of the child in question "etc.* [15] which justifies the decisions of the authorities to establish such measures.

In our opinion, the case presented herein, was not about an explicit refusal of the mother, as she did not have the objective opportunity to express her opinion regarding the minor's situation or the opening of the adoption procedure. This deficiency was a justified one, especially in the context in which the reports of the DGASPC and the social investigation carried out showed that the environment in which family relationships took place was a harsh one, unsuitable for the development or maintenance of relationships between the defendant and the child (physical and verbal violence from the father towards the mother, lack of affection, respect, etc.).

However, in the reasoning of the court, the best interest of the child prevailed, considering that, according to Article 32 of Law 273/2004, the opening of the internal adoption procedure is conditioned by the fact that the individualized protection plan must establish the need for adoption, that it was not possible reintegrate the child into the extended family, although this has been tried, but also with the consent of the natural parent...which can be replaced by the court when it is considered to be abusive, according to art 8 of the same normative act. The court thus concluded that "the minor needs emotional and material stability that cannot be granted in the natural family or through a form of special protection, so it is in the interest of this minor to identify a potential adoptive family..." [16].

Conclusions

Resulting from the use of the legal concept of "best interest of the child", the "superiority" of the child's interest must be understood, as also results from art. 2 of Law no. 272/2004, in the sense that in order to observe these rights, they must converge, subordinate to these rights and the actions of all factors whose general, sectoral or specific responsibilities involve the relationship with the child must be related - from parents to the education system, the medical system, society as a whole [17],[18].

The case presented herein shows us how the passive attitude of both or at least one of the parents in relation to taking over of their minor child by the state authorities in

the situation where the child is in danger leads the court to the possibility of replacing their consent in order to respect the best interest of the child. As can be seen, this is interpreted differently, both in national jurisprudence and by international conventions, this interest practically coinciding with the best interest of the child, a good that is not always reflected in maintaining a relationship with one's own parents, / the family of origin but in ensuring a healthy climate from the perspective of physical, mental and spiritual health.

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