

THE ADOPTION OF ROMANIAN CHILDREN BY FOREIGNERS

Report of a Group of Experts on the implementation of the
Convention on the Rights of the Child
regarding inter-country adoption

- DEFENCE FOR CHILDREN INTERNATIONAL (DCI) is a human rights organisation working specifically for the promotion and protection of the rights of the child, with particular attention to justice and penal questions and the various forms of child exploitation, as set out in the United Nations Convention of 1989. Founded in 1979, it has national sections and members in 60 countries and is in consultative status with the United Nations Economic and Social Council, UNICEF and the Council of Europe.
- INTERNATIONAL SOCIAL SERVICE (ISS) has a worldwide network of national sections and correspondents which facilitates communication among social services in different countries in order to resolve problems of individuals and families resulting from international migration. It also investigates and reports on the conditions and consequences of individual and family migration from an international standpoint, and in this context has for many years worked on the question of inter-country adoption.

PREFACE

This report of the Group of Experts marks the end of the first phase of an initiative launched at the end of 1990 by Defence for Children International (DCI) and International Social Service (ISS), two international non-governmental organizations based in Geneva. Both institutions found they shared a common concern in the face of the various ramifications of the wave of inter-country adoptions of Romanian orphans which developed after the change of the political regime in December 1989.

For many years the two organizations had been devoting particular attention to problems linked with inter-country adoption. Defence for Children International, as the international advocate for children's rights, had been especially involved in matters concerning the illicit buying and selling of children as well as other questionable practices existing within the context of international adoption. International Social Service, as an agency dealing with problems resulting from inter-country migrations, is also confronted with situations involving illegal actions and the large number of social and legal problems linked to adoptions from abroad. For many years now inter-country adoption had been one of the subjects to which ISS has devoted much study and expertise.

DCI and ISS had already pooled their experience and put to use the complementary nature of their mandates and working methods on several occasions: the two organizations took an active part in the elaboration of the United Nations Convention on the Rights of the Child; they are both participating in the work of the Hague Conference on Private International Law in order to establish a Convention on cooperation between States in questions relating to inter-country adoption, and recently carried out a joint investigation in this context.

DCI and ISS met for consultations several times as of October 1990 in order to define a common stand in the face of a seriously growing concern: how to help to enforce the respect of legal standards and international principles which were obviously being flouted more and more in a certain number of inter-country adoption cases involving Romanian children.

The two organizations took several factors into account in determining their stand, notably:

- the policy of the Romanian Authorities and the legislative measures they were enacting on inter-country adoption seemed to be moving in the right direction;
- national policy in this field would have little chance of succeeding if all persons involved in child welfare did not actively prove their solidarity, at all levels, in the countries where the Romanian children were being sent for adoption;
- the two organizations had heard of certain projected initiatives which seemed to be running counter to such a policy;
- the mass media in Western countries did not always give a correct picture of the real situation of children in Romania, and often tended to stimulate abusively the "demand" for adopting Romanian children;
- the problems seemed to be growing and the situation was deteriorating rapidly.

Because of these and other considerations, it seemed appropriate to submit a proposal for the urgent organization of consultations between a group of experts and other persons and services concerned, under the auspices of both DCI and ISS. Its purpose would be to develop a realistic strategy which, when implemented, could ensure the application of the United Nations Convention on the Rights of the Child in relation to the inter-country adoption of children from Romania. With the highly appreciated assistance of UNICEF and its representative in Romania, this proposal

was communicated to the Romanian Authorities at the end of December 1990. The response was swift and positive and it was thus possible to embark upon the implementation of the proposal.

Nigel Cantwell, Director of Programmes of DCI, and Damien Ngabonziza, Secretary General of ISS, then undertook a short mission to Romania from 17 to 20 February 1991 to prepare the first visit of the Group of Experts. At the same time the four members of the group were designated according to the following criteria:

They had to:

- come from different countries;
- represent professions relevant to the practice of adoption;
- not be currently involved in the arranging of international adoptions but having experience in this field in some way or another;
- be able to work in French and, if possible, understand English.

The persons chosen to form the group were:

- Anne-Marie Crine, Belgian, a psychologist at the Centre for Assistance, Research and Information on Adoption in Liège;
- Peter Fry, Australian, social worker and lecturer at the Central Council for the Education and Training of Social Workers in London, and member of the ISS Executive Committee;
- Albert Mégevand, Swiss, paediatrician and professor emeritus of paediatrics in Geneva, former President of the Swiss Paediatrics Association, and Board member of the International Association of French-speaking Paediatricians;
- Hans van Loon, Dutch, an international jurist and First Secretary at the Hague Conference on Private International Law.

DCI and ISS are grateful to the national and international bodies which made this study possible by providing resources required for carrying it out. To date, these bodies are the Hague Conference on Private International Law, UNICEF, the Belgian Government and the Republic and Canton of Geneva.

*Defence for Children International
International Social Service
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I. INTRODUCTION

The Group made two visits to Romania, from 2 to 9 March and from 10 to 17 April 1991 at the invitation of the Romanian Government (Health Ministry). Research work had previously been carried out and consultations held by the experts in their own countries and, at the international level, by DCI and ISS. The Group met at a preparatory session in Geneva at the end of February, and at an intermediate meeting, again in Geneva, from 20 to 23 March. On its first visit, the Group was assisted by Chantal Saclier, Director of Programmes of ISS, who represented both ISS and DCI. On its second visit, Nigel Cantwell, DCI's Director of Programmes, joined Chantal Saclier with the Group.

During its visits in Romania, the Group exchanged views and held in-depth discussions with a dozen senior Romanian civil servants, including the Vice-Minister for Foreign Affairs and the President and Members of the Romanian Committee on Adoption, as well as members of the Supreme Court, the President of the Romanian National Committee for UNICEF, religious leaders, representatives of political

parties, leaders and representatives of Romanian and foreign NGOs working in Romania, Romanian lawyers, social workers, psychologists, paediatricians, and representatives of the Embassies of Austria, Belgium, Canada, Germany, Greece, Israel, Italy, the Netherlands, Spain, Sweden, Switzerland, the United Kingdom, and the United States. The Group also visited an orphanage, a maternity clinic and a specialized institution for mentally handicapped children.

The general objective of the Group's mission as set forth in the letter of invitation from the Romanian Secretary of State for Health, was to help the Romanian Government to set up the kind of framework which would safeguard the rights of the child in matters of adoption. The Group took as its reference base the United Nations Convention on the Rights of the Child of 20 November 1989, in particular Articles 18, 20, 21 and 35 (see Annex 1). Romania was one of the first States to sign and ratify the Convention which came into force on 2 September 1990. Another reference was the "Declaration on social and legal principles relating to the protection and welfare of children, with special reference to foster placement and adoption nationally and internationally", unanimously adopted by the General Assembly of the United Nations on 3 December 1986, as well as the on-going work of the Hague Conference on Private International Law which should result in 1993 in a convention on the protection of children and inter-State cooperation in international adoption. Romania is taking an active part in this work.

Among other points, the United Nations Convention :

- attributes primary responsibility to the parents for the upbringing and the development of the child (Art. 18; see also the Declaration, Art. 3);
- gives priority to the country of origin for taking care of the child (Art. 21, para b; Declaration, Art. 17);
- requires that the best interests of the child be the dominant criterion in the case of adoption (Art. 21; Declaration, Arts. 5, 13 and 14);
- makes the competent authorities responsible for authorizing adoption (Art. 21 para. 1; Declaration, Art. 22);
- calls for appropriate measures to ensure that in inter-country adoption the placement does not result in improper financial gain (Art. 21 para d; Declaration, Art. 20).

Acting on these principles, and in spite of the particular limitations of its mission, the Group attempted to establish as correctly as possible an overview of the present situation in Romania with regard to the social welfare of the child, and also set out to identify the major existing problems in order to formulate a certain number of recommendations. These recommendations are intended above all for the Romanian Government, which bears the final responsibility for implementing the principles of the Convention in the country. Some, nevertheless, also concern the Governments of other countries whose citizens are involved in the adoption of Romanian children.

This report is based both on the information and opinions that the Group of Experts gathered in Romania from the Authorities, various professionals and organizations, as well as on the information received from the social services and professionals in several host countries of the adopted children. During its two stays in Romania, the Group was able to check on some of the information. The Group, however, is well aware that during such intensive but brief stays — confined, moreover, to Bucharest — it was impossible to gain the in-depth insight enabling it to propose more detailed recommendations and strategies. In fact the mission could not be investigatory as such. The Group therefore tried to compensate for these limitations by submitting its intermediate report at a series of meetings and seminars held over a four-day period with the persons and organizations met during its first visit, in order to reflect their comments in the final report.

The Group wishes to convey its warmest thanks for the active and fruitful collaboration it enjoyed from all the persons, both governmental and non-governmental, with whom they met.

II. DESCRIPTION OF THE SITUATION

We will not be giving an exhaustive account of the situation regarding children in Romania, nor of the political, social and economic factors behind it. Studies on the subject already exist, and the August 1990 UNICEF mission report is an essential reference in this regard. We will only mention those elements we feel to be particularly important in the context of our study. **It should be remembered that both our description and our analysis of the situation, drawn up to facilitate the identification of the most appropriate technical guidelines, are based not only on the information and opinions we received from the Authorities and professionals in Romania, but also on data collected by ISS and DCI from social services and professionals in several countries concerned with the issue of Romanian children.**

1. Historical background

After the fall of the previous regime, the Romanian people and the world in general were stupefied to discover, via the mass media, the high number of children placed in institutions in that country, as well as the very difficult living conditions that they often experienced there. The images broadcast showed on the one hand a population of mentally or physically handicapped children, or children with serious psychic disorders because of the hardships of institutional life, and on the other, the large number of children — especially in the lower age-group — abandoned in institutions and in danger of death or of becoming permanently handicapped. The information implied that these children could only be saved through emergency programmes of international solidarity or placement in substitute families.

This gave rise to a generalized and often improvised mobilization on the part of numerous existing organizations or organizations especially created for the circumstance, informal groupings and isolated individuals. Many set out for Romania with convoys of emergency relief. Some settled in orphanages, hospitals, villages, etc., and intervened according to their own criteria and for shorter or longer periods of time. Others returned, taking with them children from orphanages, keeping them in their own families or handing them over to families whom they trusted. Most organizations or bodies with previous professional experience in assistance are now either pursuing or launching support actions in Romania. While maintaining emergency relief programmes (nutritional assistance, improvement of premises and equipment, medical and pharmaceutical aid, etc.), they are developing short-term actions to train supervisory staff and grass-roots workers to cushion the urgent need for qualified personnel. Others prefer to seek local, national and sometimes community solutions to respond to the problems of children and their families.

At the same time, the Romanian Authorities have taken measures to tackle the situation and attempt to improve conditions in child welfare, namely: the ratification of the United Nations Convention on the Rights of the Child, the amendment of the law

on adoption, the creation of a State Secretariat for the Handicapped Child, the creation of a Romanian Committee for Child Welfare composed of eminent national personalities, creation of a Romanian Committee on Adoption, and the establishment of an Interministerial Committee. Certain Ministries have developed global or partial strategies. The teaching of disciplines linked with child welfare (social work, psychology, various medical and para-medical specializations) has been re-established or inaugurated and foreign expertise sought to support the development of better social, medical and educational policies.

It is important to mention that, although still in their infancy, there have been efforts in organization at the grass roots level. A certain number of non-profit organizations have appeared on the scene, action groups are getting together, families, local leaders, and professionals are taking action, either by themselves or through some sort of structure. They have every intention of playing their part in the implementation of local or regional solutions to the problems of their country, including those of children.

There seems to be no doubt that, thanks to international solidarity, to the efforts of the national Governmental Authorities and to those of a growing minority of Romanians, **the situation of children in institutions** is improving. The number of children in them has decreased because some parents have taken them back, other children have been adopted within the country or abroad and, because abortion has been made legal, there is a significant drop in the number of unwanted births. Within institutions conditions are reportedly improving as there now appear to be less children per staff member. To be sure, now and then painful cases are still being discovered, but they would seem to have become the exception. It is true that much has yet to be done, in particular regarding the valorization of the child, staff training, and the adaptation of institutions and procedures to the specific needs of children. But although the situation remains difficult (as in other countries of the region) it does not seem to be as critical and urgent as in 1990.

2. Future prospects

We do not claim to have undertaken here a scientific analysis of the future prospects. We have only tried to outline the general trends whose immediate consequence is the vulnerability of family links to the detriment of children. This outline is based on the information and opinions we repeatedly heard during the many discussions we had during the mission, but which we have not been able to check directly ourselves.

Although the situation of children in institutions may be improving, the same does not seem to be true with regard to that of children in families. Certain information received would tend to confirm this: in 1990 there were three times more abortions than births; the critical general health of mothers has led to a significant number of premature babies whose own health doomed them almost inexorably to permanent placement in institutions. For very many Romanians, the economic situation is still alarming, especially for the least privileged sectors. Unemployment, which was practically inexistent in communist Romania, has now appeared but there is no system to limit its effects, nor have any private alternatives yet been organized. There is little Romanian and foreign investment in the creation of businesses or jobs. The informal labour sector has no recent tradition to go by. Furthermore, the multiplication of negotiations in foreign currencies (in the field of inter-country adoptions among others) has caused a price explosion in certain products, the national currency has lost its value in economic transactions to the advantage of strong currencies which have become the reference within the country itself. The combination of these phenomena

has led to a growing disequilibrium in income for Romanians on the one hand, and on the other, to the poor becoming rapidly poorer — in particular needy families, single mothers, and the unemployed. Added to this are other complications : the lack of roots for a certain number of city-dwellers who had to leave their villages because of the previous policy of enforced industrialization; difficult housing conditions which have worsened since the revolution because of the halt in construction which followed the return of the "peasant-builders" to the countryside where land is now being redistributed, etc.

Romania therefore has many serious difficulties to overcome. While the valorization of the child and the strengthening of family ties to ensure the future of the child have not yet been reconsolidated, and while education in family planning is still just a project, it is probable that, for many years to come, an increasing number of families will have to face adverse economic conditions hardly likely to favour family cohesion, the good health of mothers and children, and child welfare.

3. Adoption

Magnitude of the phenomenon

In a single year, Romania has become the international focal point for adoption. Very much limited during the last years of the Ceaucescu government, when permits for inter-country adoptions had to be signed by the President himself, it was quickly advocated by some as THE solution for saving children from institutions. After the amendment of the law on adoptions on 1 August, 1990, doing away with the presidential authorisation and giving the departmental ("judet") courts the power to deliver inter-country adoption orders, the latter have increased rapidly. According to figures received by the Ministry of Justice from the Courts, from 1 August to 31 October 1990, 1457 inter-country adoptions were granted. Furthermore, everyone agrees that inter-country adoptions have shot up during the first two months of 1991: approximately 500 visas were given by a total of 9 Embassies in February to adopted children (see Annex 2). Given that some children leave Romania without a visa from the receiving country and that there are receiving countries not included in the 9 Embassies previously mentioned, the magnitude of the movement under way is obvious. According to the President of the Romanian Committee on Adoption, the Ministry of the Interior has stated that almost 2,000 inter-country adoptions were authorised during the first three months of 1991. With a yearly estimate of between 18,000 and 22,000 cases of inter-country adoptions the world over, it is easy to deduce that at this rate, the adoption of Romanian children would represent over a third of the total annual figure for inter-country adoptions.

||| decentralising adoption

Characteristics of the children adopted

Information from Embassies confirms that most visas are delivered for very young children and that during the last three months their age has tended to drop even more. Several countries have indicated that in January-February 1991, over 50% of the children adopted were between 0 to 6 months (see Annex 2); an increasing number of children were only a few weeks and even a few days old; very few children over three years of age were adopted; only exceptionally were disabled children adopted.

The opinion of Embassy officials matches the information and opinions received from various other sources: **more and more children are being adopted from families and less and less from institutions**, although the latter would benefit

more from adoption (including inter-country adoption). But it is very difficult today to adopt a baby of less than six months from an institution.

Problems posed by the adoption of Romanian children

Problems connected with the mental and physical health of the child: there is now confirmation that AIDS and hepatitis B are widespread among very young children, especially those in institutions (see Annex 3). Since tests carried out in Romania are frequently unreliable, a certain number of cases were only discovered some weeks or months after the child's arrival in the host country. Furthermore, many children after years in institutions were affected by serious psychic disorders which the adoptive families were not able to cope with. Social services of adopting countries were thus beginning to see cases where families rejected children adopted in Romania, obviously leaving the child in a very alarming mental, emotional, social and often juridical vacuum.

Pressure on the mothers: most of the persons spoken to were convinced that, more and more, pregnant mothers were approached before they gave birth, or at the maternity clinic, to give up their child for adoption. Sometimes the legal formalities were even taken care of before the birth of the child so that he/she would be officially adopted just days after birth (one embassy official cited the recent case of an adoption order granted for a child only four days old).

The child as an object of illicit buying and selling: Information and opinions tend to confirm that, since September-October 1990, international adoption of Romanian children has become a source of illicit trafficking in goods or money and that this phenomenon is developing. Both Romanians and foreigners are said to be taking part in it, be they biological families and/or adopting families, or intermediaries. "It's just like a market where you sell potatoes" said an official at a Ministry. Corruption has spread and it seems that there are now networks organized for the international adoption of Romanian children.

It is also felt that, with adoption in Romania now involving monetary compensation, it has become difficult for Romanian families to adopt children as they can hardly match the financial possibilities of foreign families. Furthermore, biological families are said to prefer handing over their child to foreign families. Indeed, inter-country adoption is still seen by some Romanians as a chance for a better future for the child, despite the potential of adoptions by Romanian families (1,200 national adoptions from August to October 1990 according to figures from the Ministry of Justice).

Information and opinions also converge to assert that international adoption is now taking place against a background of all kinds of ever-increasing pressure from different sources on families, professionals, the Romanian Authorities and foreign officials. The pressure is perceived by the Authorities as becoming unbearable, as well as by the representatives of some Embassies and professionals — both Romanian and foreign — in child welfare. **Inter-country adoption is now seen as a national tragedy in Romania. It is also becoming the subject of international concern.**

III. CONSIDERATIONS

In the specific field of interest to us here, we have been able to note a certain number of elements tending to confirm that Romania is seeking to make progress in concretely implementing the United Nations Convention on the Rights of the Child which it ratified in 1990.

First of all, the contacts we established in Romania have convinced us that the placement of children in institutions was linked to a dramatic period in the history of Romania but that it is not part of the culture of any one of the communities of the country, including the Roms (Gypsies). **It is therefore a reversible phenomenon if actions to valorize the child and the family are developed alongside economic and social programmes.**

We were impressed to note that child welfare is an issue that has given rise to real public awareness and community concern both in Romania and in countries which are sympathetic to the Romanian "renewal". In governmental, non-governmental, religious, political and professional circles, people seem to have realized how enormous the challenges the country has to face are in this period of transition, and have clearly expressed their will to achieve a real system of child welfare. All this has led to specific initiatives in research, and the development of local, regional and national responses.

The results obtained through the combination of international aid and the commitment of Governmental Authorities, groups and professionals in the field can already be perceived. **Unfortunately, little is known about them outside the country.**

With regard to inter-country adoption, the different aspects of the question have now been understood by both Romanian officials and those of other countries involved. There is a common will to seek together the ways and the means to clean up practices in inter-country adoption and to set up alternative solutions, **more especially national**, to those of abandoning or placing children in institutions.

The creation of the Romanian Committee on Adoption, the revision of the legislation since 1 August, the formulation of new legislation to cover the abandonment of children and to ensure better child protection are all indications that Romania is seeking to overcome its problems in this field.

Nevertheless, a certain number of elements are currently making it difficult for Romania to take up the challenge it faces. These must be identified and tackled if adequate responses are to be found.

Persistency of past values and attitudes: It is much easier to make progress in the material rather than in the non-material field. It is easier to re-establish individual liberty in the economic sector — although this is a challenge in itself — than to restore the fundamental values of freedom and democracy in the social field, in the welfare of the child and the family. Values, attitudes and conditions inherited from the past seem to be running deep. During the dictatorship, Romania was a country which, on the one hand valued human beings mainly according to their usefulness to society, thus systematically marginalizing all those who had no potential for production — children with health problems, the handicapped, the elderly, etc. On the other hand, the social and psycho-emotional dimensions of family relationships and their importance in the child's development were ignored and/or hidden. There is still much to be done to restore the values of the human person, the family, the child.

Vulnerability of the society: The persistency of values and attitudes of the past, uncertainty as to the shape of the new society to come, together with the alarming economic situation, have made Romania particularly vulnerable to abuses in the context of inter-country adoption, especially in the case of child trafficking. Practices now current in Romania have highlighted the fact that all too often the child is considered **by both parties** as an object for barter and not a person and subject of rights. Furthermore, the prevailing attitude, among Romanians and foreigners alike, is to look for a child for the family rather than a family for the child.

To date, the solutions found to respond to the situation have been all too fragmentary, fragile and insufficiently coordinated.