

April 30, 2003

The Honorable Petru Serban Mihailescu  
General Secretariat of the Government  
Palatul Victoria, nr.1, sector 1  
Bucuresti, Romaniei

Dear General Secretariat Mihailescu,

*Ethica* is a non-profit education, assistance and advocacy group, which seeks to be an impartial voice for ethical adoption practices worldwide. *Ethica* does not place children for adoption, nor do we have members that do. We strive to develop organizational policy and recommendations based solely on the basic ethical principles that underscore best practices in adoption and speak to the best interest of children. *Ethica* believes that all children deserve permanent loving homes, preferably within their family of birth. When remaining with their birth families is not possible, and children cannot be adopted by families within their country of birth, intercountry adoption may be in the child's best interest.

*Ethica* supports the ideals embodied in the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. It is imperative that countries take measures to ensure that decisions about a child's future are made in their best interests and that adoptions take place in an environment that provides adequate safeguards to the children and their families. *Ethica* commends the interest Romania has shown in improving its services to children, and we are appreciative of this opportunity to comment on the April 4, 2003 draft of the Adoption Law.

We are pleased to note the many positive aspects of the proposed law that correspond to the tenets of the Hague Convention, including:

- ▶ Recognition of the principle of the best interest of the child;
- ▶ Pre-adoption counseling for the child, birth family and adoptive family;
- ▶ Measures to ensure that consent to the adoption has not been induced by payment or compensation;
- ▶ Prohibition of improper financial gain and safeguards against unreasonably high fees;
- ▶ Preservation of information concerning the identity and medical information of the birth family.

There are also several aspects of the proposed law on which *Ethica* would like to recommend changes.

### **Compliance with Hague Convention**

As noted in the preamble to the Hague Convention, States which are signatory to the Convention recognize that the child "should grow up in a family environment, in an atmosphere of happiness, love and understanding" and that "intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin".

Article 2(b) of the proposed law acknowledges this principle. However, Article 2(e) includes language which adds "or cannot be cared for appropriately". Additionally, Article 45(2)(b) states that international adoption may be allowed only if "the child cannot be appropriately cared for by the public or private services for the special protection of the child."

Such provisions, which allow for children to be cared for in public or private institutions instead of being adopted internationally, would seem to conflict with the basic tenets of the Hague Convention, and may thus result in an inability to fulfill Article 62, which provides for the issuance of a certificate "indicating that the adoption complies with the norms set by the Hague Convention."

Therefore, *Ethica* respectfully suggests that Article 2(e) be changed to remove the clause “or cannot be cared for appropriately”, and that Article 45(2)(b) be removed from the law entirely.

### **Adoption of Children under Age 2**

Article 52(1) indicates that international adoption is allowed only if the child is over the age of 2. It is difficult to understand what the purpose of this prohibition would be, other than to assure that reasonable efforts have been made to preserve the original family and/or to pursue a placement with a Romanian family. However, Article 52 also provides for the expiration of all the deadlines outlined in previous sections that ensure such measures are taken.

If all the previous steps have been taken and no family is found to care for the child in Romania, then there is no benefit to forcing children to wait until the age of 2 to be adopted internationally, especially in light of the long-term developmental, educational and emotional effects of institutionalization, which have been well documented. Additionally, Article 52 stipulates that the above referenced provision in Article 45(2)(b) be met, which calls for the child to be cared for by public or private services. It seems reasonable to conclude that these provisions may have been included to prohibit international adoption completely.

*Ethica* respectfully suggests that Article 52(1) be modified to read, “If after the expiration of the deadlines indicated in article 26 and the condition mentioned in article 45 paragraph (2)(a) are met, the Direction where the child lives will be able to request the competent court to determine the adoptability of the child according to the procedures of the international adoption”.

### **Travel Requirements for Adoptive Parents**

Articles 59 and 60 require that the adoptive family travel to Romania for an adjustment period of at least 30 consecutive days before a report can be created (within 5 days) regarding the attachment between the child and adoptive family. This report is required to file a request to the court to approve the adoption. After adding the necessary days for court proceedings, for which timelines do not appear to be stipulated, adoptive parents will be required to be in Romania for well over a month. Additionally, article 63 stipulates that only the adoptive parents can travel with the child, removing the possibility that a child could be escorted. Such stipulations will add undue hardship to adoptive parents. There is no evidence that prolonged periods of adjustment in the child’s country have any correlation to the long-term success of an adoption. Such requirements disqualify many adoptive parents who could otherwise provide loving homes for children in need.

*Ethica* respectfully suggests that the length of the required adjustment period be reduced to 10 days.

### **Renegotiation of Bilateral and Multilateral Agreements**

Article 80(5) states that the Office will renegotiate all bilateral and multilateral agreements in the field of adoption closed by Romania with other countries. We appreciate that this provision is intended to allow for the adjustment of agreements to include the provisions of the new law. However, it is possible that previous agreements may sufficiently address the new law.

*Ethica* respectfully suggests that the language of Article 80(5) be changed to read, “the Office will renegotiate all bilateral and multilateral agreements in the field of adoption closed by Romania, if necessary to enforce the provisions of the present law.”

We appreciate your kind consideration of our suggestions, and look forward to the end of the current adoption moratorium.

Sincerely,

Trish Maskew, President