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Sent: Wednesday, March 14, 2007 10:13 AM
To: FRATTINI Franco (CAB)
Cc: SCHMITT Diane (CAB)
Subject: Pour validation

Monsieur le Vice-Président,

Je vous remercie pour le temps que vous avez bien voulu prendre pour que nous abordions ensemble le problème de l'adoption internationale et pour votre vigilance à l'égard des violations des droits de l'enfant qu'il peut engendrer. Comme convenu, je vous transmets l'article paru en Roumanie dans Le Monde Diplomatique rédigé par le Représentant de l'UNICEF. Par ailleurs, vous trouverez ci-jointe une note de Jean-Marie Cavada et de moi-même sur les évolutions récentes de ce dossier. Nous vous serions très reconnaissant de bien vouloir aborder ce sujet lors de votre déplacement en Roumanie.

Comme je vous l'ai indiqué, il nous a été rapporté que la fonctionnaire européenne en charge de la Bulgarie est [REDACTED] ([REDACTED]) et [REDACTED] pour la Roumanie en ce qui concerne le suivi de ces nouveaux pays membres suite à leur adhésion. Pourriez-vous nous le confirmer ?

Enfin, le dernier document vous fait part des bases que nous avons posées avec M. Van Loon pour la création d'un groupe de haut niveau. Nous contactons en ce moment les différentes personnes auxquelles nous avons pensé. Nous sommes bien entendu tout à fait disposés à bénéficier de vos recommandations sur la composition de ce groupe et serions très honorés que vous acceptiez d'y prendre part.

Recevez, Monsieur le Vice-président, mes salutations distinguées.

Claire Gibault





Note de Claire Gibault et de Jean-Marie Cavada sur l'adoption internationale en Roumanie

Nous avons eu connaissance d'un article du mois dernier rédigé par le Représentant de l'UNICEF en Roumanie dans Le Monde Diplomatique qui dénonce l'aggravation de la situation en Roumanie, puisqu'il constate :

- une augmentation du nombre d'enfants laissés dans les hôpitaux pendant les premières années de leur vie et qui parfois ne sont pas déclarés à l'état civil,
- des réintégrations forcées dans les familles d'origine d'enfants non désirés, ce qui expose ces enfants soit à des abus de quelques sortes qu'ils soient, soit à de la négligence,
- le placement de milliers d'enfants dans des familles d'accueil rémunérées, ce qui est un système extrêmement coûteux pour la Roumanie et qui ne permet pas de contrôle efficace en raison d'une pénurie de travailleurs sociaux formés à cet effet,
- l'abandon d'enfants à la rue dès leur majorité et
- la diminution paradoxale du nombre d'adoptions nationales puisque les juges doivent s'assurer au préalable que l'enfant abandonné ne peut être adopté par sa famille élargie.

De plus, nous recevons chaque jour des courriers d'associations de protection de l'enfance roumaine qui nous appelle au secours.

Maud de Boer-Buquicchio, Secrétaire générale adjointe du Conseil de l'Europe, s'est dite "*très favorable aux récentes initiatives du Parlement européen qui commencent à remettre en question l'approche actuelle très restrictive de l'adoption internationale*" dans un communiqué de presse du 20 novembre 2006.

Par ailleurs, le Parlement européen dans son dernier rapport sur l'adhésion de la Roumanie à l'Union européenne "*suggère que la commission des libertés civiles, de la justice et des affaires intérieures effectue un suivi des réformes entreprises sur l'adoption et sur la protection de l'enfant en Roumanie à partir du 1^{er} janvier 2007*".

Il est particulièrement urgent d'agir maintenant, car la Roumanie est arrivée à une étape charnière, et ce à plusieurs égards :

- depuis le 1^{er} janvier, la Roumanie est maintenant un Etat membre à part entière de l'Union européenne, ce qui permet aux autorités roumaines de réfléchir à ce problème sans le spectre du refus d'adhésion et

- l'interdiction de l'adoption internationale est en place depuis maintenant 6 ans, le temps d'une évaluation est donc venu. Selon nos informations, le gouvernement roumain est prêt à avancer sur ce thème. Après le coup d'arrêt donné en 2001 aux adoptions internationales, les autorités sont en mesure de faire un état des lieux des effets de ces mesures, que vous aviez qualifiées de "*strictes*" lors de la conférence du 9 novembre 2006. Or, aujourd'hui, bien que la législation roumaine sur la protection de l'enfance soit d'un niveau satisfaisant, il s'avère que les droits de l'enfant ne sont pas respectés en Roumanie comme l'ont souligné plusieurs ONGs de protection des enfants car le gouvernement roumain ne respecte pas les lois dont il s'est pourvu. Il nous semble que ces manquements au droit sont liés à cette législation non adaptée à un pays tel que la Roumanie à l'heure actuelle.

La Roumanie ne doit pas se sentir isolée, d'autres pays ont recours à l'adoption internationale et cela permet de gérer les problèmes liés à la protection de l'enfance quand le pays ne le peut pas seul, ce n'est pas une honte et la France y a aussi parfois eu recours. La Bulgarie qui prend exemple sur la Roumanie va au devant des mêmes difficultés. Il faut enrayer ce problème maintenant en Roumanie afin qu'il ne se propage pas en Europe. Pour empêcher cette dérive, il est nécessaire d'aider la Roumanie à réexaminer les dossiers en suspens et à remettre en place un système d'adoption internationale basé sur des procédures transparentes et sûres. Nous proposons à ce sujet à la Roumanie de bénéficier des recommandations de la Conférence de La Haye, tel que nous l'a suggéré son Secrétaire général, Hans Van Loon, et nous sommes d'ores et déjà en train de monter avec son appui un groupe de haut niveau sur la protection de l'enfance et l'adoption internationale. Il s'agit ici des droits de l'enfant et c'est à l'Union d'agir pour en garantir le respect afin que la situation ne continue pas de se détériorer.

Groupe de haut niveau sur la protection de l'enfance et l'adoption internationale

Contexte :

Constatant qu'en Europe, une croyance s'est répandue ces dernières années, selon laquelle l'adoption internationale est à la fois la cause et le moyen de faciliter le trafic d'enfants.

Ces thèses ont été soutenues malheureusement par différents analystes et c'est sur ce fondement, que des pays ont mis en place des législations très contraignantes.

Constatant également que ces thèses ont été fortement critiquées et que la situation de la protection de l'enfance a continué à se dégrader dans ces pays sans que pour autant que le trafic n'ait été éradiqué et que parfois même des effets collatéraux pervers ont été constatés.

Nous souhaitons mettre en place un groupe de haut niveau chargé de mener une étude approfondie tant des législations européennes sur l'adoption internationale que leurs effets directs et indirects sur le terrain en matière de protection de l'enfance.

Buts :

Le groupe de haut niveau sur la protection de l'enfance et l'adoption internationale devra, d'une part, déterminer si l'interdiction de l'adoption internationale peut répondre à l'exigence du respect de l'intérêt supérieur de l'enfant dans un Etat et, d'autre part, mettre au point un guide de bonnes pratiques en matière d'adoption internationale en Europe.

Dans ce guide il serait question notamment de :

- exiger que tout enfant ait une identité dès sa naissance,
- simplifier les procédures d'adoption et réduire les délais d'instruction des dossiers,
- amener les Etats membres à réagir face à la détresse psychologique de tous leurs enfants abandonnés ou orphelins, en leur permettant de trouver un père et une mère dans un autre pays européen dans le respect du droit de ces enfants à avoir une famille quand aucune autre solution nationale n'est possible,
- tenir informé le pays d'origine de l'enfant adopté de la façon dont l'enfant s'intègre dans sa nouvelle vie et renforcer le suivi des enfants après leur arrivée dans un autre pays européen et
- s'assurer du droit des enfants à connaître leurs origines.

Composition :

Nous souhaitons que les personnes suivantes soient intégrées dans ce groupe de travail :

- Franco Frattini, Vice-président de la Commission européenne chargé de la Liberté, de la sécurité et de la Justice,
- Hans Van Loon, Secrétaire général de la Conférence de La Haye de droit international privé,
- Maud de Boer-Buquicchio, Secrétaire Générale Adjointe du Conseil de l'Europe
- Claire Brisset, Ancienne journaliste et directrice de l'information de l'UNICEF, elle fut la première Défenseure des enfants en France,
- Janice Peyré, Présidente de l'association Enfance et Familles d'Adoption,
- François de Combret, Fondateur et Président de l'Association Solidarité Enfants Roumanie Abandonnés et Vice-président de CARE France,
- Robin Nydes, Fondateur et Président de la *Foundation for the Relief of Disabled Orphans*,
- Marco Cappellari, Président du *Coordinamento Nazionale Amici dell'Adozione* et
- Emanuele Cremona, Responsable du Bureau des Relations Internationales de l'Association *Amici dei Bambini*.

Claire Gibault

Jean-Marie Cavada

"CHILDREN PROTECTED ONLY ON PAPER AWAIT REAL PROTECTION"
By Pierre Poupard

English Version of the article published in Romania "Le Monde Diplomatique", February 2007.

(UNICEF Representative in Romania and specially invited author for this edition of Le Monde diplomatique)

THE PROGRESS ROMANIA HAS MADE DURING THE LAST SIX YEARS IN THE FIELD OF CHILD PROTECTION IS, FOR SEVERAL REASONS, UNDENIABLE. THE PROTECTION SYSTEM REFORM, DEMANDED BY THE EUROPEAN INSTITUTIONS AT THE BEGINNING OF THE DECADE AS A PREREQUISITE FOR ROMANIA'S ADHESION, HAS BEEN IMPLEMENTED. IN THE LAST TWO YEARS, A NEW LEGISLATIVE PACKAGE HAS BEEN INTRODUCED, FULLY CONSISTENT WITH THE CONVENTION ON THE RIGHTS OF THE CHILD, WHICH FORESHADOWS NEW DEVELOPMENTS IN THE NEAR FUTURE.

In September 2006, three months before Romania's accession to the European Union, the last Monitoring Report of the European Commission clearly emphasized that, in the field of child protection, the obstacles to the effective adhesion in 2007 had been overcome. Few outside observers would have believed, six years ago, that the last Report of the Commission might read as follows:

With regard to the protection of the rights of the child further progress has been made. The authorities have carried on the implementation of the legislation passed in the year 2005 on the rights of the child and adoption, which harmonized the Romanian legislation with the provisions of the United Nations Convention on the Rights of the Child and brought Romania to the level of member states. The number of institutionalized children is dropping. The living conditions in the remaining institutions have improved considerably and are currently, in general, up to standards. Many children have returned to their families or have been given in the care of persons trained to this effect. On the other hand, the action plan regarding the support given to mothers in view of preventing newborn abandonment must be carefully implemented. Concerning the situation of children with disabilities, the Romanian authorities have formed a working group which will thoroughly examine the living conditions of these children in placement centers, hospitals and boarding schools with a view to improving them.⁽¹⁾

Nevertheless, at a more careful look and making a comparison between the living standards of the population of Romania and the other 10 countries which joined the European Union in 2004, the available indicators point to an important deficit! In 2005, the mortality rate among children under five (measured by number of deaths in one thousand live births) was 17 ‰ compared to an average of between 7‰ and 8‰ in the other 10 countries. And the poverty level is much, much higher in Romania where the per capita income is estimated at about 40% of the per capita income in the other ten countries which joined in 2004.⁽²⁾

Reading between the lines of the Monitoring Report of the European Commission regarding the protection of the rights of the child, it is clear that there are at least two problems which require particular attention: The problem of child abandonment in maternity hospitals and pediatric wards⁽³⁾ and the problem of children with severe disabilities living in residential institutions.

At the beginning of the 90's, immediately after the fall of the Ceausescu regime, an estimated number of 100,000 children under 18 were living in public institutions, at the time the only form of protection for the children whose parents could not or would not care for them. Even today these institutions are referred to as orphanages. In fact, they were not orphanages: the number of orphan children was (and still is) insignificant compared to that of children abandoned by their families, unwanted children conceived under the unjust and megalomaniac pressure of the Ceausescu couple, in the last years of the communist regime.

Today there are about 27,000 children – out of a total of 76,000 receiving social protection measures - living in institutions, making up for 2% of the 4.6 million children of Romania. The most spectacular progress has been made in the past six years, under the pressure of the European Commission. Thus, whereas in the year 2000 two thirds of the children receiving protective measures were institutionalized, today they are only one third. More than two thirds of these children are 14 years old or older. A large part of them are children or young adults with multiple severe handicap, which justifies their being kept in a residential center.

They constitute, certainly, a large part of the vulnerable children, the ones who are subject to exclusion and are victims of discrimination. UNICEF has recently declared its concern for their future.⁽⁴⁾ These children are still a serious challenge for the Romanian authorities as well as for other civil society actors who are engaged in the protection of the rights of the child. More often than not, these children are deprived of a family environment. Some are made to do hard labor. Others are victims of trafficking for begging and child prostitution. There are also many street children and other children who are in conflict with the law. All of these, in fact, are victims of discrimination in one form or another, either because of their ethnicity, or because of their health status (HIV-positive) or disability.

These children are all the more vulnerable as they live in dysfunctional families often afflicted by extreme poverty⁽⁵⁾, because of unemployment or of problems in single parent families or families with many children. More recently, an additional vulnerability has come to light with regard to children whose parents are gone off to work in other countries (estimated at around 15,000). The problems these children have are primarily related to a deficient family environment, where their essential physical needs (food, clothing, and a roof over their heads) are hardly being met, and where their schooling is not a priority.

Vicious circles

The health system has its schizophrenic side; many medical practitioners have had the opportunity to work or train in modern maternity and pediatric services in Western Europe and North America. However, upon their return to Romania, they go back to the same practices that existed under communism, to ideas from another age about the risk of infections for rooming-in mothers and babies.

Nevertheless, it has been demonstrated that two measures would be sufficient to reduce abandonment in maternity hospitals: in the first place, the new mothers and their newborn babies should be put together in the first hours after child-birth⁽¹¹⁾, thus forming the unbreakable bond of the baby's first look; they should be able to share the same room for the entire duration of their stay in the hospital. In the second place, as a measure to prevent abandonment, for young mothers, women whose despondency is easy to spot, psychological and social services support should be available in maternity hospitals. It must be admitted that despite the instructions issued by the Ministry to put these things into practice, there has been resistance from numerous hospital directors, from midwives, and from other medical personnel, and in many maternity hospitals, included in big cities, these instructions have not yet been implemented.

The risks of family reintegration

There is a dilemma when it comes to the fate of these children who are deprived of a family, between the International Convention on the Rights of the Child, which stipulates in its preamble: "the family [is] the fundamental group of society and the natural environment for the growth and wellbeing [...] of the children", and the necessary protection many children need due to their parents' deficiencies or incapacity to raise them. While it is true that in many European countries the current legislations on children make most of these children unadoptable, simply because justice and social services do not want to sever the tie between children and their biological families, it is also true that as a result many of them end up being tossed from one family to another, or in institutions or boarding schools. Consequently, they will not benefit from the stable solution provided by a foster family and which would be guaranteed only by adoption.

Thus, it is legitimate to wonder why the Romanian authorities, both national and local, are so insistent on this solution of family reintegration, for there is a high price to be paid by the children – a major risk of abuse or neglect. It could be largely explained by the sustained de-institutionalization policy implemented as of the beginning of the year 2000, upon pressure from European institutions, which aim primarily, and rightly so, at closing down the big unhealthy residential centers, mostly unable to provide children with a minimum of affection. Today, the Romanian government has an additional problem. It must face the challenge of continuing to sustain an excessively costly system of foster care. This involves more than 42,000 employees for the approximately 76,000 children who are in the state system of child protection. This excludes foster parents and other helpers in the child protection system.

Vulnerability is also tied to the deficiencies in the school and health care systems. The lack of efficiency and adequacy of social services in all these extreme situations contributes to the development of a series of vicious cycles. Children implicated in criminal offenses would be sent to prison, released, and then end up in prison again. Street children would return to the streets. Children who are the victims of trafficking would be picked up again by the extremely efficient networks of child trafficking. It is well known that the community social services are insufficient, especially in rural areas, that they are not proximity services where social workers are proactive with respect to vulnerable segments of the population, instead of waiting in their offices. Neither is there adequately trained and remunerated personnel, their salaries are derisory and the outcome of their work is often demotivating.

The vulnerability of children is therefore related to a combination of factors: loss of a system of values, social inertia, economic poverty, weak governance - all mutually enhancing and contributing to the social exclusion and discrimination against many children. Still, the transition is happening. Romania today can no longer be identified with the image of the 19th century peasantry, nor with the unproductive industrial giants, the only safeguards against unemployment under the communist regime. The changes in the demographic⁽⁶⁾ and societal patterns (the typical family is regressing in most European countries) and the geographic and social mobility, far from solving these problems, have often contributed to their exacerbation, emphasizing disparities, conducing to more marginalization.

Child abandonment is a universal phenomenon. Human Rights Watch⁽⁷⁾ estimates that millions of children worldwide are living in orphanages and other institutions. China, Russia, and Romania are glaring examples in this respect. Abandonment takes multiple forms, from children born under "identity X", which is legal practice in France⁽⁸⁾, to children abandoned in the street or in the maternity hospital or pediatric wards, and also street children, de facto abandoned by their families, as well as the millions of exploited children - child labor or activities related to the sex industry⁽⁹⁾.

A schizophrenic system

The immediate causes of child abandonment in Romania (the number of abandoned children in 2003-2004⁽¹⁰⁾ was estimated by UNICEF at 7 - 8,000) are, at first analysis, related to factors specific to the mother: unwanted pregnancies, premature babies, or with health problems, or with a low birth weight, poverty and a precarious family situation, or very young mother and/or mother without a husband or partner. But beyond the immediate causes we find important deficiencies of the system: the maternity hospitals are not woman-friendly, in half of the maternity hospitals there is no rooming-in for the mothers and their newborn babies, and, very often, women in distress do not receive social assistance to help them give up the idea of abandoning their baby.

Judges lack courage

National adoptions are indeed a form of alternative care which needs to be developed and especially in a country where poverty is prevalent and where it still subsists the old adage "the state will provide", the state can substitute for the family or community in the care of children. Nevertheless, what is alarming is the paradox that from the time international adoptions were banned in Romania, national adoptions have not progressed and in fact have regressed in recent years⁽¹²⁾.

The reasons for such a small number of national adoptions pronounced since the new legislation came into force (in 2005) are related primarily to the complications inherent to that legislation. Now, it is a judge who decides regarding the adoption of a child. According to Romanian law, adoption is only possible through the deprivation of parental rights and, therefore, a total severance of the child's ties with the biological family. In order to make this decision (often legitimate, with regard to the Convention on the Rights of the Child and to the principle of the best interest of the child), the judge must examine in detail the dossier, the home studies conducted on the biological family and on the adoptive family, and satisfy him/herself (in conformity with the law) that all the other legal solutions (like placement with the extended family) have been exhausted. Here is the weak point. Judges do not dare to decide. They return the files. They ask for additional information. They doubly fear that they will make some mistake or, more seriously, be accused of corruption, given the great disparity between the number of potential adoptive parents and the number of children deemed to be adoptable.

In this respect, it is clear that the Romanian authorities need to break away from the "tutelage" of the European Commission and the European Parliament, which Romania's new status of member state of the European Union cannot but justify. Romania needs to make some rapid, courageous, and innovative decisions in order to guarantee that the hundreds of babies who are in hospitals or in temporary foster families, and who await a definitive solution, will have their right to a family fulfilled.

Another significant challenge concerns the question of children with severe disabilities, the majority living with their own families often in very difficult conditions, and who do not receive the medical or psychological assistance they need. Several recent reports (others are about to be published) have illustrated just how sad this situation is. Far too often in the institutions admitting the most serious cases, in need of permanent medical care, the personnel is insufficient in number and mostly under-qualified and underpaid. The desperation of parents in a good many cases is all the more revolting as pregnancy monitoring and family planning programs are ineffective or non-existent. The Ministry of Health is chronically shaken by political crises which usually end in a change of political leadership⁽¹³⁾, and free sailing, while well known problems await precise answers. This undoubtedly triggers a great lack of coherence in public health policies, as well as the migration of the most qualified personnel to the private sector or abroad.

Responsibilities of the State

Now that Romania is a member of the European Union, and there is every indication that Romania will want to fully take its place in this community, the time has arrived for some rigorous introspection with regard to the protection of the rights of the child. The fear of Brussels' reproaches has disappeared. Romanian authorities must engage in a sincere and serious discussion with their partners from civil society, from the private sector and with human rights international organizations with regard to all these new challenges. Thus, Romanian authorities must address the issue of difficult national adoptions, the deficiencies of the new legislative package in the field of child protection, as well as the other issues, that have not been explored here, of street children, child trafficking, or the painful issue of juvenile offenders, hundreds of children aged 14 to 18 years old receiving custodial sentences.

The State cannot do everything, those times are gone, civil society must find its place in a system where public authorities should enhance their regulating and standard-setting role; it is time for the public authorities to allow their policies and systems to be examined, monitored and evaluated by independent institutions – as is the case in almost all European countries – child rights observatories, children's ombudsmen, or simply by national child protection organizations. Under these conditions, the protection of the rights of the child in Romania can continue to progress and will finally put children where they ought to be on the political agenda: first.

(1) Monitoring Report on the level of preparedness of Romania and Bulgaria for accession to the EU, p.41 http://ec.europa.eu/enlargement/pdf/key_documents/2006/sept/report_bg_ro_2006_ro.pdf.

(2) Innocenti Social Monitor 2006; UNICEF 2006.

(3) Please see UNICEF Report on child abandonment; UNICEF-Romania 2005.

(4) Children on the Brink, a focused situation analysis of vulnerable, excluded and discriminated children; UNICEF-Romania 2006.

(5) Please see the reports of SAMUSOCIAL Bucharest, who provided assistance to more than 350 persons in the year 2006 alone.

(6) Please see the excellent article by Vasile Ghetau in *Le Monde Diplomatique*, December 2006.

(7) <http://hrw.org/children/abandoned.htm>

(8) Under the legislation in force, a woman may give birth anonymously, the child will be put up for adoption and will receive an identity unrelated to that of his/her mother.

(9) *The Situation of Children Worldwide*, UNICEF 2006.

(10) NAPRC official data indicate a number of 2,600 children in 2005, but they do not include numerous children who do not stay more than a few weeks in hospital, but who are taken into account in UNICEF's definition.

(11) Please see Prof. Delassus' numerous works on maternology, demonstrating to what extent the baby's first look at his/her mother is important for his/her future development.

(12) Please see the article in *Le Monde Diplomatique*, January 2007.

(13) During the past three years, no less than four ministers and secretaries of state succeeded each other at the Ministry of Health, not including the countless changes in the management of directions, services, departments.