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LE SCANDALE
DE L'INTERDICTION DE L'ADOPTION INTERNATIONALE
DES ENFANTS ROUMAINS ABANDONNES

Contribution et position de CARE

CARE France
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L'adoption internationale a permis chaque année à environ 4.000 enfants roumains abandonnés de trouver une famille jusqu'à ce qu'intervienne la « suspension » des procédures en décembre 2000, suivie de l'interdiction depuis le 1^{er} janvier 2005.

Pour justifier cette décision d'interdiction, imposée au gouvernement roumain par l'Union Européenne, la Commission de l'Union a publié en novembre 2005 la note ci-jointe en annexe.

Cette note, intitulée « Child protection and adoption in Romania », [REDACTED]

La pierre angulaire en est précisément l'interdiction de l'adoption internationale, « which is no longer foreseen as a child protection measure ».

[REDACTED]

[REDACTED]

En 2004, rien que dans les maternités et les services pédiatriques des hôpitaux, l'UNICEF a dénombré 9.000 abandons d'enfants.

La question fondamentale est de savoir comment respecter le droit de chacun de ces enfants à une famille si l'adoption internationale est interdite.

Il y a deux alternatives théoriquement possibles.

La première est l'adoption nationale, [REDACTED]

[REDACTED]

La seconde est le retour de l'enfant dans sa famille naturelle.

La note de la Commission précise que cette interdiction est « en ligne avec la Convention des Nations Unies sur les Droits de l'Enfant et avec la Convention Européenne sur les Droits de l'Homme ». ("it brings Romania in line with the U.N. Convention on the Rights of the Child and the European Convention on Human Rights").

- la Convention des Nations Unis, en date du 20 novembre 1989, affirme dans son préambule que « l'enfant, pour l'épanouissement harmonieux de sa personnalité, doit grandir dans le milieu familial dans un climat de bonheur, d'amour et de compréhension. »

- la Convention de La Haye sur « la coopération en matière d'adoption internationale », en date du 29 mai 1993, organise l'adoption internationale à laquelle elle reconnaît « l'avantage de donner une famille permanente à l'enfant pour lequel une famille appropriée ne peut être trouvée dans son Etat d'origine ».

Cette convention a été ratifiée par 36 Etats dont 13 sont qualifiés de « pays d'accueil », dont la France, et 23 de « pays d'origine », dont la Roumanie.

En effet, en application de la nouvelle législation entrée en vigueur le 1^{er} janvier dernier, aucun enfant ne peut être désormais placé en orphelinats avant d'avoir atteint l'âge de deux ans.

Autres observations sur la note de la Commission de l'Union Européenne(novembre 2005)

1) « As a consequence of the application of the new legislation since January 1st, 2005, the number of parents in Romania willing to adopt a child is bigger than the number of children available for adoption : 1.200 parents as opposed to 267 children declared adoptable after verification by the courts ».

Commentaire :




2) « The situation in Romania is becoming similar to the situation in many member states. There is consequently no need to resume inter-country adoption ».

Commentaire :



3) The number of international requests for adoption has decreased significantly from over 600 in 2003 to 146 in 2004 ».

Commentaire :



Pour prendre l'exemple français, le nombre de ménages français ayant adopté un enfant étranger s'est élevé à environ 4.000 en 2004, dont 507 enfants de Haïti, 491 de Chine et 445 de Russie. Au 31 décembre 2004, 25.000 ménages français étaient titulaires d'un agrément pour adopter et ne trouvaient pas d'enfants.

4) « Most of the children which are in institutional care (total 32.654) are already older (22.230 are 10 years or older, out of which 5.885 over 18 years). The figures are provided by the National Authority for Child Protection in Romania ».

Commentaire :



5) « The so-called pipeline cases (petitions for international adoption that were filed in between October 2001 and December 2004, which were not sent to courts) are currently under investigation. The examination may result in an international adoption for some cases. However, national solutions apply for the big majority those 1.400 cases ».

Commentaire :



6) « The European Union has played a key role in encouraging reform and funding in the childcare sector in Romania. The progress achieved has been widely acknowledged and Romania's child protection is nowadays considered a model for the region. Some 100 millions € were initially spent on improving the conditions in the institutions and subsequently on preparing and funding reform policy and projects. In 2001, the E. U. started a 59.5 million € project for raising awareness to the alternative to institutionnalisation and for creating alternative childcare facilities. »

Commentaire :



Pièces jointes

1. Note de la Commission de l'Union Européenne (novembre 2005)
 2. Communiqué de presse de l'UNICEF (20 janvier 2005)
 3. Communiqué du sénateur Sam Brownback et du représentant Christopher Smith (18 novembre 2005)
 4. Note à propos de l'arrêt de la Cour Européenne des Droits de l'Homme (22 septembre 2004)
 5. Préambule de la Convention des Nations Unies (20 novembre 1989)
 6. Convention de La Haye sur la coopération en matière d'adoption internationale (29 mai 1993)
 7. « La nouvelle tragédie des enfants roumains » (Le Monde, 24 avril 2004)
 8. « A one-woman war against intercountry adoption » (Wall Street Journal, 4 février 2005)
 9. « Family of Irak war » (Westcountry News, 22 avril 2004)
 10. Joint Council on International Children's Services (7 juillet 2004)
 11. Niveau de vie en Roumanie
 12. L'adoption internationale en France en 2004
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Note de la Commission de l'Union Européenne
(novembre 2005)

Child Protection and Adoption in
Romania, November 2005

Romania has adopted as from 1 January 2005 a new legislation on child protection. This new legislation completes the reform of child protection in Romania. It brings Romania in line with the UN Convention on the Rights of the Child and the European Convention on Human Rights. Intercountry adoption, which is strictly limited to grand parents, is no longer foreseen as a child protection measure. This represents a firm reaction to past irregularities and distortions and a measure conducive to developing intra-country alternatives in the best interests of each child.

As a consequence of the application of the new legislation since 1 January 2005 the number of parents in Romania willing to adopt a child is bigger than the number of children available for adoption (1200 parents as opposed to 267 children declared adoptable after verification by the courts -- source: State Secretary for adoption questions). The situation in Romania is becoming similar in this respect to the situation in many member states. There is consequently no need to resume inter-country adoption. According to Romanian sources the number of international requests for adoption has decreased significantly from over 600 in 2003 to 146 in 2004.

The number of child protection measures 32 654 (CMR) does not equal the number of children available for international adoption. A placement in institutional care is one of the suitable child protection measures according to the law on child protection as re-unification with the natural parents, the placement in the enlarged family or with foster parents or the national adoption. All the measures described above are valid child protection measures as stipulated in the UN Charta for the rights of the child, which is also the European acquis in the area. There is no priority for international adoption measures. On the contrary, it is the last resort if other possibilities have failed to work out. Only the children who were declared adoptable for international adoption by the competent Romanian courts may be adopted in this way.

Most of the children which are in institutional care (total 32 654) are already older (22.230 are 10 years or older, out of which 5.885 over 18 years). The figures are provided by the National authority for child protection in Romania.

The so-called pipeline cases (petitions for international adoption that were filed in between October 2001 and December 2004, which were not sent to courts) are currently under investigation. The examination may result in an international adoption for some cases, which fall under transitory provisions (see background). However, national solutions apply for the big majority of those 1400 cases.

The European Union has played a key role in encouraging reform and funding in the childcare sector in Romania. The progress achieved has been widely acknowledged (see UNICEF report on De-Institutionalisation) and Romania's child protection is nowadays considered a model for the region. Some €100 Mio were initially spent on improving the conditions in the institutions and subsequently on preparing and funding reform policy and projects. In 2001 the EU started a 59, 5 Mio € project for raising awareness to the alternatives to institutionalisation and for creating alternative childcare facilities. Special attention is given to closure of large institutions for very young children and for children with special needs by replacing them with alternative child care. The programme will run until 2006.

Background

The policy of Ceaucescu's regime in Romania was to encourage families to have as many children as possible. Due to the absence of funding and structures to support families, the upbringing of the children was primarily the responsibility of the state. This process of institutionalisation led to the founding of children's homes all over the country. In some 600 big residential institutions some 100.000 children were hosted to up to the age of 18 years. Economic hardship forced a lot of parents to abandon their children and give them in institutional care. The resources of the government to cope with the child care facilities were very limited leading to other considerations than the best interest of the child. The massive inter-country adoption was considered to be a solution to the problem of crowded children's homes. The massive foreign demand for adoption led also to the problem of child trafficking.

The issue of children's rights and the condition of children were mentioned in the 1997 Commission opinion on Romania's application for membership of the European Union and were described to give rise to serious concern with respect to fulfil the first Copenhagen criteria (respect of human rights and the protection of minorities).

The Romanian legislation in place at that time, open to intercountry adoptions, created a flow of inter-country adoptions rather than promoting national solutions. Besides, the financing of national solutions was not possible. The situation did not substantially change up to October 2001, when the Romanian government decided a moratorium on intercountry adoptions until a new legislation would be in place. Nevertheless a court decision based on the general principle that the Romanian administration has to register any demand presented by each citizen, even from non-Romanian citizens, led to the result that requests for adoption were recorded during the moratorium. These cases are the so-called pipeline cases.

However, in December 2001 the Romanian government diverged from this principle again and allowed through an emergency ordinance intercountry adoptions to take place under the existing regulations at the moment of their submission. Moreover, the emergency ordinance stipulated, that in exceptional situations, required by the best interest of the child, the government may entrust cases for international adoption to the competent courts. As a consequence Romanian courts approved still until December 2003 1115 international adoption applications.