

**NOVELTY ELEMENTS AND CHANGES
BROUGHT TO ADOPTION PROCEDURE BY LAW NO. 57/2016****Associate Professor Daniela Creț PhD**

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Abstract: Adoption is chief among the measures of alternative protection that can be taken to protect a child in Romania. According to Law no. 273/2004 on adoption procedure, current forms under which adoption can be found are domestic adoption and international adoption.

In what follows we will highlight certain novelty *elements and changes to the domestic adoption procedure brought by Law no. 57/2016*.

Keywords: adoption procedure, the leave of adjustment, the monthly allowance, information on adoption.

1. Introductory considerations on adoption

Any child has the right to grow, develop and be educated in a harmonious family environment, full of love and understanding. In certain situations, for objective (e.g. both parents are deceased) or subjective reasons (e.g. one of the parents is alcoholic and abusive towards the spouse and children), the children are taken away from their natural family and placed into the care of the state. In such situations some protective measures must be taken, such as foster care, emergency foster care or adoption.

The reiteration of my foray into the analysis of adoption, as a means for protecting children deprived of parental care, is determined by the novelty elements and the changes in the matter brought by the recent republication of Law no. 273/2014 which governs adoption.

At present, adoption is governed [1] by the Civil Code [2], which became effective in 2011, by Law no. 273/2004 regarding adoption procedure [3], and under the procedural aspect, by the Code of Civil Procedure, which became effective in 2013. Such legal provisions are completed by those of Law no. 272/2004 on the protection and promotion of children's rights, which is the frame-law in the matter of child protection; and with those of G.D. no. 579/2016 for approval of the Methodological Norms for the application of Law no. 273/2004, as republished in 2016, on the procedure of adoption, for the amendment and supplementation of Government Decision no. 233/2012 on the services and activities that can be conducted by Romanian private bodies as part of the domestic adoption procedure, as well as the methodology for authorisation thereof, and for the amendment of Government Decision no. 1.441/2004 on the authorisation of foreign private organizations to conduct activities in the area of international adoption [4].

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The norms of Law no. 273/2004 do not define the term of adoption, but establish, depending on the existence of the foreign element, that adoption can take one of two forms – domestic adoption and international adoption – delimiting them from a conceptual point of view [5]. The Civil Code defines adoption [6], at art. 451, as being “the legal operation which creates a parentage bond between the adopter and the adoptee, as well as kinship between the adoptee and the relatives of the adopter”.

In the literature, adoption has also been defined as being the legal act creating kinship, similar to natural kinship, between the adoptee and his descendants, on the one hand, and the adopter and his relatives, on the other hand [7].

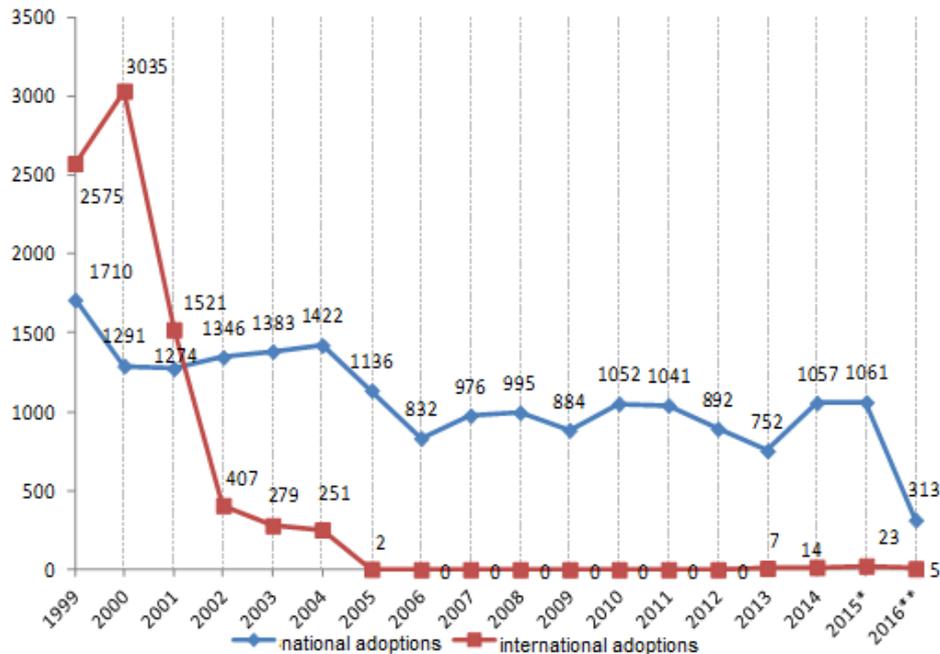


Figure 1. Approved adoptions between 1999 – 30 June 2016 for children who had adoption established as a special protection measure (final decision registered in the National Register of Adoptions (R.N.A.) by 30 June 2016)

Notes:

- 2015* partial data. Final decisions registered in the R.N.A by 30 June 2016, according to documents sent by D.G.A.S.P.C.
- 2016** partial data. Final decisions registered in the R.N.A by 30 June 2016, according to documents sent by D.G.A.S.P.C.

Source: Adoption statistics from www.copii.ro/statistica-2016/

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Indicative of the current situation of adoptable children is the statistic data of June 2016 from the Ministry of Labour and Social Justice [8]. This data shows that in June 2016 there were recorded 3,250 children declared adoptable. Among these were 2,716 nationally adoptable children on 30 June 2016 and 534 internationally adoptable children on the same date. By comparison, the number of families attested for adoption with valid certificates on 30 June 2016 was 1,881.

2. The leave of adjustment granted to the adopter, the allowance s/he is due and the regime of information on adoption - Novelty elements instituted in the matter of adoption by the provisions of Law no. 273/2004, as republished

Among the novelty elements to which Law no. 273/2004, as republished following Law no. 57/2016 [9], confers detailed regulation (art. 50 - 53), are the leave of adjustment granted to the adopter or to any of the spouses in the adopting family, and the monthly allowance which relates to the social reference indicator, in an amount of 3.4 ISR. The leave has a maximum duration of one year and comprises the period when the child is entrusted for adoption.

For the granting thereof, the provisions of the special law establish as prerequisite that the entitled person (who, in the terms of the law, is the adopter or, optionally, any of the spouses in the adopting family) should earn income subject to income tax according to the provisions of Law no. 227/2015 on the Fiscal Code, as subsequently amended and supplemented, from wages and assimilated gains or, as applicable, independent or agricultural activities.

In order to benefit from the above-mentioned leave and allowance, the entitled person must file a request for registration at the agency for payments and social inspection of the county or the City of Bucharest in the jurisdiction of which that person is domiciled or resident, with the following annexes: the certificate of registry on the basis of which the judgement on entrustment for adoption is enforced, the document attesting the relocation of the child with the adopter/adopting family, registered with the directorate in the jurisdiction of which the child was protected, the proof of effective commencement of the leave or cessation of activity [art. 50 para. (2) corroborated with para. (7)], but also a copy of the applicant's identity document, a copy of the child's birth certificate, and documents proving the existence of income subject to income tax according to the provisions of art. 67, art. 76 para. (1) and (2) and art. 103 of Law no. 227/2015 on the Fiscal Code as subsequently amended and supplemented [art. 67 para. (2) of G.D. 579/2016].

The term in which the request and proving documents required for granting the monthly allowance corresponding to the leave of adjustment must be filed and registered at the above-mentioned institution is of 10 working days since the date when the judgement to entrust the child for adoption was enforced.

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On the above-mentioned request, the executive director of the territorial agency (agency for payments and social inspection of the county or City of Bucharest in the jurisdiction of which that person is domiciled or resident – s. n.) must issue a decision, within 3 working days from the date of registration, which will be communicated to the applicant. An appeal can be filed against this decision, which will be settled under the conditions of the Law of Administrative Litigation no. 554/2004, as subsequently amended and supplemented (art. 68 of G.D. no. 579/2016).

Depending on the option of the entitled person, as indicated in the request, the allowance can be paid by postal order or, as applicable, in the person's current personal account or card account.

As a rule, the allowance is to be paid on the day following the one when the judgement entrusting the child for adoption was enforced. By exception, however, if the request is filed after the term of the 10 working days from the date when the judgement entrusting the child for adoption was enforced, but before the expiry of the term for which the entrustment of the child for adoption was ordered, the allowance shall be granted from the date when the request was filed.

On the grounds of art. 70 of G. D. no. 579/2016, any intervening change likely to cause the cessation or suspension of the payment of the allowance must be communicated to the agency for payments and social inspection of the county or City of Bucharest within 5 days from the date of issuance and acknowledgement, by the entitled person or, as applicable, the directorate, following the development of the child-adopters relationship throughout the duration of entrustment for adoption.

G.D. no. 579/2016 expands the scope of norms referring to granting the payment of the allowance corresponding to the leave of adjustment and regarding the people who have children entrusted for adoption on the date of entry into force of the methodological norms it regulates. According to these, the allowance, as well as the leave of adjustment, are to be granted proportionally, according to the number of calendar days remaining from the date when the judgement entrusting the child for adoption was enforced, and until the expiry of the maximum period provided by law for granting the leave of adjustment (art. 71).

The provisions of art. 50 para. (4) of Law no. 273/2004, as republished, stipulate the interdiction of people who benefit from a leave of adjustment and the aforementioned allowance to benefit, during the period of this leave, from the rights granted based on art. 2 and 7 of the Government Emergency Ordinance no. 111/2010 on the leave and monthly allowance for raising children, approved, with amendments, by Law no. 132/2011, as subsequently amended and supplemented.

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It should be noted, however, that the entitled person benefits during the leave from the payment of individual health insurance contribution [10] [art. 50 para. (5) first thesis of Law no. 273/2004, as republished].

According to the provisions of art. 51 of Law no. 273/2004, the leave of adjustment and the payment of allowance shall cease starting on the day following the one when one of the following situations occurs:

- a) the maximum period of one year, provided for the leave of adjustment, has expired;
- b) upon the request of the entitled person;
- c) the child has reached the age of 18;
- d) the child has died;
- e) the entitled person who was going to adopt as a single person has died;
- f) the judgement regarding the revocation of entrustment for adoption has remained final.

The provisions of the law under analysis also establish the situations in which the leave of adjustment and the payment of the allowance are suspended, beginning with the day following the one in which one of the following situations occurs: the child was placed into emergency foster care, or the judgement regarding the revocation of entrustment for adoption was enforced [art. 52 para. (1)] [11].

The text of art. 53 of Law no. 273/2004, as republished, brings certain clarifications referring to the financial contributions owed to the state by the entitled persons and establishes the legal effects of granting the leave. In this regard, such persons are exempt from paying the mandatory taxes and social contributions established by the law, with the exception of the health insurance contribution. As regards the legal consequences of granting the leave of adjustment, the following situations are emphasised:

- the period of the leave is a period assimilated to the contribution period, for the purpose of establishing health insurance allowances provided by the Government Emergency Ordinance no. 158/2005 on health insurance leaves and allowances, approved with amendments by Law no. 399/2006, as amended and supplemented;
- the period of the leave provided under art. 50 para. (1) is the period assimilated to the contribution quota and is considered for obtaining social security benefits, under the conditions provided by Law no. 263/2010 on the unitary public pensions system, as amended and supplemented, and the rights established by Law no. 76/2002 on the system of unemployment insurance and the stimulation of employment, as amended and supplemented, as well as to establish the rights provided by the Government Emergency Ordinance no. 111/2010 on the leave and monthly allowance for raising children, approved with amendments by Law no. 132/2011, as amended and supplemented;

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- the period of the leave of adjustment is considered as seniority in work, in service and in speciality, which is valued when establishing the rights granted in relation to these.

It is worth noting that the amounts granted improperly, meaning when the allowance was also granted during the period when the cessation or suspension of the leave and allowance, shall be recovered from the entitled person, under the same conditions as those provided by Government Emergency Ordinance no. 44/2014 for the regulation of measures regarding the recovery of debts for social security benefits, as well as for the amendment of art. 101 of Law no. 448/2006 on the protection and promotion of rights for disabled persons [12].

Another novelty element provided by Law no. 273/2004, as republished, stipulates the obligation of employers to grant to the adopting employee or, as applicable, to adopting employee spouses, time off from work for undergoing the evaluations imposed by the obtainment of the adoption certificate and the matching process (art. 54). These shall be conferred without diminishing wage entitlements, within the limit of 40 hours per year.

In order to be granted time off, the applicant must file a request attaching a copy of the calendar of meetings or, as applicable, the visitation programme, compiled by the competent general directorate for social work and child protection.

Failure by the employer to comply with obligations to grant time off to the employee or, as applicable, to adopting employee spouses, constitutes an offense and shall incur penalties by fine ranging from 1,000 lei to 2,500 lei [art. 54 para. (3)].

Another novelty element provided by Law no. 273/2004, as republished in 2016, concerns the adoptee's access to information regarding his/her origins and past, as well as the content of information concerning the adoptee to which the natural parents or biological relatives of adopted persons have access.

Given the importance of this aspect both for the adoptee and for the natural parents or biological relatives of the adoptee, the current form of the law in the matter renames Chapter V "The legal general regime of information on adoption".

While keeping the previous provisions, the current Law of adoption confers to adoptees the right to request and obtain information on their place of birth, the institutional path and personal history, if this does not involve disclosing the identity of natural parents/biological relatives. Information attesting to the adoption can be provided by A.N.P.D.C.A. only to people who have acquired full capacity of exercise. In order to obtain such information, the adoptee with a full capacity of exercise must request A.N.P.D.C.A. to issue a document attesting to the adoption and whether prior to the adoption his/her filiation to at least one of the biological parents was established, and must also participate in at least one counselling meeting ascertaining whether the adoptee is psycho-emotionally balanced.

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Counselling for the adoptee, a novelty aspect in the obtainment of information on the adoption by the adoptee, can be conducted by the directorate in the jurisdiction of which the adoptee is domiciled, by authorised private entities, as well as individual practices, associate practices or professional civil societies in social work and/or psychology, which have entered into conventions with A.N.P.D.C.A., or by foreign authorities/entities authorised to this effect, if the adoptee is not domiciled in Romania. Following this activity, a counselling report will be drawn up and communicated to the adoptee (art. 78 of Law no. 273/2004, as republished). After completing these steps, the adoptee with a full capacity of exercise can request the tribunal in the jurisdiction of which s/he is domiciled or, in case s/he is not domiciled in Romania, the Bucharest Tribunal, to authorise access to information held by any public authorities regarding the identity of his/her natural parents/biological relatives.

In this context one can note aspects of novelty in the matter, intervening as a consequence of Law no. 57/2016 and with regard to the procedural regime of authorising the adoptee's access to information concerning the identity of his/her natural parents. For the purpose of authorising the obtainment of information referring to the identity of his/her natural parents, the adoptee must file a request addressed to the court, to which s/he must attach: a copy of the applicant's identity document, a copy of the document attesting to the adoption and the establishment of filiation towards at least one of the natural parents, as well as the report confirming the conduct of counselling [13] [art. 79 para. (1) of the analysed law].

The settlement of requests for the authorisation of access to information referring to the identity of natural parents entails summoning the adoptee and A.N.P.D.C.A. According to art. 79 para. (4) of Law no. 273, the admission of the application can be made by the court if, based on the administered evidence, it shall ascertain the fulfilment of the following conditions: the applicant is an adopted person whose filiation was established towards at least one of his/her biological parents; s/he has undergone counselling; and the court has reached the conclusion that the adoptee is psycho-emotionally balanced.

In virtue of the principle of guaranteeing confidentiality regarding the identification data of the adopter or, as the case may be, of the adopting family, as well as regarding the identity of natural parents, a principle regulated both by the provisions of Law no. 273/2004, as republished in 2012, and by those of its current form, as an aspect of novelty, the natural parents or biological relatives of adopted persons may obtain information on the adoptee only with regard to the confirmation of adoption, the year of its approval, the domestic or international character of adoption, as well as whether the adopted person appears in the records of authorities as being alive or deceased. Other information regarding the adoptee can be provided to his/her natural parents or biological relatives only with the

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express consent of the adoptee who has acquired full capacity of exercise or, in case the adoptee is a minor, with the consent of the adopting person or family [art. 80 para. (1)-(2)]. The consent is requested by the National Authority for Child Protection and Adoption (A.N.P.D.C.A.), as the case may be, through the directorate or central authority of the receiving state, or the accredited foreign organization involved in the adoption procedure, while the information will also be offered by A.N.P.D.C.A.

It is worth noting that the current Law of adoption maintains the obligation of adopters to gradually inform the child that s/he is adopted, starting as early as possible. However, it also stipulates, as in the previous form of the law, that the identity of the natural parents of the adoptee can be disclosed by the A.N.P.D.C.A. before his/her acquisition of full capacity of exercise, but only for medical reasons, while reducing, compared to the previous form, the scope of people who can request this disclosure: any of the adopters, the adoptee, or the representative of a medical institution, accompanied by supporting medical documents [art. 81 para. (2)].

If the adopted persons should have information on the identity of their natural parents they can inform A.N.P.D.C.A. directly in order to take the necessary steps to contact the natural parents or biological relatives.

Detailed aspects regarding the procedure of contacting natural parents or biological relatives, the adoptee's access to information concerning his/her origins and past, as well as the access of the natural parents or biological relatives of adopted persons to information on the adopted person are regulated by the recent Government Decision for the approval of the Methodology for contacting natural parents or biological relatives, the adoptee's access to information regarding his/her origins and past, as well as the access of natural parents or biological relatives of adopted persons to information concerning the adopted person [14]. According to art. 14 of this normative document, contacting natural parents or other biological relatives, under various forms, meetings, correspondence, telephone conversations etc. can be facilitated under the condition of consent regarding contact and, as the case may be, personal data processing, by the persons whose contacting has been requested. If the sought person does not have full capacity of exercise, facilitation of contact also entails the consent of his/her legal representatives regarding contact and, as the case may be, personal data processing. The provisions of art. 83 of Law no. 273 impose the keeping of relevant information concerning the adoption and the origin of the child for at least 50 years from the date of the final judgement of approval of adoption, especially those regarding the identity of natural parents, as well as data on the medical history of the child and his/her family.

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3. Certain changes and novelty elements regarding the procedural regime for settling requests in the matter of adoption

The judgement procedure is regulated by Chapter VI of the current Law of adoption. The provisions of this chapter are completed by the provisions of Book III entitled "Non-contentious legal proceedings" in the Code of Civil Procedure.

Certain legal provisions in the matter have been modified by Law no. 57/2016, and others have been regulated with novelty elements.

As in the previous regulation [15], all requests provided for in the Law of adoption are assigned to the competence of Romanian courts, if at least one of the parties has the habitual residence in Romania.

From the point of view of material competence, requests provided by Law no. 273 are within the competence of the tribunal, and in terms of jurisdiction, they, as well as those regarding the cessation of adoption, are assigned to the tribunal in the territory of which the adoptee is domiciled. Litigations for the judgement of which the competent court cannot be established shall be judged by the Bucharest Tribunal [art. 84 para. (3) of the Law of adoption].

Requests regarding adoption must fulfil the general conditions of applications for summons [16]. Such requests are exempt from judicial stamp duty.

Likewise, it can be noted that, as in the previous form of the analysed law, requests in matters of adoption are settled by specialised court panels, in the council chamber, with the obligatory participation of the prosecutor.

As novelty elements, the current regulation of adoption comprises certain aspects, which are at the same time derogations from the common law, among these being:

- art. 87 of Law no. 273 provide that in the settlement of cases regarding the application of Law no. 273/2004, the provisions of art. 200 of the Code of Civil Procedure referring to the verification of the request and its regularisation are not applicable. Also, the request must be filed in as many copies as are necessary for communication, and one copy for the court. Documents accompanying the request shall be filed in one copy. Upon receiving the request, the president of the court shall at once take steps for setting the date of the first hearing, which cannot be later than 15 days from the date of registration of the request, as well as for the summons and communication of the request. Counterstatement is not obligatory. It can be noted that the first court settles the request by judgement, usually based on the documents. The pronouncement of the decision can be postponed by no more than 48 hours, and the decision must be drafted within 7 days of the pronouncement. The decision shall be communicated to the parties within 48 hours of its drafting. It can be noted that, unlike the current provisions, in the previous regulation of adoption the judgement had to be drafted and communicated to the parties within no more than 10 days of its pronouncement;

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- art. 88 establishes the appeal against requests provided by the current law; this shall be executed within 10 days; by exception, in judgements by which the request to start the adoption procedure is settled, the appeal term is 30 days. The appeal can be pursued by any of the parties, but also by the prosecutor, and is judged urgently and prevalently, by summoning the parties to the council chamber;
- art. 89 stipulates that requests regarding the cessation of adoption are judged with the summoning of the adopter or, as applicable, of the adopting family; of the adoptee in his/her own name or, as applicable, through his/her legal representative; of the directorate in whose jurisdiction the adoptee is domiciled and of A.N.P.D.C.A.;
- art. 90 establishes the enforceable character of decisions settling requests provided by the current law, if the law does not provide otherwise, from the date when they became final.

4. Conclusions

I believe that the current form of legislation in the matter – Law no. 273/2004 on the adoption procedure, the Norms of application thereof, as well as the Methodology for contacting the natural parents or biological relatives, the adoptee's access to information concerning his/her origins and past, and the access of natural parents or biological relatives of adopted persons to information concerning the adopted person – inspired by European regulations incidental in the matter, implement welcome novelty elements, such as: the more rapid creation of a profound attachment between the adopting person/family and the adopted child as a result of the leave of adjustment granted to the adopting person/family; the facilitation of the obtainment of information by the adopted person regarding his/her natural parents/biological relatives; or the reduction of certain terms for the drafting and communication of the decision in the matter.

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7. Stoica V., *Natura juridică și procedura specifică adopției*, în *Dreptul*, nr. 2/1993
8. G. D. no. 579/2016 for approval of the Methodological Norms for the application of Law no. 273/2004, as republished in 2016, on the procedure of adoption, for the amendment and supplementation of Government Decision no. 233/2012 on the services and activities that can be conducted by Romanian private bodies as part of the domestic adoption procedure, as well as the methodology for authorisation thereof, and for the amendment of Government Decision no. 1.441/2004 on the authorisation of foreign private organizations to conduct activities in the area of international adoption published in "Official Gazette of Romania", Part I, no. 623 of 12 August 2016
9. Law no. 57/2016 published in the "Official Gazette of Romania", Part I, no. 283 of 14 April 2016
10. Law no. 273/2004 regarding adoption procedure republished in "Official Gazette of Romania", Part I, no. 739 of 23 September 2016
11. Law no. 448/2006 on the protection and promotion of rights for disabled persons was approved with amendments by Law no. 266/2015, for other social security benefits
12. Government Decision for the approval of the Methodology for contacting natural parents or biological relatives, the adoptee's access to information regarding his/her origins and past, as well as the access of natural parents or biological relatives of adopted persons to information concerning the adopted person published on 15.03.2017 (www.mmuncii.ro/j33/images/Documente/MMJS/Transparenta-decizionala/2017-03-15-2-HG_Norme_)
13. www.copii.ro/statistica-2016/

Notes

- [1] For the regulation of adoption throughout time see I. Nicolae, *Dreptul familiei în context național și în raporturile de drept internațional privat*, Editura Hamangiu, 2014, p. 278 *et seq.*; D. C. Creț, *Ocotirea minorilor în dreptul privat*, Editura Cordial Lex, Cluj-Napoca, 2011, pp. 297-298.
- [2] See Fl.-A. Baias, E. Chelaru, R. Constantinovici, I. Macovei, *Noul Cod civil. Comentariu pe articole*. ediția 1, revizuită, Editura C. H. Beck, București, 2012.
- [3] Republished in "Official Gazette of Romania", Part I, no. 739 of 23 September 2016.
- [4] Published in "Official Gazette of Romania", Part I, no. 623 of 12 August 2016.
- [5] According to art. 2 let. c) of Law no. 273/2004, as republished in 2016, domestic adoption constitutes "adoption in which both the adopter or the adopting family and the adoptee have their habitual residence in Romania"; and according to art. 2 let. d) of the same normative act, international adoption is "adoption in which the adopter or the adopting family and the child which is to be adopted have their habitual residence in different states, and following the approval of adoption, the child is to have the same habitual residence as that of the adopter".
- [6] See V. Stoica, *Natura juridică și procedura specifică adopției*, in *Dreptul*, no. 2/1993, p. 31.
- [7] Al. Bacaci, C. V. Dumitrache, C. C. Hageanu, *Dreptul familiei*, ediția a 7-a, Editura C. H. Beck, București, 2012, p. 225.
- [8] www.copii.ro/statistica-2016/
- [9] Published in the "Official Gazette of Romania", Part I, no. 283 of 14 April 2016.

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[10] The amount of this contribution is calculated by applying the percentage quota established by the law to the value of the granted allowance [art. 50 para. (5) second thesis of Law no. 273/2004] .

[11] Regarding situations when suspension is ceased and the leave of adjustment and the payment of allowance are resumed see para. (2) and (3) of art. 52.

[12] Approved with amendments by Law no. 266/2015, for other social security benefits.

[13] If the counselling is provided by authorised foreign authorities/entities, the report must be filed with the court in original or notarised copy, together with a certified translation into Romanian [art. 79 para. (2) of Law no. 273/2004, as republished].

[14] Published on 15.03.2017 (www.mmuncii.ro/j33/images/Documente/MMJS/Transparenta-decizionala/2017-03-15-2-HG_Norme_)

[15] For the previous regulation of adoption see D.-C. Creț, N.-M. Stoicu, *The national adoption procedure from the perspective of current regulations in the field*, in *Mediterranean Journal of Social Sciences*, Vol. 5, No. 22 September 2014, pp. 571-572.

[16] M. Avram, *Drept civil. Familia*, Editura Hamangiu, 2016, p. 470.