

**Confidential and Privileged**

**Center for Adoption Policy, Inc.**

**INTER-COUNTRY ADOPTION:  
THE EUROPEAN UNION, ROMANIA AND THE  
INTERNATIONAL COMMUNITY**

A Report for the Center for Adoption Policy Studies

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<b>VOLUME II</b>
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**Annexes**

## SUMMARY

### ➤ *Introduction*

Romania has applied to become a member of the European Union. Although it was praised for its recent efforts by the European Commission in its report on the negotiations published at the end of last year, the fact remains that - with Bulgaria - it is one of the two back markers in the enlargement process. By the beginning of 2002, Romania had completed accession negotiations on less than one-third of the 'chapters' of the so-called *acquis communautaire*.<sup>1</sup> This means that it will not become part of the EU before the last quarter of the current decade.

The main reason for Romania's position in the accession league table is that it is the second poorest of the twelve countries currently in negotiations with the EU. To take one economic indicator more or less at random, today inflation is high at over 45% (if lower than in 1997, when it was 154.8%). Romania's economy cannot generate the resources necessary for the government to achieve on its own many of the reforms required of it by the EU. Thus Romania has a degree of financial dependence on the wider international community, coupled of course with an obligation to recognise and to adhere to the conditions of the aid granted, however and by whom those conditions are expressed.

Romania's financial difficulties are compounded by the weakness of its public authorities. Romania's political inheritance was bleak. The country had to endure an especially difficult transition to democracy following the overthrow of the Ceau\_escu regime in 1989. With Albania and Yugoslavia, Romania had sought separate if parallel political paths to that taken by the Soviet Union and the states of the Warsaw Pact. The journey to western democracy has been more arduous and painful for these three countries than for those of the others that have taken it.

With its application to join the EU, and more particularly with the decision to begin negotiations, Romania has entered a period of transition. During this time, the government has to implement legislation conforming to the requirements of the Union.

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<sup>1</sup> The term is defined in chapter two. By contrast ten candidates had closed twenty or more chapters. Bulgaria has closed fourteen.

This in turn requires a certain degree of urgency on the part of the government if the process is to be completed before 2007, the year by which it has said it wishes Romania to be a member of the Union. Thus the temptation to be seen to respond positively to 'advice' given by Europeans and other international bodies, as long as to do so is to bring the goal of EU membership a little closer, is very strong.

It will not do to imprint too bleak an impression of Romania's economy and political system today. In the last two years trade between Romania and its partners has grown sharply with exports and imports surging by more than 40%. Since the election in November 2000, this stronger economic performance has encouraged the Romanian government to make strenuous reform efforts.

However the very effort to reform so many aspects of public life at the same time has inevitably disrupted existing patterns of administration without yet necessarily delivering all the benefits that the changes may in time produce. This report suggests that, whilst many of Romania's difficulties derive from the particularities of its economy and politics, it is also clear that the government's reform efforts have in some respects served to exacerbate them.

➤ *Child welfare reform*

This is especially the case for child welfare reform. Peering in from outside Romania, the media, public opinion and politicians have often found this a subject hard to resist. We would not suggest that in every instance their interest has had negative results. On the contrary: scrutiny from NGOs and the European Parliament has thrown light on practices that have caused untold suffering to vulnerable young people. Without this attention it seems most unlikely that the improvements currently in train would have come about when they did. Yet it is difficult to avoid the thought that financial commitment and technical assistance sustained over a longer period of time might have been more productive in bringing about the goals sought.

At the moment there is a one-year ban on inter-country adoption. This is due to expire in September 2002. We do not expect the ban to be renewed. Legislation is being implemented that will reform procedures and practice in reviewing and processing applications for international adoption. This will render the ban unnecessary.

This report shows that the government's reform programme has been constrained by limited resources of money, management, and expertise. A comment made by representatives of the Romanian public authorities and from the NGOs most closely involved is that the international community has been consistent in exhorting the government to yet more far reaching reform but spasmodic in providing the support necessary to achieve it. Thus the international community in general, and the EU in particular, must bear some responsibility for the difficulties the government confronts.

The criticism is directed precisely at the discontinuities in support and not at its total value. This is quite considerable. Recent figures from the European Commission suggest that the total volume of pre-accession assistance available from the EU is running at an average of about EUR630m/year. This is some 6% of annual consolidated Romanian national budget revenues and up to 25% of investment expenditure under the national budget. Furthermore NGOs and consultants have provided a range of technical expertise to improve the delivery and impact of the assistance provided.

➤ *The need to treat discrete issues separately*

The report notes that a proportion of inter-country adoptions has been corrupt. We think that this is not a reason for banning inter-country adoption. UNICEF suggests clearly that corruption in inter-country adoption derives mainly from private families giving away their children to foreigners for goods or money. The Romanian government concedes that some agencies were taking advantage of the practice. UNICEF believes that fostering and adoption (national or international) is the best solution for the well-being of the child. The 2001 Commission Report shows that an under-resourced civil service and judiciary is a major drawback in the child welfare sector in general.

We believe that further legislation to control human trafficking is necessary. This will free genuine inter-country adoption agencies from any association with nefarious practices. It should also allow foreign parents to adopt Romanian children from orphanages. Few disagree with the proposition that an orphanage is a better place for an abandoned child to be than with a non-Romanian family.

Although some inter-country adoptions have been corrupt, and others are merely covers for trafficking in human beings, we should resist the sloppy thinking that allows us to confuse each with the other. Genuine inter-country adoption is in fact a separate issue. It

is essential that legislators keep in mind the interest of the child and the fact that his or her place is not the happiest in an institution.

➤ *The ban on inter-country adoption*

The RCA decided in June 2001 to suspend the registration of new applications for adoption from foreign families for a period of one year. This has been renewed in October by ordinance. The European Forum for Child Welfare argues that the renewal of the ban on ICA is counter-productive. The organisation suggests that the ban has in fact had a negative impact on children. This is because those waiting in institutions for adoption, as well as the Roma children whose families can no longer look after them, are vulnerable to individuals whose sole interest is profit.

Until Romania implements measures fully to protect families, women, and children (and not least Roma children), banning inter-country adoption seems a wholly inappropriate policy response. For as long as there is insufficient domestic demand, and thus a large number of children still living in institutions, there is a need for inter-country adoption. It seems to have been argued that recourse to inter-country adoption removes pressure on the Romanian authorities to reform their institutions and create a social welfare system. This is unproven at best. It is also a cynical device that fails to put the needs of the child first.

Although we believe that the ban will not be renewed, it is for discussion as to whether it should be referred to the European Court of Human Rights. Consideration might be given to inviting the court to decide why and on which grounds the European Parliament supports the ban on inter-country adoption and whether there are in fact persuasive grounds for the ban to be associated with human trafficking. Such a reference might play a part in discouraging those who would like to see the ban renewed.

However it should be noted that Romania is by no means the only candidate Member State whose child welfare policy has been found wanting. UNICEF has also been critical of Bulgaria, Estonia and Latvia. It can well be argued, therefore, that discussion of adoption policy should be located within a much broader consideration of social investment, focusing on youth, in the former Communist regimes.

Despite the recent reforms and the ban on inter-country adoption, the fate of abandoned Roma children remains critical. The number of Roma children in institutions is

disproportionately higher than for other groups of Romanian children. Their fate is to remain in institutions and the only real hope for a better life is international adoption. Again this could be an issue for the ECHR and even the UN.

## METHODOLOGY

The research summarised in this report was commissioned by the Center for Adoption Policy Studies in November 2001. The assignment was conducted and the report written by Pascale Stacey. There are two volumes to the report. The first provides an analytical outline of the subject whilst the second is made up of relevant documents. The report was submitted to the Center in February 2002.

Most of the research was desk-based and used the Internet and other printed materials already to hand. Research sources are listed in the bibliography are divided in the conventional way between official papers and secondary materials. The author is grateful to the library of the London School of Economics and Political Science, the resources of which were indispensable.

The subject matter of this report proved somewhat controversial. At first sight this is surprising: what should be less controversial than the conditions of life for so-called unwanted children? But (and as the report amply demonstrates) the interplay of politics (national and international), law (ditto), economics, and human prejudice serve to make this a much more sensitive issue than common sense suggests. Many of those contacted during the course of research for the report required considerable reassurance that their help or opinions were not going to be put to a use that they would find inappropriate. Not all were so persuaded and not all those that were often proved willing to be more forthcoming than strict necessity required.

The present report does not aim to be much more than a detailed scoping study. It seeks to identify sources, outline institutional relations, and define parameters. It reaches conclusions but is not prescriptive as to future actions: it is not in that sense 'action-orientated'. Nevertheless it does indicate some broad lines to guide future investigation.



## CHAPTER ONE

### ***ROMANIA AND THE EUROPEAN UNION: INSTITUTIONS AND PROCESSES***

This chapter provides a profile of Romania and of the relevant institutions of the European Union and thus an essential context for the discussion that follows.

#### **1 ROMANIA - COUNTRY PROFILE AND POLITICAL SYSTEM**

Romania's geographical area is 238,391 km<sup>2</sup> and its capital is Bucharest. The official languages are Romanian and Hungarian: the population (22.4 million in mid-2000) is composed of Romanians, Hungarians (7.1%), Roma (also called gypsies: 1.8%), Germans (0.5%), and Ukrainians. The main religions are Romanian Orthodox (88%), Roman Catholic (6%), and Protestant (5%). The unit of currency is the *lei* (of 100 *bani*).

King Michael abdicated and a people's republic was declared in December 1947. The communist leader, Gheorghiu-Dej, was at first Stalinist but the ties with Moscow were soon loosened. From 1965 Romania was a socialist republic. The gap between Bucharest and Moscow widened under Nicolae Ceau\_escu. In 1989 the Ceau\_escu regime was toppled. The country is now a republic and its president is Ion Iliescu from the Social Democratic Party (PSD). The most recent election was in November 2000. The PSD/Humanist Party of Romania (PUR) government is supported by the Democratic Union of Hungarians in Romania (UDMR) and commands just over 50% of the seats in both houses of the bicameral parliamentary system. The senate has 140 seats and the chamber of deputies 345. Both chambers are directly elected from 41 multimember constituencies, comprising 40 counties and the municipality of Bucharest. A new constitution was adopted in 1991.<sup>2</sup>

"Romania is the second largest (after Poland) of the central and eastern European countries that have applied for membership of the Union and after Lithuania the second poorest."<sup>3</sup> Per capita GDP of some EUR1,800/EUR6,000 (PPS) is about 24% of the EU

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<sup>2</sup> DG Enlargement 'Relations with Romania'

(<http://www.europa.eu.int/comm/enlargement/romania/index.htm>); Economist.com, 2000.

<sup>3</sup> Bainbridge, 1998, p. 430.

average.<sup>4</sup> About half Romania's foreign trade is with the EU and 35% of that is with Italy.

With the fall of communism, Romania and the other Central and Eastern European countries (CEECs) entered a new era of rapid political, economic and social change.<sup>5</sup> Internal reform in Romania was gradual due in part to the unfavourable legacy the country had inherited and political opposition from those unwilling to abandon the certainties of the past for the uncertainties of the future. Although significant progress has been made in small-scale privatisation, the main and difficult task of the government is to redress excessive delay in implementing plans for large-scale privatisation and to stabilise the economy following the crisis between 1997 to 1999.

The 2000 and 2001 accession reports prepared by the European Commission emphasised that Romania needs to introduce wider economic more reform as it is not at present considered a functioning market economy and is not able to withstand competitive pressure within the EU. The Economist goes even further (as it usually does) and, straining for alliterative effect, describes Romania as "the laggard of all the former Warsaw Pact countries, slipping even behind Bulgaria, its battered Balkan rival."<sup>6</sup> Wages are low in cities, and few rural areas permit life significantly above a level of subsistence.

However, the present Romanian government enjoys wider respect internationally and at home than its post-Ceau\_escu predecessors. It is recognised that Mr Adrian Nastase, the present Prime Minister, is committed to re-structuring the public administration. There seems to have been some marked improvements in economic performance in the last twelve months. Yet still more needs to be done to combat corruption and inertia. The problems in social welfare are daunting.

The Romanian welfare system under socialism adopted a mixture of a workfare and welfare state.<sup>7</sup> A person had a duty and a right to work and social welfare measures were either universal or work-related. The welfare state provided jobs for all, pensions for most, free education and healthcare services, and housing. The state heavily subsidised basic goods and services and targeted benefits such as child allowances.

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<sup>4</sup> See Annexe A.

<sup>5</sup> UNICEF, 2000a.

<sup>6</sup> Economist, 2001b.

<sup>7</sup> Zamfir, 1997b.

From the Second World War until 1980, the standard of living grew steadily, reaching its peak in the early seventies as a result of high economic growth achieved by loans for industrial development from western countries. In the 1980s, however, social benefits such as child allowances became targeted and means-tested. The welfare system deteriorated rapidly especially in education and health care services. Unemployment rose.

Although the standard of living rose again slightly after the 1989 revolution, poverty set in by the end of the 1990s. The very poor received the least social support and children suffered most because of the transition.<sup>8</sup> This was the result of significant cuts in means-tested child benefits and child allowances. Tax deductions for families with children were cancelled in 1993, and financial support for mothers with many children in 1995.

By 1994 there had been a one-fifth reduction by comparison with 1989 values in the overall allocations for children. Income fell, unemployment rose, and social protection collapsed. Consequently childless households' increased and large families became poorer and marginalised.<sup>9</sup> The birth rate remained high in rural areas and amongst the Roma community.<sup>10</sup>

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<sup>8</sup> It can be argued that the dynamics of child welfare in Romania before and after transition can be understood by considering the demographic trends since WWII which explain the current social problems, political attitudes and policy options.

<sup>9</sup> The birth rate fell after the liberalisation of abortion in 1989 but undesired births perceived by the rate of underweight births rose from 7.3% in 1989 to 10.9% in 1993 and may be explained by the rise in poverty between 1991 and 1993.

<sup>10</sup> Roma children are more exposed to poverty and marginalisation than their non-Roma Romanian counterparts and are more likely to be abandoned.

## 2 EU INSTITUTIONS<sup>11</sup>

### *The European Commission*<sup>12</sup>

The Commission is the European Union's civil service but with a unique combination of administrative, executive, legislative and judicial functions. Specifically the Commission:

- Initiates Community policy and represents the general interest of the European Union
- Acts as the guardian of the EU treaties to ensure that European legislation is applied correctly
- Manages policies and negotiates international trade and co-operation agreements.<sup>13</sup>

Headed by a President and nineteen Commissioners, the Commission is made up of about 15,000 officials, about 3,000 of whom are employed as translators and interpreters (the EU has eleven official languages). This is not a large bureaucracy for a union of fifteen Member States and about 375 million citizens.

The Commission's officials are distributed amongst thirty-six directorates-general and ancillary services located mainly in Brussels but partly in Luxembourg.

For our purposes the most important directorates-general are the following:

- DG Employment and Social Affairs (Commissioner Anna Diamantopoulou)
- DG Enlargement (Commissioner Günter Verheugen)
- DG External Relations (Commissioner Christopher Patten).

It is important to note that, though the Commission has the right of initiating legislation, the Council of the European Union makes most policy decisions. In doing so, the Council must consult or co-decide with the European Parliament. The Council is made up of ministers from the Member States.

There are some exceptions to this general rule (for example, in matters to do with agriculture, competition and trade policy), where the Commission has autonomy to take decisions without submitting proposals to the Council, but they are not relevant to the subject of this report.

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<sup>11</sup> This section leans heavily on Bainbridge, 1998.

<sup>12</sup> Best accessed through <http://www.europa.eu.int>

### ***The Council of Ministers of the European Union***<sup>14</sup>

The Council is:

"The principal decision-making body within the European Union. It has both executive and legislative powers, the former devolved in many areas to the European Commission and the latter in some cases exercised jointly with the European Parliament."<sup>15</sup>

The Council is presided over by the presidency-in-office with each Member State taking on the task for six months. Belgium held the presidency in the second half of 2001 followed by Spain and Denmark in the first and second halves of 2002. The Council meets about eighty times per year.

The Council divides its work between several subject-based councils meeting monthly, bi-monthly, or less frequently, as the case may be. Relevant to this report, we may mention that the Councils on foreign affairs meets monthly and those on social affairs less often.

The decision-making process at Council level begins with working groups composed of officials drawn from the Member States assisted by the Council's own secretariat. The working groups report to COREPER (*comité des représentants permanents*), which is made up of the ambassadors representing the Member States to the EU, their deputies and relevant senior colleagues. It is COREPER that decides the agenda and, to a large extent, the subsequent discussion by ministers at the relevant Council meeting.

### ***The European Parliament***<sup>16</sup>

There are 626 Members of the European Parliament (MEPs) elected directly by the electors of the fifteen Member States every fifth year. The parliament is unicameral. Its official seat is in Strasbourg, parliamentary committees meet in Brussels, and the secretariat is in Luxembourg. The parliament has legislative, supervisory and budgetary powers.

There are seventeen standing committees meeting about once a month for up to two days on each occasion. The relevant body for our concerns is the Committee on Foreign

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<sup>13</sup> See [http://www.europa.eu.int/comm/role\\_en.htm](http://www.europa.eu.int/comm/role_en.htm)

<sup>14</sup> See <http://www.ue.eu.int>

<sup>15</sup> Bainbridge, 1998, p.98.

<sup>16</sup> See <http://www.europarl.eu.int>

Affairs, Human Rights, Common Security and Defence Policy. The current chairman is the German Christian Democrat Mr Elmar Brok.<sup>17</sup> The vice-chairman is the British Liberal Democrat Baroness Nicholson of Winterbourne.<sup>18</sup>

Committees hold enquiries into subjects of their choosing within their area of responsibility. On each occasion they will appoint from amongst their membership a *rappporteur*, whose task it is to draw up a report on the subject in question. After discussion within the committee, the report will be amended and/or approved and sent for debate and acceptance/amendment on the floor at a plenary meeting of the parliament.

### **3 OTHER INSTITUTIONS AND GROUPS**

#### *The European Court of Human Rights*<sup>19</sup>

The Court was set up in 1959 following the entry into force six years earlier of the Convention for the Protection of Human Rights and Fundamental Freedoms, which had been signed in Rome on 4 November 1950. It has forty-one judges, each of whom sits in a personal capacity.

The principal object of the Convention was to provide a means for ensuring the collective enforcement of certain of the rights stated in the United Nations Universal Declaration of Human Rights (1948). Forty-one states have ratified the Convention (hence the number of judges): Romania did so in 1994.

The Court is an organ of the Council of Europe, which was founded in 1949 and has its seat in Strasbourg. One of the Council's basic objectives was the "maintenance and further realisation of human rights and fundamental freedoms".<sup>20</sup>

The Council is an intergovernmental organisation representing about 770 million European citizens. At the moment there are two 'special guest members': Armenia and

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<sup>17</sup> Mr Elmar Brok: born 1946; member of the EP bureau; EP representative on the Council's Reflection Group for Maastricht II, at the Intergovernmental Conference on the Treaty of Amsterdam, and at the 2000 Intergovernmental Conference.

<sup>18</sup> Emma Nicholson, the Baroness Nicholson of Winterbourne: born 1941; Save the Children Fund, 1974-85; Vice-Chairman, Conservative Party 1983-87; Member of (UK) Parliament (sitting as a Conservative 1987-95 and then as a Liberal Democrat until the general election in 1997).

<sup>19</sup> See <http://www.echr.coe.int>

<sup>20</sup> Bainbridge, 1998, p.299.

Azerbaijan. The United States of America, Canada, Japan and the Vatican City have observer status.

The Convention was amended - by Protocol No 11 - in 1997. Amongst other changes, this reorganised the way in which the Court operates.

### ***High Level Group***

The protection of children in Romania is a priority issue for the Romanian government. This is because the EU has linked 'satisfactory' progress in enhancing child protection to the negotiations for the country's accession to the EU. What is clear is neither the nature of the link nor the criteria for determining whether progress has been 'satisfactory'.

A High Level Group ('HLG') was created by the European Parliament in 2000. Its role is important since it acts as a self-appointed 'ginger' group.

The European Parliament resolution on Romania's application for membership of the EU of 4 October 2000:

*"Recalls that a High Level Group on children's welfare has been created with the backing of the Romania Prime Minister, the Commission, the World Bank, the WHO and UNICEF in order to speed up the efforts aimed at finding a lasting solution to this problem".<sup>21</sup>*

The 2000 European Parliament Report makes no mention of the HLG but the 2001 Report states that the HLG will closely monitor the new programme proposed by the Romanian government, including the WHO-led basic health reforms and the new adoption laws.<sup>22</sup>

The HLG established an executive committee in June 2001 to implement its decisions. It met for the first time in the following month. The committee is composed of Romanian specialists and representatives of the ministries with responsibilities in the field of child protection.

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<sup>21</sup> European Parliament resolution on Romania's application for membership of the European Union and the state of the negotiations (COM(1999) 510-C5-0033/2000 - 1997/217(COS)). Minutes of 04/10/2000 - Provisional Edition.

<sup>22</sup> Annexe H, point 24, page 18 of report.

The task of the executive committee is to monitor and grant support in solving problems related to children in need. A Forum of Romanian children is being created in order to transmit the opinions of children to the HLG.

The HLG also proposed to establish a so-called multidisciplinary group to monitor progress made in the de-institutionalisation process. This group met also for the first time in July 2001.

THE HLG is, so far as we know, without precedent in the European Parliament. With the specialists sub-groups it has spawned, it exercises an ill-defined because essentially informal influence on relations between the EU and Romania.

### ***The National Authority for Child Protection and Adoption (NACPA)***

NACPA was set up by the Romanian Government in 2000. It was set up following the EP insistence that Romania take firm action to reform its childcare institutions before any negotiation for accession take place.<sup>23</sup> Currently Mr Vlad Mihai Romano heads the authority, which has the status of a general directorate at the Ministry of Labour and Social Security. It replaces the ministry's child protection department and reports directly to the minister.

NACPA is responsible for the supervision of protection of children, the improvement of living standards in orphanages, and the provision of adequate care for children in need. Mr Romano's agenda is to decentralise the system, to create establishments to receive street children, and to co-operate closely with the European Commission for the development of policy. The EU is been asked to provide long-term support to the authority.

The secretary general of the government has overall responsibility for NACPA. This positive development provides the authority with representation at ministerial level. However, the authority's ability to carry out its regulatory and monitoring functions effectively is reduced by insufficient budgetary resources and training. Thus the role to co-ordinate government policies related to children's rights is still not fully established. This should be done urgently to address adequately the integration of childcare policy with other sectoral policies (social and family policies, health and education).

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<sup>23</sup> European Parliament, 2000a.



The Ministry of Health and the Family and the Ministry of Education and Research also have roles in child protection policy.

## CHAPTER TWO

### ***THE EUROPEAN COMMISSION'S REGULAR REPORTS AND THE WORK OF THE EUROPEAN PARLIAMENT***

The European Commission plays a vital role in the development of policy in Romania on the question of inter-country adoption. In fact, the whole issue of child welfare in Romania has been made central to the country's accession to the EU, which is unlikely to take place until 'realistic' improvements have been effected in the Romanian childcare system.

#### **THE COMMISSION REGULAR REPORT IN 2001<sup>24</sup>**

The Commission was requested by the European Council meeting in Luxembourg in 1997 to provide a regular report to the Council reviewing the progress of each Central and Eastern European applicant country towards membership of the EU.

The reports make recommendations and provide the basis for the Council to take decisions on the conduct of the negotiations. The report provides an overall assessment of the global situation in each applicant country as well as detailed analysis of the issues under consideration. Thus the 2001 report notes the rate at which Romania is adopting the Union *acquis*.<sup>25</sup>

The 2001 Report provides:

- A description of the relations between Romania and the EU in the framework of the Association Agreement  
An analysis of the current situation in respect of the political criteria set by the 1993 Copenhagen European Council<sup>26</sup>

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<sup>24</sup> Full Report available at <http://www.europa.eu.int.com>

<sup>25</sup> The *acquis communautaire* ("the Community patrimony") "denotes the whole range of principles, policies, laws, practices, obligations and objectives that have been agreed or have been developed within the European Union [and] includes most notably the Treaties in their entirety, all legislation enacted to date, the judgements of the Court of Justice, and joint actions taken in the area of the Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA)." (Bainbridge, 1998, p.4).

<sup>26</sup> The Copenhagen criteria, which have to be met by all candidate countries for membership of the EU, are: "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities ... a functioning market economy, as well as the capacity to cope with competitive

- An assessment of Romania's economic situation and prospects to meet the criteria defined by the Copenhagen European Council.

The report also addresses the question of Romania's capacity to assume the obligations of membership. It covers:

- Alignment of legislation
- The development of the judicial and administrative capacity necessary to implement and enforce the access
- Adjustment of Romania's administrative structures to create the conditions for the harmonious integration.

The Report considers whether intended reforms referred to have actually been carried out and examines new initiatives. Progress has been measured on basis of decisions actually taken, legislation actually adopted, and international conventions actually ratified.

## ➤ ***CRITERIA FOR MEMBERSHIP***

### ***1 Political criteria***

In its 2000 report, the Commission had stated that Romania continued to fulfil the Copenhagen political criteria. The report noted that the government had showed commitment in addressing the problems of institutionalised children and that progress has been made in transferring responsibility from institutions to local authorities, in the adoption of a national strategy to adopt structural reform, and in supporting these decisions financially. The Commission judged that Romania met the 1999 accession partnership's short-term priorities.

However, in its 2001 Report the Commission observes that, in the treatment of Roma, the short-term priorities in developing and financing a national strategy have not yet been met. Progress is limited to programmes improving access to education.

In the same report the Commission found that the functioning of the judicial system had improved but commented that the reform process has to be continued and consolidated if it is to be in line with the agreed short-term priorities.

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pressure and market forces within the Union; [and] the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union" (Bainbridge, 1998, p.93).

The report said that democratic institutions are now well established but the decision-making process remains weak. The government relies too heavily on ordinances for the introduction of new legislation. Too often there is no clear justification for the bypassing of normal parliamentary procedures. This means that parliament's ability to carry out the essential function of scrutinising legislation remains limited. The report also argued that the process of consultation on draft legislation should be substantially improved.

According to the report Romania has met the short-term priorities in terms of administrative capacity by adopting a law on the civil service and setting up a civil service agency but these developments still need to be strengthened. A comprehensive programme of public administration reform must be developed and the decentralisation of responsibilities needs to be matched with sufficient financial and human resources at the local level.

UNICEF reports that there have been cuts in civil service staff at local level and misdistribution of funding. Furthermore, the level of corruption is too high and little progress has been made to reduce it and improved co-ordination between the anti-corruption initiatives.

***First criterion: democracy and the rule of law:***

***The parliament***

The Commission's regular report finds that the legislature has become more efficient. The functioning of both houses has been reformed. Both the senate and the chamber of deputies have introduced streamlined procedures. Measures have been introduced to improve the relationship between the legislature and the executive. A batch of about 700 draft legislative acts left over from previous government has been swiftly processed.

***The executive***

Recent reforms significantly improved the functioning of government. There is increased inter-ministerial co-operation and the policy-making capacity of the administration has improved. Progress has been made in decentralising powers to local government. Problems remain in the implementation of reforms and in carrying out a strategic reform of the public administration. The new government conducted an extensive overhaul of

the executive. The number of ministers and ministries has been increased and all government agencies have been subordinated to ministries.<sup>27</sup>

Policy formulation has strengthened through specific initiatives. In February 2001, the government adopted a law on the organisation and functioning of the Romanian government.<sup>28</sup> However, some government decisions are still taken hastily and without ministerial consultation.

Consultation with stakeholders, social partners, NGOs, and the business community has improved but is still too limited.

Little substantial progress made on civil service reform since the 2000 regular report. The report welcomed the adoption of a civil service statute and the establishment of the civil service agency to implement the statute and take a leading role in public administration reform.

The re-structuring of all ministries has had the negative consequence of destabilising the civil service at all levels. This brought about the removal of many experienced civil servants either by resignation and redundancy).<sup>29</sup>

A National Institute of Public Administration has been established with the remit of improving training for civil servants. As the institute will become fully functional only in the 2002-03 academic year, it is not possible to assess its effectiveness at the present time.

The Commission stressed that reform of the public administration should be one of the new government's most urgent priorities. However no secondary legislation is in place

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<sup>27</sup> The new Ministry of European Integration is responsible for co-ordinating the EU accession effort including implementation of the pre-accession strategy, management of EU financial assistance, and conduct of the accession negotiations.

<sup>28</sup> The law provides a legal basis for inter-ministerial bodies 'in order to elaborate, integrate, correlate and monitor certain policies' and improved policy co-ordination.

<sup>29</sup> The reorganisation of ministries was accompanied by the announcement of a 30% reduction in the number of civil servants; and, as of September 2001, staff numbers had been reduced by 22%. Thus the already low levels of administrative capacity have been further reduced leaving several important ministries understaffed. The Commission finds that, as there was no evidence of systematic overstaffing in the central administration, making substantial cuts in each ministry missed the opportunity of reallocating excess resources to those areas that needed additional staff.

covering recruitment, career structures and remuneration and thus the civil service statute has yet to fulfil its promise.

In September 2001, the government adopted a so-called general strategy regarding the acceleration of public administration reform as well as one on e-government but has not yet implemented a comprehensive reform strategy as requested by the 1999 Accession Partnership.<sup>30</sup>

The operational capacity and political influence on other ministries of the Ministry of Public Administration and the National Agency of Civil Servants are limited and must be greatly reinforced for reform to succeed.

In March 2001, the government adopted a new law on local public administration to extend and clarify the decentralisation process.<sup>31</sup> This positive development still meets difficulties in the transfer of new responsibilities to local authorities without a corresponding transfer of resources in matters concerning institutionalised children, health and education. The capacity of local government to raise local taxes remains limited and is an issue that should also be addressed.

Administrative capacity has increased but there are too many disparities from one place to another in the performance of local administration. The local level has not yet developed sufficient financial or administrative capacity to deal with the decentralisation of competencies. The administration of many local communities has become unmanageable and there has been evidence of occasional mismanagement of funds. Such shortcomings will have to be urgently addressed if further decentralisation is to be successful.

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<sup>30</sup> An inter-ministerial council, under the authority of the prime minister, has been established to monitor the implementation of the reform strategy. Considerable work will be necessary to develop the strategy further. Nevertheless, these developments are significant steps forward and should provide foundations for future progress.

<sup>31</sup> The new law will also support the principle of local autonomy, clearly set out the competencies of local authorities, and define the relationship between central and local government. Central government is prohibited from devolving additional responsibilities to the local level without also providing the necessary financial means. Greater fiscal autonomy is envisaged and the law sets out the right of local authorities to levy local taxes and to elaborate and approve their own budgets.

### *The judicial system*

Recent reforms were introduced to speed up court procedure and improve the enforcement of judicial decisions. However, additional reforms are still necessary to include measures guaranteeing the independence of the judiciary, and to develop a human resource policy for judges and supporting court staff.

Under a separate measure, judges are now obliged to publish reasoned decisions. These changes are welcomed by the Commission and should improve the efficiency of the judicial system. However the already over-stretched supreme court has been given additional tasks, and the process of simplifying procedures has considerably restricted the right to appeal in certain cases. The extension of the general prosecutor's right to introduce extraordinary appeals against judicial decisions risks undermining the principle of legal certainty. Another concern relates to the independence of the judiciary from the executive.<sup>32</sup>

The 2001 regular report notes that the Romanian government recognises the seriousness of corruption. It is still widespread and a systemic problem undermining the legal system, the economy and public confidence in government. So far, the appropriate measures taken to tackle corruption have been limited and in consequence have failed to make a significant impact.

The general prosecutor's office set up a section for anti-corruption and related organised crime in October 2000.<sup>33</sup> However the lack of staff and equipment has limited its effectiveness. There has been no substantial progress made in implementing the anti-corruption law because of the absence of secondary legislation to make clear institutional arrangements.

The lack of co-ordination between the various other bodies charged with tackling organised crime and corruption despite recent administrative changes have not led to any improvements. In April 2001, an ordinance introducing public procurement procedures

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<sup>32</sup> During the first half of 2001, senior members of the judiciary were transferred from their posts without clear reason being given. The Ministry of Justice also issued a circular letter to courts in March 2001 asking judges to pay attention to the social consequences in cases concerning restitution of nationalised houses. As the Romanian authorities have subsequently recognised, such recommendations would appear to contradict the principle of an independent judiciary.

<sup>33</sup> The anti-corruption law passed last year allowed this body to take the lead in combating corruption.

and establishing the right to appeal against the award of public contracts was adopted and at least in this area there has been some improvement.

Romania has still not ratified the Council of Europe's convention on laundering, search, seizure and confiscation of the proceeds from crime. The Council of Europe's criminal and civil law conventions on corruption has been signed but not ratified. Romania is involved in the OECD's stability pact anti-corruption initiative. Romania is a party to the Council of Europe's partial agreement Group of States against Corruption (GRECO).

Access to information is closely related both to the government's accountability and the fight against corruption. However there is no effective implementing legislation to apply the principle of access to information, which is enshrined in the 1991 Constitution.

Apart from public procurement legislation, the Commission found that there had been only insubstantial progress in the fight against corruption since the 2000 report. To make progress, there needs to be secondary legislation to implement the anti-corruption law.

The anti-corruption section at the General Prosecutor's Office needs more resources to operate effectively. The national strategy to combat corruption should be finalised and adopted. The division of tasks among the bodies involved in the fight against corruption needs to be clarified and overlapping competencies should be removed. The concept of criminal liability of legal persons should be introduced into Romanian criminal law and the rules governing the funding of political parties revised.

### ***Second criterion: human rights and the protection of minorities***

The 2001 Report states that, as mentioned in the previous regular reports, Romania continues to respect human rights and freedoms.

### ***Discrimination***

In November 2000 Romania signed the Protocol to the European Convention on Human Rights. This contains a general prohibition of discrimination on any grounds such as sex, race, colour, and language.

This is a major development. In September 2000, the Romanian government had agreed to an emergency ordinance on the prevention and combating of all forms of



discrimination.<sup>34</sup> There is no secondary legislation in place yet for it to be operational and the implementing body, the National Council for Preventing and Combating Discrimination, has not yet been established.

An Office of Ombudsman has been set up and deals with complaints lodged by persons whose civil rights and freedoms have been infringed by the public administration.<sup>35</sup> Frequent cases concern women's and family rights, and on the provision of social security. Over the reporting period, regional offices have been set up and co-operation with NGOs has increased. There have been more direct audiences with complainants.

In terms of administrative capacity, the personnel reductions imposed on the entire central administration at the beginning of 2001 reduced the number of posts at the ombudsman's office from 108 to 80.<sup>36</sup> Despite a recent significant improvement in its performance, the office suffers from a lack of co-operation from other state institutions, which often fail to respond to requests from the ombudsman within the legally set period. The credibility and effectiveness of the institution is further undermined by the senate, responsible for appointing the ombudsman.<sup>37</sup>

### *Civil and political rights*

The 2001 report notes that there has been significant progress in improving the civil and political rights of Romanian citizens. The childcare system is undergoing reform and, together with other citizens' rights reforms, Romania is now in line with European standards.

### *Childcare*

The Commission strategy paper of 2000 noted that, in adopting certain legislative, administrative and financial measures, the Romanian government has addressed childcare institution problems. However it also said that further sustained efforts were needed to improve living conditions, implement structural reforms and address the problem of street children in full respect of human rights.

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<sup>34</sup> It covers rights defined in relevant international agreements, and is broadly in line with the Council Directive on implementing the principle of equal treatment between persons irrespective of their racial and ethnic origin. It also covers recent recommendations of the European Commission against racism and intolerance.

<sup>35</sup> In 2000 the institution dealt with 4,556 complaints, a slight increase over the previous year.

<sup>36</sup> This did not lead to redundancies as only 77 posts had been filled by the end of 2000.

Further progress has since been made with an increase in the budget allocated to childcare.<sup>38</sup> There is now wider availability of alternative childcare services to institutionalisation.

The new measure that presidents of county councils are directly responsible for all institutions related to child protection is intended to guarantee that local administrations give sufficient political priority to child-care issues. Important translation errors in the United Nations Convention on the Rights of the Child were corrected. The process of moving children out of special schools and into mainstream education has been initiated. Romania has met the 1999 accession partnership priority related to child protection.

However, given the high poverty rate in Romania, the demand for state-supported care remained constant in 2001.<sup>39</sup> Recent developments and reforms in child-care protection have been insufficient. Better-targeted social allowance scheme for families with children are urgently required to prevent child abandonment and institutionalisation.

In May 2001 the government adopted a revised strategy on the protection of children in need for the period 2001-04. It was devised after consultation with NGOs and international organisations.

The strategy has been a broadly positive development with the emphasis placed on rehabilitating institutions rather than closing them. However the provision of support to families and mothers, the care of young adults leaving residential care system, and policies preventing child abandonment have not been addressed by the strategy.

### ***Trafficking of human beings***

A serious problem related to inter-country adoption and corruption is the trafficking of human beings. Despite positive initiatives to address it, implementation of reforms has been disappointing in several of these areas and this is a challenge the Romanian government will have to face. Romania is both an origin and a transit country for the

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<sup>37</sup> The senate has repeatedly delayed debating the ombudsman's annual report.

<sup>38</sup> EUR79m in 2001 as against EUR42m in 2000.

<sup>39</sup> The official figures say that at the end of 2000 there were 129,296 children in need of special protection out of which 77,844 were children in residential care and 51,452 were children supported in natural or substitute families.

trafficking of human beings and is caused by economic and social uncertainty, widespread poverty, and domestic prostitution rings.<sup>40</sup>

Faced with this problem, the government set up a task force within the framework of the regional centre for combating organised cross-border crime. In October 2000, the Ministry of the Interior launched a programme for the protection of women and children against trafficking. In April 2001 the government appointed a national co-ordinator to combat trafficking and, the following month, it established an inter-ministerial commission to draft an anti-trafficking law. Despite these actions, there are still insufficient legislative tools for prosecuting and punishing traffickers and for protecting victims.

### ***Social exclusion and equal opportunities between men and women***

The government has launched various initiatives to combat social exclusion and promote equal opportunities between men and women but the lack of resources and limited administrative capacity has slowed down implementation.

In December 2000 the government approved a national action plan regarding equal opportunities for men and women. The plan identifies a number of areas of intervention and a number of operational objectives in the fields of legislation, social rights, the economy, participation in decision-making, and public awareness. This is certainly a welcome development but there appears to have been no concrete actions taken in order to implement it and insufficient resources allocated for implementation.<sup>41</sup>

Fragmentation of the administrative structures dealing with socially vulnerable sections of society is a considerable obstacle to making decisive reforms.<sup>42</sup> The decentralisation of social services and social assistance has led to difficulties in connection with finding

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<sup>40</sup> The report asserts that the public is not aware of this problem and it deplores the continuing decrease in the age of the victims. In the first eight months of the year the police dealt with 435 trafficking cases.

<sup>41</sup> It is one of the government's main objectives and changes have been made to administrative structures to address it. The Ministry of Labour and Social Solidarity set up a new structure for liaison with NGOs and trade unions. Specific departments in governmental and non-governmental bodies have been created such as the Equal Opportunities Commission within the Economic and Social Council, the Department for Family, Children and Women within the Ombudsman's office, and departments for equal opportunities within trade union confederations.

<sup>42</sup> The government also took a number of decisions concerning the needs of the elderly, criteria for identifying the degree of dependency and defining the type of services to be supplied to dependant persons.

the appropriate level of decentralisation, low levels of administrative capacity at the local level, and problems related to financial decentralisation.

In its 1997 opinion, the Commission concluded that Romania fulfilled the political criteria. The country has now made considerable progress in further consolidating and deepening the stability of its institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.

In 2001, Romania continues to fulfil the Copenhagen political criteria and the efficiency of the legislature and the overall functioning of the government have particularly improved. The reform of judicial procedures has continued and effective implementation of new legislation on public procurement should play an important role in the fight against corruption although corruption remains a serious problem that is largely unresolved.

Other particular concerns are the lack of progress in carrying out a strategic reform of the public administration and the need further to guarantee the independence of the judiciary. Significant progress has been made in the field of human rights. Reform of the childcare system is well under way and several initiatives have been taken to address trafficking of human beings. Efforts to improve the actual living conditions in childcare institutions should continue.

Romania has addressed the short-term accession partnership priorities related to the political criteria by improving the conditions of institutionalised children, making progress with the reform of childcare policy, developing a national strategy for Roma, and taking measures to provide support to minority programmes.

As regards medium-term priorities, progress has been made towards meeting the medium-term priority related to childcare, and initiatives have been taken to increase the Roma's access to education. However, important actions are still needed in other areas: the Roma strategy has not yet been implemented; anti-discrimination legislation has been adopted but it is not yet operational; and the demilitarisation of the police has not yet started.

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<sup>42</sup> These are disabled people, the elderly, and isolated women, who are particularly at risk of poverty and social marginalisation.

### ***Economic criteria for accession***

Progress has been made in Romania to establish a functioning market economy but the country is not able, in the medium term, to cope with competitive pressure and market forces as a member of the EU. Measures nevertheless have been taken allowing the development of Romania's future capacity provided that it keeps strictly to the path of economic reform.

The serious economic imbalances and fragile macro-economic environment are the result of high inflation and a widening current account deficit but also the difficult social environment. The private sector has not been able to develop properly.

### **➤ ROMANIA AND THE ACQUIS COMMUNAUTAIRE**

How able is Romania in assuming the obligations of membership especially in terms of the human rights of the child? In June 2001, Romania presented a revised programme for the adoption of the *acquis* outlining its strategy for accession.

The European Commission in Agenda 2000 underlined the importance of effectively incorporating Community legislation into national legislation, and using the appropriate administrative and judicial structures to implement it properly within specific fields. It is an essential pre-condition to accession to create the necessary mutual trust. The applicant countries must be able to implement and enforce the *acquis* and make efforts to strengthen and reform their administrative and judicial structures.

The Commission in its 2000 regular report concluded that Romania is progressing with the adoption of the *acquis* but the achievements in 1999 were mixed. The legal transposition and the setting-up of the necessary administrative structures advanced in certain key areas but remained stagnant in others. Nevertheless, the 2001 regular report finds that Romania has continued to make progress with the adoption of the *acquis* but advances in legal transposition have not always been matched by improvements in administrative capacity.

The government has made social policy a priority and progress has been made. Further alignment with the *acquis* and improvements in administrative capacity are still necessary.

The government's regional policy has progressed, especially in terms of improving institutional arrangements. However, the new structures are still fragile and considerable work is necessary in programming, monitoring, evaluation and developing the capacity to manage and control public funds.

Significant progress has been made in justice and home affairs (visa policy, border control and migration) but more legislation needs to be adopted in key areas such as data protection systems. The capacity and infrastructure for border management also needs upgrading.

There have been some positive developments within the area of financial control but there is no comprehensive policy framework for internal financial control over public funds and efforts are needed to strengthen the administrative capacity in this area. There has also been some progress in reforming national budgetary procedures but further efforts are required in relation to the national budget and own resources.

Public administration has limited capacity to implement the *acquis*. This represents a major constraint on Romania's accession preparations. Certain parts of the administration function effectively but others raise serious concerns. These concerns extend beyond the adoption of the *acquis* and apply to the management of EU funds. There has been no significant progress in developing administrative capacity although this issue is beginning to be addressed by the government.

Short-term and medium term accession partnership priorities have been met in certain areas such as transport and fisheries but this is not so within taxation, customs, justice and home affairs. Little progress was made in addressing the short-term and medium term priorities within the internal market, in particular in employment and social affairs, and in the reinforcement of administrative and judicial capacity.

The overall assessment in social policy and employment is that, while Romania has advanced in some areas, considerable effort is still needed to align the social policy with the *acquis*.

- Increased poverty and the risk of social exclusion of different categories of the population (including abandoned children, young unemployed, families of

unemployed, single parent families, homeless families, and the Roma population) is a major challenge

- Sustained efforts are required to reform social assistance, which is currently hampered by fragmented administrative structures and the confused decentralisation of resources and responsibilities to the local level
- The fight against exclusion (Article 136 TEC) is part of the objectives of EU social policy and the 2001 Göteborg European Council invited candidate countries to translate the Union's objectives of promoting social inclusion into their national policies.
- Social dialogue is still not given sufficient importance and the Economic and Social Council is repeatedly by-passed in the decision making process. Efforts are required to promote and strengthen bipartisan social dialogue structures. Social dialogue in the public sector remains inadequate and to be improved at enterprise level. Worker participation in works councils should be improved. The government will need to help the social partners to develop their capacity before they can play an active role in the EU context. As regards employment, essential re-structuring of the economy will pose further challenges on the labour market.
- In the preparation for participation in the European Social Fund ('ESF'), Romania should use the expertise gained with ESF-type projects to benefit fully and to establish links with the European employment strategy and the social inclusion process
- The approval of a new labour code is a particular priority. Further work is urgently required on health and safety at work and improving the capacity of the labour inspectorate as well as on equal treatment for women and men. Romania has ratified the ILO convention on child labour.
- There is need for a national employment strategy, to develop further an active labour market policy and the capacity of the national agency for employment, and to strengthen the administrative capacity of local employment offices to improve their provision of services.
- Efforts are necessary in public health to establish the national surveillance system for communicable diseases in line with the Community Network. Basic indicators, such as high infant mortality and low life expectancy, demonstrate the low level of public health in Romania.
- While reform of the health care system is one of the government's priorities, the budget allocation for the health sector, measured as a share of GDP, is far lower than

EU levels. This lack of resources limits the delivery and quality of health services. Romania should therefore continue with its health sector reforms and a greater emphasis should be placed on strategic planning of human and financial resources in order to make efficient use of scarce public funds. Ensuring equal access to basic health care should be one of the Government's objectives.

In respect of regional policy and co-ordination of structural instruments, the Commission report notes that:

*"The new structures remain fragile and considerable work is still necessary as regards programming, monitoring and evaluation and developing the capacity to manage and control public funds.*

- *Romania has developed some structures for the implementation of the Structural Funds but many issues still need to be tackled.*
- *Romania agreed with EUROSTAT on a national territorial organisation for statistical purposes.*
- *There is a need to clearly define the responsibilities of ministries and all other bodies involved in the preparation of future Structural Funds assistance at national and regional level. It is important to ensure that the structures for inter-ministerial co-ordination are efficient and based on a political consensus and the Ministry of Development and Prognosis needs to be given greater authority.*
- *Administrative structures put in place at regional level must have a well- clarified role in programme development and implementation needs. Regional development institutions need recruiting more qualified staff and need to be strengthened in terms of allocation of sufficient financial resources by local authorities.*
- *Romania is slowly developing the necessary structures and operational arrangements to implement the ESF. Substantial efforts are necessary to improve both administrative capacity and the mechanism for co-ordinating ESF interventions in the context of the European Employment Strategy and the Social Inclusion Process.*
- *Inter-ministerial co-ordination in terms of programming needs to be made more effective and comprehensive. Genuine partnership structures at the regional level, including regional/local authorities, the economic and social partners and other relevant organisations need to be established.*
- *Substantial progress is needed with the technical preparation of projects with a view to preparing for Structural and Cohesion Funds.*



- *Significant work is still necessary to ensure compliance with the acquis requirements for monitoring and evaluation. The timely availability and effective functioning of a monitoring and evaluation system will be of central importance for the efficient implementation of the Structural Funds.*
- *Further efforts in regional statistics are necessary to bring them up to the level required for regional policy planing and programming."*

The Commission's overall assessment in co-operation in the field of justice and home affairs comments that important legislation has been adopted recently, in particular on border control and on the alien's regime. However, much remains to be done on legal approximation and strengthening administrative capacity. Particular attention should be paid to speeding up the reform of the national police and the recent anti-corruption law should be followed up by measures to strengthen the capacity to enforce the legislation.

- There has been significant progress in aligning Romania's visa policy with that of the European Union. Further alignment with the EU visa policy should continue, in particular with regard to the introduction of visa obligations for countries with high migration potential.
- To improve identity checks and detect attempts to misuse visas, a Schengen-type visa sticker will need to be developed and Romania should also rapidly implement the upgrading of existing passports.
- Within Romania's external borders, progress has been made in the reorganisation and modernisation of the Romanian Border Police but inter-agency co-operation between border management agencies should be further improved and efforts to combat corruption increased.

The Report recommends the following actions:

- **Schengen:** Romania should start the preparations for participation in the Schengen area and develop a Schengen Action Plan.<sup>43</sup> Romania has concluded readmission agreements with all Member States except the United Kingdom and Portugal. These agreements are all in force, except the agreements with Finland and Ireland, which have been signed but not yet ratified. In addition, six readmission agreements with candidate countries (Poland, Slovakia, the Czech Republic, Slovenia, Hungary and Bulgaria) are in force. There are also agreements with Switzerland, India, Croatia

and Moldova. The government has re-negotiated the readmission agreements with Sweden, Slovenia and Hungary in order to update and align them with the relevant EU recommendations and standards. For the same purpose the agreement with Austria is in the process of negotiation.

- **Asylum:** The amended Refugee Law has considerably improved the alignment of the asylum legislation. Recommendations: the provisions on detention of rejected asylum seekers need to be further clarified. Romania also needs to develop country-of-origin information and there is still scope for improving accommodation conditions for asylum-seekers.
- **Police co-operation and the fight against organised crime:** New legislation on Police Organisation and Operation and on the Statute of Policemen was approved by the Government and are pending in (demilitarisation of the police
- **Fight against fraud and corruption:** Very limited progress made. Far greater efforts are needed to create an efficient implementing capacity and to improve inter-institutional co-operation in this area. Romania advised to align its legislation with the 1995 convention on the protection of the financial interests of the European Communities and its protocols. The Romanian authorities have applied for full membership of the OECD working group for combating corruption in international commercial transactions. The Council of Europe's civil and criminal law conventions on corruption remain to be ratified.
- **Money laundering: Romanian** legislation is, to a great extent, already aligned with the *acquis*, although the Council of Europe's convention on laundering, search, seizure and confiscation of proceeds of crime still has to be ratified.

***Recommendations:***

- Sufficient financial means and training should be given to the National Office for Preventing and Fighting Money Laundering Operations.
- The capacity of the office to co-operate with other law-enforcement agencies should be strengthened.
- Specialised training should be organised for police officers and prosecutors dealing with money laundering issues.
- Customs co-operation: progress made by setting up the anti-fraud service within the general customs directorate.

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<sup>43</sup> This has been in place since December 2001.

- Inter-agency co-operation needs to be improved and mutual assistance agreements signed.
- Other methods for fighting fraud and corruption should still be developed, including the introduction of mobile surveillance units, the development of customs laboratories and the attribution of powers to customs personnel to carry out controls and enforce compliance.
- **Judicial co-operation:** Romania has ratified most of the international conventions included in the *acquis*. However the Hague Conventions of 1965 on service of documents, of 1970 on the taking of evidence abroad, of 1980 on international access to justice and the European Convention on recognition and enforcement of decisions concerning custody of children have yet to be ratified. The Commission in its 2001 Report recommends that further efforts are required to ensure the appropriate level of co-operation in civil matters, notably as regards mutual recognition and enforcement of judicial decisions, and direct court-to-court dealings in cross-border situations.
- **Human rights:** All the legal instruments covered by the justice and home affairs *acquis* have been ratified by Romania with the exception of the 1981 Council of Europe convention on the protection of individuals with regard to automatic processing of personal data. Legislation for its ratification is pending in parliament.

➤ ***The acquis and child welfare in Romania***

The Commission's 2001 Report contained a global assessment on child welfare in the context of the accession partnership and the national programmes for the adoption of the *acquis* was as follows:

➤ ***Political criteria***

The criteria priorities have been met but close attention needs to be given to implementation of commitments that have been given

- Adequate budgetary provisions have been made for institutionalised children
- A strategy for a comprehensive reform of child-care policies has been launched and is in the process of being implemented.
- The political criteria priority relating to children continues to be met
- The reform strategy covers the situation of children with chronic diseases and handicaps but is a concern for adults
- A national strategy for Roma has been adopted and is of high quality but implementation has only began

- Scope for improving the provision of adequate financial support to minority programmes and will be important when the Roma strategy is implemented.

➤ *Economic criteria*

Romania has made progress in meeting the numerous priorities related to the economic criteria but considerable additional efforts are necessary.

- **Internal market**

Romania continues to have not yet fully implemented any of the accession partnership priorities concerning the internal market

- **Agriculture**

There has been limited progress in meeting the Accession Partnership priorities in this sector

- **Transport**

Romania has fully met this priority

- **Employment and Social Affairs**

Despite good progress in developing the social dialogue, the capacity of the social partners remains low and the bipartite social dialogue is underdeveloped. The priorities have only been partially met

- **Environment**

Good progress has been made with transposition of legislation but the priorities related to administrative capacity have not been addressed

- **Justice and Home Affairs**

The border police force has been restructured, there is a new law on the state frontier, and a programme to strengthen border controls and prevent illegal immigration has been introduced. There has been no substantial progress on preparing for participation in the Schengen information system. The law on corruption has been adopted and the capacity to deal with money laundering has been strengthened. Co-ordination between agencies needs to be strengthened. New laws on aliens and refugees and an accelerated asylum procedure are to be adopted. No significant progress has been made with upgrading the capacities of law enforcement agencies. Similarly there has been no progress with demilitarisation of police force. International conventions listed in the accession partnership have yet to be ratified. Justice and home affairs priorities continue to have been met only partially.

- **Reinforcement of administrative and judicial capacity (including capacity to manage and control EC funds)**

Romania has made mixed progress in meeting the priorities relating to administrative and judicial capacity.

### **Medium term priorities**

#### ➤ *Political criteria*

Progress towards meeting the medium term political criteria priorities has been made in the case of child-care while important efforts are still needed in the other areas such as anti-discrimination, Roma, and the demilitarisation of the police force.

- Conditions for children in care have improved and reform efforts have been consolidated.

#### ➤ *Economic priorities*

Romania has made progress in meeting two priorities - supporting business and SME development and establishing an annual fiscal surveillance procedure. The other priorities need to be addressed.

- **Internal market**

Progress made on several internal market priorities but insufficient in the area of free movement of persons.

- **Agriculture and Fisheries**

These two priorities have been met to a limited degree.

- **Energy**

Romania has met the medium-term priority related to nuclear safety but not those related to other aspects of energy policy.

- **Transport**

Priority has been partially met.

- **Employment and social affairs**

Pending the adoption of a new labour code, Romania has made very limited progress with meeting the accession partnership priorities. Considerable work is needed to align with EU legislation and administrative structures still need to be strengthened.

- **Environment**

Romania remains far from full transposition. This priority has not been met.

- **Justice and Home Affairs**

Visa policy has been substantially aligned with that of the EU and some measures have been taken to combat trafficking in women and children. International instruments related to the fight against drug trafficking have to be adopted and applied. Steps to

reinforce the independence of the judiciary from the executive to be taken. Two of the priorities have been met.

- **Administration and judicial capacity**

A strategy to reform the public administration has been adopted but not yet implemented. Training in EU law for the legal profession is provided. Administrative weaknesses hamper the implementation of financial controls. Internal audit functions remain incomplete. The statistical system is still far from compliance with EU standards. There has been only limited progress in meeting the priorities relating to administrative and judicial capacity.

## CHAPTER THREE

### *CHILD WELFARE AND THE ADOPTION SYSTEM IN ROMANIA*

#### **CHILD WELFARE**

The children most at risk in Romania, as in most CEECs, are those abandoned to institutions or the street by a parent unwilling or unable to look after them. Mentally or physically disabled and delinquent children are also significantly at risk.<sup>44</sup>

During WWII and the post-war period, the rate of orphaned or abandoned children grew significantly but not as much as in the Soviet Union, Yugoslavia and Poland. Economic growth in the 1960s and 1970s reduced the occurrence of severe poverty and the number of children at risk outside the family fell sharply. Families benefited from generous social policies.

The rate of abandoned children increased sharply in the 1980s, affecting mostly the poorest and marginalised ethnic groups such as the Roma. Zamfir (1997) argue that this can be explained by the combination of economic crisis and social disintegration resulting from industrialisation and urbanisation. Another factor was a deliberate government policy: first, to boost the birth rate and, second, through strict laws against birth control. These factors combined to contribute to increase the birth rate, and thus, given the prevailing prejudices and administrative practice, the number of children entering institutional care.

#### ➤ *Institutionalisation of children at risk under socialism to 1989*

In Romania, the institutionalisation of children at risk has been the preferred solution to adoption, foster care or other placements.<sup>45</sup> Government policy was to facilitate the institutionalisation of children rather than to provide resources to help families directly. Thus the government effectively encouraged families in difficulties systematically to

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<sup>42</sup> Zamfir, 1997.

<sup>43</sup> According to Burke (1995), the rate is twice that of Hungary and Lithuania and five times that of Poland and Slovenia.

institutionalise their children.<sup>46</sup> Zamfir (1997) argue that this policy has created a confusing relationship between families and the state in relation to the responsibility of the child.<sup>47</sup>

Foster care was an unusual practice and provided usually by the child's relatives as a temporary measure before adoption. Rising costs of living, low incomes, the housing crisis (especially in urban areas) and the tradition that young people depended on their families to set up their own household contributed to diminish interest in adopting children. To have more than one child was economically a difficult decision to take, so adoption and family placements were not an option for most couples. Furthermore as more women entered employment, so the number of caregivers decreased. The pre-1989 administration did not seek to counteract the strong social stigma against those abandoning their children and against adoption. The ideology of the Ceau\_escu regime had no place for individual private and family lives. It accepted ready recourse to the institutionalisation of children as a remedy to all or most problems.

Originally, the care of children in institutions was good but it declined rapidly. The continuing economic crisis encouraged the black economy to flourish with attendant corruption and theft from state enterprises. Children in institutions who could only depend on public resources were disadvantaged. They received basic medical care and food and elementary hygiene.

The health of institutionalised children also worsened due to the lack of social and emotional stimulation. Increasingly the only essential requirement was to keep the children alive by medical means. This was accentuated by the ban in 1969 on the training of social workers and on the teaching of sociology and psychology in 1978.

Families were encouraged to institutionalise their children even if only marginally disabled or lightly psychologically disturbed. The need for women to work outside the home, material hardship, and the lack of local facilities and support for the disabled child and his/her family motivated parents to place their child in institutions and very often to abandon them thereafter.

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<sup>46</sup> This might be done for unspecified periods, for healthy or for sick or disabled children, regardless the motive.

<sup>47</sup> Roma working seasonally might institutionalise their children until the age of three but usually because of health or poverty problems.



There were institutions for abnormal children and normal children. However, negligent diagnoses and the lack of supervision often sent normal children to institutions for the mentally handicapped. Frequently those normal children became handicapped because the institutional environment worsened their condition. This was accentuated by the lack of social and psychological assistance and staff shortages. Too frequently the irretrievably handicapped children were treated like animals. Zamfir (1997) argue that this state of affairs was brought about by the process of institutional decay that characterised the final years of the Ceau\_escu regime and from the total isolation of institutionalised children from the wider community.

➤ ***Institutionalisation of children post 1989***<sup>48</sup>

According to Zamfir (1997) the situation of abandoned children post-1989 was contradictory. The birth rate dropped in Romania and in all the transitional countries because of the rise in poverty and economic uncertainty. In Romania the legalisation of abortion also contributed to this trend. However, the proportion of abandoned children rose in Romania despite the drop in birth rate because of the difficult economic environment during transition. The ratio of abandoned children to new-born babies was in 1994 as a percentage of 1989 higher in all the states in transition except for Hungary.<sup>49</sup>

Again the reason for the rise in abandonment is increased poverty affecting a huge number of families. A study by the Romanian Ministry of Health and UNICEF in 1991 concluded that children were placed in institutions almost entirely for economic reasons:

<b>Unemployed parents</b>	<b>74%</b>
<b>Insufficient household income</b>	<b>61.8%</b>
<b>Unsatisfactory/lack of housing</b>	<b>58.2%</b>
<b>Single mothers</b>	<b>40.1%</b>
<b>Previous abandonment in institution for babies</b>	<b>19.2%</b>
<b>Mentally ill parent</b>	<b>17.1%</b>
<b>Alcoholic parent</b>	<b>12.9%</b>
<b>Child with handicapped or with AIDS</b>	<b>10.9%</b>

A further reason is the increase of unwanted teenage pregnancies. This increase is higher in rural areas especially for young people aged between 15 to 19.

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<sup>48</sup> See Annexe B.

➤ ***Roma children***

A large proportion of abandoned children is Roma.<sup>50</sup> A high birth rate and economic problems contribute to the worsening quality of life of Roma children. Furthermore the fertility rate is very high compared to that of the general population.<sup>51</sup> More recently there seems to have been a slight reduction in the fertility rate among the Roma.

Zamfir (1997) notes that the Roma suffered particularly during the economic changes in the final decade of socialism and the first transitional years.<sup>52</sup> The Roma population today is relatively poorly educated with a high rate of unemployment, crime and poverty.<sup>53</sup> Those in work are said to be mainly in the underground economy.<sup>54</sup> The health of Roma children is fragile, their level of education is low, and they are easily exposed to crime.

➤ ***Improvements in the living conditions in institutions - post 1989***

The government and aid from the west through NGOs contributed to the improvement in the quality of life of institutionalised children. These changes were rapid and significant not least because the institutions had been exposed publicly. Changes affected staff whose numbers and remuneration improved substantially as did the supply of medicine and food. The death rate diminished dramatically.

Changes in staff approaches and methods through training contributed significantly to the humanising of the centres and improvement of the quality of children's lives. Obstacles remained. Architecturally the buildings remain inadequate with children sleeping in dormitories and lacking space for social development activities. The 'old mentality' of the medical staff is difficult to shake off and the standard of untrained staff is low.

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<sup>49</sup> See Annexe C.

<sup>50</sup> In 1991, Roma provide 45.8% of the 0-3 year old category of which, 58.3% are born out of wedlock and only 17.4% recognised by the fathers (Romanian Ministry of Health and UNICEF Report, 1991, in Zamfir, 1997).

<sup>51</sup> Out of 12,000 Roma in 1,804 households, the fertility rate among Roma women over 15 years of age was 4.35 children against 1.79 children in the general population (see Zamfir, 1997).

<sup>52</sup> Zamfir, 1997.

<sup>53</sup> 1.2% of adult Romas are in prison compared to 0.5% of the rest of the population. 0.4% of Romas over 16 are in school. In 1992, 50% of 7-10 year old children attended school regularly (see Zamfir, 1997).

<sup>54</sup> Romanian Ministry of Health and UNICEF Report, 1991, in Zamfir, 1997.

➤ *The prevention of abandonment and institutionalisation before the ban in 2001*

The Romanian community was not prepared to cope with the worsening situation of children. It is reported that legalisation of abortion and other birth control methods were not very effective and many groups of people had little or no access to modern family planning techniques.<sup>55</sup> It is generally agreed that poverty rather than the increase in birth rates is the main factor in putting children at risk.

The government and NGOs promoted family placement, foster care, and adoption as alternatives to institutionalisation. Between 1990 and 1991, the number of international adoptions rose from 2,951 to 7,328. By contrast national adoption during that period until 1992 remained limited because (as we have seen) of the low standard of living and the stigma attached to abandoned children. In 1992 the passage of a law to establish a better legal framework for adoption, to protect children and parents' rights, and to stop abuses, and an intensive government campaign the following year, resulted in the number of national adoptions surpassing international adoption.<sup>56</sup>

The number of children in foster care and family placement rose substantially between 1990 to 1993 whilst those in institutions increased only modestly. According to the authors, there were 41,986 children in institutions in 1994 against 40,500 in 1989. The number of children in family placement and foster care rose from 5,730 in 1989 to 8,342 in 1994. These figures demonstrate the fact that many children are being abandoned.<sup>57</sup>

Although the cost per child for institutional care is much higher than for family placement or foster care, the government dramatically cut back financial support for families and thus must bear some responsibility for the rate of child abandonment and institutionalisation. Means-tested benefits were introduced in 1995 and had a negligible positive impact. The impact of the family placement allowance, in any case not granted automatically, was limited and was received by only 36% of families.<sup>58</sup>

Despite tremendous efforts and programs set up by NGOs in the prevention of child abandonment and alternative methods to institutionalisation, Zamfir (1997) argue that the main causes of abandonment have not been confronted. They believe that the

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<sup>55</sup> Institute for the Protection of Mother and Child, 1995.

<sup>56</sup> See Annexe D.

<sup>57</sup> Zamfir, 1997.

government has failed to provide sufficient support to families with children by not providing appropriate public services, which is the key factor explaining the ineffectiveness of the initiatives taken to prevent child abandonment and to develop alternatives to institutionalisation. They believe in the implementation of policies to give direct economic support to families in difficulty. This would require modifying the tax system to compensate low-income families with children. Enhancing child allowances, which can be means-tested, could provide universal and targeted income support to families with children.

➤ ***Strength of most recent changes before the ban on inter-country adoption in 2001***<sup>59</sup>

- Improvement of education and health care services, noticeable 'human care'
- Alternatives to institutionalisation: rise in adoption (national and international) and family placement
- National establishment of services to prevent child abandonment, help families in difficulties, and promote the reintegration of institutionalised children into their natural families are been successful within projects organised through partnerships between Romanian public authorities, the European Commission, NGOs, and UNICEF
- Institutions for disabled children have improved and better services and economic support is given to families with handicapped children
- Creation of local NGOs with the encouragement and support of foreign NGOs has been successful, efficient and highly professional and is setting high standards and implementing new approaches
- Training of staff working with children has had impressive results and expanded quickly in a short time leading to positive changes in attitude, knowledge and skills. Each year, around 400 university students graduate in social work

➤ ***Weakness of social policy perspectives***

- The 1995 means-tested social benefits only help the poorest of the poor (some 22% of children), leaving 50% of children with little means of financial support. The benefits only represent a tiny proportion of family income and thus do little to help poor children towards the opportunity of a decent life

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<sup>58</sup> Zamfir, 1997.

<sup>59</sup> See Annexe E.

- Not all children have access to education and health care services (this is especially the case for Roma children)
- Local social services networks are still at the initial stages and need developing further
- The lack of community social services is a major obstacle to the implementation of focused and efficient policies to help children.

➤ *The long term problems*

The most serious problem among families is the low standard of living and the legacy of an intensive institutionalisation of children. Zamfir (1997) note that problems related to poverty have accumulated since 1989. The slow but steady economic recovery is not a sufficient remedy because gains from economic growth have been inequitably distributed. Families with three or more children are those most at risk.

Zamfir (1997) foresee an inevitable increase in the number of institutionalised children and of abandonment because of continuous economic hardship. They also identify a new category of children at risk in need of urgent help: those abused/neglected children within the family home. There is no policy yet in Romania to protect those children. Measures have now been devised for those children under the government's strategy for 2001-2004.<sup>60</sup>

Zamfir (1997) argue that reforms are necessary within the public social services to confront the issues of institutionalisation, adoption and foster care. They are particularly anxious about the fate of abandoned Roma children. The Roma community is suffering most from poverty and has suffered discrimination for a long time. Although the Roma movement in favour of political and ethnic rights is emerging and is demanding fundamental human rights throughout Europe, the crime rate and violence amongst Roma is increasing.

The general attitude concerning the Roma community amongst the Romanian population as a whole is that 'somehow they will manage'. This attitude in part explains the difficult situation in which the Roma find themselves today. Zamfir (1997) believe that a change in public attitude and implementation of positive discrimination policies are necessary to improve the life of Roma and to integrate them into society, thereby reducing the incidence of child abandonment. A special program to help Roma families is necessary

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<sup>60</sup> See Annexe F.

on the grounds that economic recovery and general social policy alone will not help them sufficiently.

### **THE ADOPTION SYSTEM IN ROMANIA<sup>61</sup>**

When the present government took power at the end of 2000, there were 105 private accredited bodies in Romania acting in the field of child protection through adoption. Statistics show that these foundations contributed 184 billion lei to the adoption system in less than two years between 1999 to August 2000.

The annual number of adoptions increased from approximately 1,000 in 1997 to 4,326 in 2000.<sup>62</sup> In the latter year, 73% were international adoptions. By 14 December 2000, the Romanian Committee for Adoptions approved 330 placements for registered children for whom a domestic family could not be found. Since this date, no placements have been approved. At the present time, 1,850 children are registered as 'adoptable' at the Romanian Committee for Adoptions ('RCA'). A Romanian adopted family has been identified for some of those children. During the period between January and April 2001, 361 irrevocable national adoptions have been finalised and 920 international adoptions.

Between June 1997 and 21 June 2001, the RCA received approximately 5,000 requests for adoptions from persons and families.<sup>63</sup> These requests come from families for whom an adoptable child has not been identified yet.

During the special session on the Hague Convention on private international law in December 2000, Romania was severely criticised when the Conference evaluated the implementation by the state parties of the provisions of the Hague Convention, which had been ratified by Romania in December 1994. NACPA has admitted that the legal requirements regarding the methodology and procedures of international adoption after 1997 generated bureaucracy, abuse and corruption within the system.

The Conference criticisms were as follows:

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<sup>61</sup> Romania, 2001a.

<sup>62</sup> See Annexe A and G

<sup>63</sup> Until 14 December 2000, there were approximately 3,268 annual requests. This number went down to annual 1,732 requests from December 2000 to 21 June 2001.

1. The point system regulating the process of placement of adoptable children encourages illegal practices even when it is conceived and designated to encourage donations from private bodies for the purpose of increasing the financial support needed for the system of services for child protection. Moreover the point system did not encourage co-operation among private bodies but rather created a 'competition' based on the principle of 'who gives more, receives more children'.
2. The excessive sum of money requested by Romanian private bodies acting as intermediate in international adoptions. Adoptive families complained that the costs of adopting a Romanian child exceeded those from other countries.<sup>64</sup> It is also thought that this money is used for other purposes than the child protection system.
3. The number of intermediates in Romania involved in the process of adoption is too high (around 100). Emergency Ordinance 25/1997, which sets out criteria for Romanian societies or associations running activities in the field of child protection through adoption, is too permissive. Many of these bodies lack the necessary expertise and experience and do not meet the appropriate standards of human resources. Furthermore the number of foundations is slowing down the activities of the RCA. NACAP does not have the necessary staff, material or financial resources to allow efficient monitoring, assessment and control of the accredited bodies.
4. The absence of public, credible information on financing the operations involved in the process of adoption has also been criticised.

Efforts by the RCA to improve the system of international adoptions have been made.

These include the following:

1. Starting from 14 December 2000, the RCA has not issued more placements of children for international adoption.
2. On 15 March 2001, the RCA urged abolition of Decision 506/1999 (the point system).
3. On 31 May 2001, the government adopted a Decision on the governmental strategy on the protection of children in difficulty for the period 2001-04.<sup>65</sup>

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<sup>64</sup> Depending on the source, the costs could be from US\$5,000- to US\$30,000.

<sup>65</sup> See the Annexe F.

Considering the major role of the family, this strategy underlines the responsibility of the state to create a favourable framework that allows the identification of a permanent solution for the protection of children in difficulty. Officials in the prime minister's cabinet wrote in July 2001 that:

*"It is an unanimously accepted fact that the solution of adoption, whether national or international, serves the best interests of the child and is the only special protection measure with a permanent character. This measure may offer children the family environment that is so necessary for a harmonious growth and development of their personality."*<sup>66</sup>

Despite this, the RCA decided on 21 June 2001 to suspend for one year the registration of new applications for adoption from foreign families. On the day of the declaration in June, prime minister Nastase declared that his intention was to make Romania a no-go area for traffickers. At the same time, the minister of the interior said that he would prepare police and judicial proposals to tackle corruption and inadequacies in the present system concerning children's rights.<sup>67</sup>

Since then, according to the French organisation the Mission for International Adoption ('MAI'), the RCA's June 2001 decision has been annulled by the Bucharest Appeal Court. However the government adopted an emergency ordinance on 9 October 2001, which forbids for a further year all procedures by foreign families to adopt Romanian children.

NACPA is re-evaluating legislation on adoption to bring transparent procedures respecting international conventions. The organisation has created a working group whose task it is to prepare a draft law on adoption. The group has collected observations, criticisms and suggestions from all the local authorities involved in child protection as well as from accredited foundations and this has provided a basis for the new draft law. It was presented in April 2001 to the members of the RCA, to the general secretariat of the government, as well as to UNICEF, USAID Mission in Romania, the delegation of the European Commission in Bucharest and the permanent bureau of the conference on private international law in The Hague.

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<sup>66</sup> Romania, 2001a.

<sup>67</sup> DG Competition 'Enlargement Weekly', 27 July 2001.



➤ *The government's efforts to revise the legal system on adoption*

The government is keen to find national solutions for the protection and placement of children in difficulty in order to reduce the high number of international adoptions.

To achieve more transparency, the government is looking at ways to transform the RCA into a separate institution with its own law and regulatory framework independent of central and local administration.

All accredited bodies, Romanian and foreign, will be audited and required to conform to Romanian law.

New child legislation has been drafted and includes the juridical framework of adoption in Romania. To avoid any act of corruption, the law expresses very clear and strong demands on controlling international adoption procedures, on the costs involved and on equality of treatment for each adoption request. This legislation was discussed in Parliament at the end of 2001.<sup>68</sup>

➤ *Actions by NACPA*

County councils received 268 billion lei from NACPA's own budget to finance the programs approved by government Decision 611 of July 2001 on the prevention of abandonment and protection of children in family environment.

The programme for the social integration of street children was approved by government Decision 610 and awarded 15 billion lei.

The process of assessment and selection of the projects drafted by the county councils and submitted to be financed by the Children First special fund has been completed to the satisfaction of the European Commission and the delegation of the European Commission in Romania.<sup>69</sup>

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<sup>68</sup> MAI, 2001b.

<sup>69</sup> Out of 232 projects drafted by 40 councils and by 6 districts from Bucharest, 112 projects have been approved so far with a value of EUR18.8 million.

## CHAPTER 4

### ***PROJECTS, ACTIONS, RESULTS: THE EU AND MEMBER STATES***

#### **I. EUROPE**

##### **The European Parliament: reports and actions**

The European Parliament's briefing paper 'Romania and the Enlargement of the European Union' makes it clear that the EU insists on Romania taking action to reform child institutions before negotiations for accession can be completed.<sup>70</sup> The key text, which has had a significant impact in defining attitudes on the subject, is the recent report from the Parliament's foreign affairs committee.

Before we look at the 2001 European Parliament Report, it may worth taking note that the 1999 European Commission Report on Romania progress towards accession had identified two major problems. These are the children's institutions and corruption.

The European Commission 1999 report was then referred by the European Parliament to the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy. Baroness Nicholson of Winterbourne was appointed *rapporteur* of the committee on 23 September 1999. She presented to the European Parliament the European Parliament Report on Romania's application for membership of the EU and the state of the negotiations from the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy in September 2000.

Concerning children's institution and corruption, the 2000 European Parliament report notes the following.

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<sup>70</sup> European Parliament, 2000a.

➤ *Children's institutions*

International adoption was considered the best solution by the Romanian authorities in 1997. The 1999 Commission Regular report accepted that Romania fulfilled the Copenhagen criteria but argued that the position would need to be re-examined if the Romanian authorities do not continue to give priority to dealing with the crisis concerning children in institutions. According to UNICEF data, the number of children in Romanian institutions was in 2000 up to 147,000 whilst the Romanian National Child Protection Agency estimated a figure at around 62,500 children. The European Parliament believed that the practice of international adoption continued to give rise to abuses in 2000.

Parliament therefore urged the government to:

- Bring in legislative reforms
- Create a new welfare system
- Set up a new public education system establishing a social framework so that families would receive support to keep their children and institutions will be encouraged to place children in birth or other local families.

The European Parliament reported that the Commission would be willing to provide EUR27m under the PHARE programme to support this measure.

Parliament decided to set up a small High Level Group on Children's Welfare to help resolve this problem more quickly. The then prime minister, Mr Mugur Isarescu, Commissioner Günter Verheugen and Baroness Nicholson participated in this group. The group received the backing of the World Bank, WHO and UNICEF.

The European Parliament agreed to monitor the Child Protection Agency very closely. The agency, created at the demand of the Helsinki European Council, assured the European Parliament in its declaration of 4 April 2000 at a hearing that it would make every effort to implement the Declaration of the Rights of the Child.

➤ *Corruption*

Corruption was widespread in 1999. In May 2000, the Romanian Government ratified a new law on preventing and combating corruption and the Court of Justice set up a special

anti-corruption unit. The European Parliament, however, stressed the need to achieve better transparency, co-ordination and co-operation.

In its final report, the European Parliament identified a related problem, namely the need to reform public administration. It also noted that senior and intermediate levels in the civil service were still too politicised.

However, the European Parliament approved of the Romanian Government actions. For example, the Government enacted laws in 1999 on the regulations governing civil servants and on ministerial accountability. In 2000, a civil ministry and a national agency for civil servants were introduced.

The European Parliament was nevertheless concerned by the reduction of ministries (down to 15) and concluded that the government's reorganisation of the machinery of government was to be closely monitored. This reduction is the result of the Romanian Government's decision to make public administration more efficient and take direct control of 36 departments and agencies, 29 of which depend directly to the prime minister's office.

The European Parliament also noted that decentralisation at local government level has not been backed up by necessary transfers of financial resources and staff. The report indicates that decentralisation is having a negative impact on efforts to solve problems such as those of children in institutions.

➤ ***The European Parliament's final report On Romania's application for membership of the European Union and the state of negotiations From the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (2001)***<sup>71</sup>  
Rapporteur: *Baroness Nicholson of Winterbourne*

The 2001 European Parliament Report on Romania considered the ability of Romania to enforce the *acquis* communautaire as well as the Romanian administrative capacity and ability to adopt and enforce the *acquis*. A key motor in adopting the *acquis* is the National Programme for the Adoption of the *Aquis* (NPAA), set up by the Romanian government in June 2001 and subsequently presented to the Commission.

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<sup>71</sup> European Parliament, 2001d.

The NPAA covers the period 2001-04. Actions are divided between short-term measures (2001-02) and medium-term measures (2003-04).<sup>72</sup> All chapters of the *acquis* are covered.

There is a chapter on the actual process for preparing Romania's accession efforts. Issues raised in previous regular reports and in the accession partnership are covered systematically and the commitments given are generally consistent with those in other frameworks.

The Romanian NPAA provides a useful overview of Romania's pre-accession strategy and also functions as a co-ordination tool for Romania's own accession preparations. It focuses on past achievements rather than provides additional detail on future plans. It lacks detail on structures of the implementation of legislation.

➤ **The ability to enforce the *acquis***

The European Parliament 2001 Report notes that Romania continues to advance with the adoption of the *acquis*. The *rapporteur* stresses that the government still needs "to develop firm policies and measures for preventive financial control and internal audit functions (this is particularly important at local level where the capacity to manage and control public funds remains weak)." Substantial efforts are still required to develop control mechanisms for pre-accession funds.<sup>73</sup> The *rapporteur* is encouraged by the government's steps in correcting new legislation contradicting obligations under the Europe Agreement.

Within the implementation of the pre-accession strategy, the *rapporteur* notes that the national budgetary procedures remain weak. Improvements are necessary within the medium-term programming of expenditure, a programme-oriented budgetary system needs to be developed, and the overall budget execution process strengthened. Measures should be taken to strengthen public financial control functions through the provision of adequate staff, training and equipment. The *rapporteur* urges EU funding in favour of Romanian children over the last three years to be examined.<sup>74</sup>

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<sup>72</sup> See Annexe F.

<sup>73</sup> European Parliament, 2001d.

<sup>74</sup> European Parliament, 20011.

➤ *The rights of the child*<sup>75</sup>

The Romanian President made a speech before parliament on 20 December 2000, which the 2001 European Parliament Report mentions in the context of a highly coloured discussion of the position of abandoned children:

16. *The speech of the President of Romania, Mr Ion Iliescu, before the Parliament of Romania on 20 December 2000 was a first step in clearly indicating the new Romanian commitment to cope with the major problem of child protection and child health and development for all of Romania's children. In line with his speech, the programme of the new Government<sup>76</sup> contains a strong and well-formulated chapter V on child protection<sup>77</sup>. Here, the Prime Minister presents the main political measures to be taken with a view to creating a family care system, including the reform of health and welfare systems, and the fixing of strategic objectives for children's rights, their protection and for juvenile justice.*
  
17. *For over a decade, the bleak inheritance of Ceausescu's inhuman treatment of abandoned children through incarceration in huge state institutions or sale abroad has persisted. Efforts to reform the system have failed to prevent infant and child abandonment, close the institutions or to guard children's basic human rights.*
  
18. *Evidence shows that, in many cases, institutionalised children of all ages from birth to 18 years old are submitted to continuous physical and psychological cruelty (daily beatings and assaults), food deprivation leading, in some cases, to starvation, sexual abuse, lack of or improper medical care and bizarre medical treatment and improper research by the staff. It is all too obvious that the brutality in the institutions has created or exacerbated the problems of these children, who have become socially disturbed, physically or mentally handicapped. Older boys and girls flee to the street for respite.*
  
19. *Few, if any, of these children are orphans. They have been abandoned or 'given to the State', frequently under improper pre- or post-natal maternal pressures. Their families gain little if any benefit from the minimum, practical help usual in poverty reduction programmes, such as free or low cost family planning, free school*

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<sup>75</sup> See in Annexe H

<sup>76</sup> This government came to power in December 2000 and its programme was published in January.

<sup>77</sup> Chapter V covering family policy, and strategic objectives for childcare.

*transport and child benefit paid directly to the mother. Once declared abandoned by the State at six months or sometimes younger, these children can be swiftly drawn into a well established, financially led international trafficking system whereby they are sold for profit under the guise of fake or inappropriate adoptions world-wide.*

20. *Your rapporteur has unearthed hundreds of international adoption cases of children for whom no evidence apparently exists of a receiving family; others who left Romania with false, but Court-accepted documentation; and worrying discrepancies with small numbers of named children in government reports and thousands unidentified officially but evidenced by other parts of the administration.*
21. *It is hard to find justification for the international adoption of boys just short of 18 years old, or of girls aged 11, 12 or 13 years who are wholly unknown to the proposed purchasers. Persistent rumours of involuntary organ donations from Romanian children have been recently validated by the relevant Moldovan authorities. Nor can poverty be the only determinant for a child's future. As the Romanian Orthodox Church leaders recently declared, Romania is not so poor that she cannot look after her own children.*
22. *The new strategic direction on child health care and welfare protection in Romania must, therefore, fully respect EU values as expressed in both the Copenhagen criteria and the *acquis communautaire*, as these reflect accurately the UN Convention for the Rights of the Child.*
23. *In recent years legislation has undermined rather than strengthened the rights of children. The UN Convention of the Rights of the Child had key rights removed by Romania's ratification without the endorsement of official opt-out protocols. The 1997 Hague Convention-related legislation framed and brought in by Dr. Cristian Tabacaru (then Secretary of State for Child Protection, now Director of the NGO, SERA) effectively legalised child trafficking. The courts, child protection authorities and some medical professionals followed the official line. Romania's children were placed in an ever more precarious position.*
24. *Spurred on by EU encouragement the new government took decisive action. On 12 June 2001 the Prime Minister published a ground-breaking paper, laying out clearly*

*a timetabled action plan which, if fully and professionally implemented, will radically alter the position of the child at risk. New adoption laws will fall within a planned Children's Act of Parliament, but resumption of international adoption must await the putting in place and monitoring of all necessary administrative capacity, including the relevant judiciary (such as Family Courts). Coupled with new, WHO-led basic health reforms and supported by external as well as government funds and monitored by the High Level Group for Romanian Children, this programme will effect much of the required reforms.*

25. *The importance of children's rights in the accession process was confirmed by the Commissioner to the Prime Minister and to your rapporteur recently.<sup>78</sup> Member states are urged to give strong and continuing support to the Prime Minister and his government on this important issue.*

➤ ***Administrative capacity and ability to adopt and enforce the acquis<sup>79</sup>***

The parliament urges the government not only to improve its public administration but also to develop a comprehensive strategy for public administration reform, depoliticise the civil service to attract and retain high-quality professionals, improve training provisions, and abolish the common practice of having two jobs simultaneously. It welcomes in this respect the recently approved law on local government.

The parliament also argues that steps must be taken to prepare Romania not merely to adapt to the existing *acquis* but also to develop it and put more effort into monitoring and adjusting to this.

Within the judiciary, the parliament notes that there is too much involvement from the executive in the functioning of the judiciary and that judges' salaries need review to retain top quality in the profession and reduce the possibility of corruption. Anti-corruption measures need to be adopted and duly implemented.

The parliament is concerned about the reduction of freedom of information and the independence of the media. It urges the government to refrain from adopting any measure that does not comply with the basic principles of a democratic society.

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<sup>78</sup> See in Annexe H

<sup>79</sup> European Parliament, 2001c.



The report also regrets the inadequacy of information to the public at large including that from the public administration on social issues, which in general it feels is inadequate. The EU's information campaign for Romania is also castigated for its inadequacy. The report calls for significant improvements in this respect from the government and also from other European institutions and urges them to step up their information campaigns on the implications of enlargement. The report identifies the need for more co-operation, fuller exchanges of information, and better practice in the field of information and communication policy towards citizens.

The parliament urges the government to support a social dialogue. The opinion of 30 May 2001 of the committee on employment and social affairs stated that such support is necessarily both from a budgetary point of view and also institutionally. It also requests the government to offer institutionalised children a future with human dignity.

The opinion of the 27 June 2001 of the committee on women's rights and equal opportunity calls for the government to implement measures and law to abolish trafficking in women and children and child pornography. It seeks consolidation of the rule of law and respect for human rights with further improvements in the situation of children, especially those in institutions.<sup>80</sup>

Concerning the rights of the child, the report supports the prime minister's statements, analysis and action plans of 12 June 2001 to address child health reforms and development within the proper legal framework, including the suspension of international adoption to address trafficking directly.

The report also supports the police and judicial proposals of the ministry of the interior with a view to tackling the corruption and inadequacies of the system relating to children's rights.

The *rapporteur* urges the government to incorporate into law and implement these plans without delay. The report points to the need to put in place the administrative capacity required for reform implementation. The child executive officer of the executive

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<sup>80</sup> Both those Opinions are attached to the European Parliament 2001 Report and are most easily accessible through <http://www.europarl.eu.int>

committee of the High Level Group has the task of monitoring and submitting regular reports to the parliament.

The *rapporteur* “believes implementation of these key reforms will significantly enhance the smooth passage of the accession process and bring the date of EU membership considerably”.<sup>81</sup>

➤ ***The European Parliament position in 2001 concerning INA and child welfare in Romania***

Günter Verheugen, the commissioner responsible for enlargement, made a speech during the EU enlargement debate on 4 September 2001 in the European Parliament.<sup>82</sup> He congratulated parliament, its groups and committees for their strong and indispensable commitment to the EU enlargement process and said that he valued their positive and constructive approach to the enlargement negotiations. He reminded his audience that the Commission closely co-ordinates its activities with the parliament and produced detailed reports.

Commissioner Verheugen pointed out that it had been agreed at the Göteborg European Council not to give specific accession dates for individual countries or groups of countries. The decision to accede will be purely political when the Commission is convinced that the applicant is properly prepared and meets all the conditions. Romania amongst ten other candidate countries has accepted the Göteborg framework.

The commissioner noted that it had been reported that Romania had made efforts to improve the situation of orphans and adoption. Changes have been made within the current government and there appeared to be readiness to apply a temporary suspension on international adoption on grounds of strong evidence of abuse.

Parliament and the Commission agreed that this moratorium should remain until the present system is radically reformed. It is also convinced of the support of prospective adoptive parents and serious NGOs in understanding the necessity of this ban to protect children against abuse as a top priority. Commissioner Verheugen gave credit to

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<sup>81</sup> European Parliament, 2001d, p. 9.

<sup>82</sup> Speech/01/363.

Baroness Nicholson for being personally responsible for uncovering "a breathtakingly corrupt system" and for the progress made in this area.

➤ ***European Parliament: Text adopted by Parliament, Provisional Edition: 5  
September 2001***

In this Romania is said to be deeply committed to bringing itself into line on the accession process, especially in relation to incorporation of the UN Convention on the Rights of the Child. Textual alterations made it incomplete and compromised the position of the abandoned child. The Hague Convention for International Adoption contracting parties condemned the 1996 secondary legislation on international adoption as it allowed world-wide child trafficking. It was later made redundant. This legislation prevented the development of child services, leading to abuse and neglect of children in state institutions, the growth of street children and child trafficking.

On 14 December 2000, international adoption was stopped by the Romanian government and then suspended by the Romanian Adoption Committee in June 2001 for a period of one year, extended on 9 October 2001 for another year by emergency ordinance with the support of the High Level Group.<sup>83</sup> A review of cases in process prior to 14 December 2000 is under way, pending the adoption of the appropriate law. Parliament reports that the Romanian government's new programme for child protection underlines its commitment to care for Romania's needy children through the provision of modern, non-institutionalised childcare services in compliance with the UN Convention on the Rights of the Child and its optional protocol on trafficking. The Prime Minister intends to make Romania a 'no-go area for traffickers'. Parliament notes that Romanian administrative capacity must be reinforced.

The European Parliament, however, welcomes the government's programme but also its commitment to be evaluated on the basis of its actions not promises and documents produced and in the consolidation of democracy and the rule of law. Concerning the rights of the child, parliament strongly supports the prime minister's clear and unambiguous statements, the plans of 12 June 2001 to address reforms on child health

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<sup>83</sup> MAI, 2001b.

development within the appropriate legal framework, and efforts to address child trafficking directly by suspending international adoption.

Parliament supports the police and judicial proposals to tackle the corruption and inadequacies of the system on children's rights, urging the government to include these plans into law and implement them as soon as possible. It believes that implementing these reforms will facilitate Romania's accession bringing closer EU membership.

## **PROJECTS AT EUROPEAN LEVEL**

### **➤ *The European Initiative for Democracy and Human Rights (EIDHR)***

EIDHR acts in the global effort to establish and empower a pluralist society, managed by the rule of law and in regard to human rights. EIDHR functions mainly through NGOs, which tendered project proposals. These proposals have to observe the guidelines and procedures determined by the European Commission. The projects apply to topics relevant to modern democracy and civil society: genuinely distinctive arrangements in government and workplace, access to reliable information, ethical practices, the principle of equality of opportunity, non-discrimination against minorities, promoting respect for human rights, and so on. Under the Macro Projects Compendium 2001, projects are taking place in 2001 and beyond.<sup>84</sup>

## **Programmes run by the European Commission**

### **➤ *Recent developments under the Association Agreement***

The Association Council, meeting in March 2001, and the Association Committee of October 2001 accepted that Romania has correctly continued to implement the Europe Agreement but identified a number of specific problems arising during the course of the year.<sup>85</sup> All applicant countries receive *Community Aid* from the European Union. The three pre-accession instruments financed by the EC are the PHARE programme, SAPARD and ISPA.<sup>86</sup> The objectives of these programmes are to give support on the accession partnership priorities to assist the applicant countries in fulfilling the criteria for membership. Only the PHARE programme is of interest to us.

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<sup>84</sup> See Annexe I.

<sup>85</sup> Remarkable improvements in trade situation: revival of economy taking place but serious cause for concern: rapid growth in imports meant trade deficit with the EC increased to EUR1.1 billion.

➤ ***The PHARE Programme***<sup>87</sup>

The PHARE programme was set up in July 1989 "as the means by which aid of all kinds from the industrialised world would be channelled to Poland and Hungary."<sup>88</sup> The programme has since been extended to include aid to other CEECs including Romania.<sup>89</sup> PHARE co-finances technical assistance, 'twinning' and investment-support projects with the general objective of strengthening institutions for the implementation and enforcement of the *acquis*.<sup>90</sup>

PHARE supports the government priorities of strengthening democracy and the rule of law.<sup>91</sup> Targeted support has been provided for further action in the field of child welfare, to improve access to education for Roma, and to develop a civil society.<sup>92</sup> In 2000, PHARE projects assisted the development of a civil society and the strengthening of the judicial system. Support has been provided to improve management of municipal services and reinforcement of administrative capacity.<sup>93 94</sup> Projects promoting the reform of public administration policies, civil service recruitment and training, and the programming and management of EC financial instruments have also received assistance from PHARE.

To meet the obligations of the *acquis* twinning, technical assistance and investment are provided in health and justice and home affairs amongst other areas.<sup>95</sup> To facilitate economic and social cohesion, investment support is provided to regional development programmes in areas facing problems.<sup>96</sup> PHARE is also involved in Community programmes.<sup>97</sup> Funding under PHARE 2001 pre-finances participation in Community programmes for 2002. Romania has continued to participate actively in a number of

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<sup>86</sup> SAPARD Programmes benefit agricultural and rural development. ISPA programmes concern transport and environment.

<sup>87</sup> See Annexe J.

<sup>88</sup> Bainbridge, 1998, p.394.

<sup>89</sup> PHARE (*Pologne, Hongrie, Assistance à la Réstructuration Economique*) provides the CEECs with support for institution building (1/3 of PHARE allocation), investment to the regulatory infrastructure needed to ensure compliance with the *acquis* (1/3) and investment in economic and social cohesion (1/3).

<sup>90</sup> See Annexe K

<sup>91</sup> EUR27m in 2001 against EUR13m in 2000.

<sup>92</sup> See Annexe L

<sup>93</sup> EUR6m in 2001.

<sup>94</sup> EUR18m in 2001.

<sup>95</sup> EUR68m in 2001 against EUR73m in 2000.

<sup>96</sup> EUR109m in 2001 against EUR88m in 2000.

<sup>97</sup> EUR21m in 2001 against EUR22m in 2000.

these programmes.<sup>98</sup>

In total, Romania received an annual financial assistance from PHARE of 260 million EUR in the years 2000-2002.<sup>99</sup> PHARE is assisting Romania in institution building, providing investment to strengthen the regulatory infrastructure needed to ensure compliance with the *acquis* and investment in economic and social cohesion. Its objectives to help Romania to develop the necessary mechanisms and institutions to implement Structural Funds after accession is supported by a limited number of measures with a regional and thematic focus.

The level of financial support available under the pre-accession instruments creates a substantial challenge for the Romanian administration. The capacity of the bodies responsible for programming, operational management and financial control are limited. For PHARE there has been a relatively low rate of tendering and contracting in 2001 compared with the previous two years, and consequently the backlog of funds not yet committed has increased.

According to the 2001 regular report on Romania, the overall impact of PHARE has continued to be as positive as the in the previous year.<sup>100</sup> Effective transfers of 'know-how', equipment and financial resources have taken place in a number of important fields. The support given for institution building in a wide range of *acquis*-related areas has succeeded in developing accession strategies and in focusing efforts on the legislative and institutional requirements of adoption and implementation of the *acquis*.

### ➤ *PHARE and child welfare*

In Romania, PHARE is playing an important role in developing a framework for implementation by local authorities of projects introducing modern child welfare services

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<sup>98</sup> For example, Leonardo da Vinci, Socrates, Youth, Life III and Framework Programme 5 for Research and Technological Development, and Euratom. Preparations for participation in new programmes: Gender Equality, Enterprise and Entrepreneurship, Altener, ETAP, SURE, IDA II, DAPHNE, Culture 2000, Fiscalis, European e-content, Customs 2002, health programmes covering health monitoring, pollution-related diseases, and injury prevention. Preparations initiated extending SAVE II, public health programmes (cancer, AIDS, drugs dependence), and health promotion.

<sup>99</sup> The PHARE programme allocated to Romania approximately EUR2,200b for 1992-1999 and EUR260.3m for 2000.

<sup>100</sup> According to the 2000 Report on Romania, the overall impact of PHARE has been positive in introducing its objective, accession-related criteria into budgetary planning and the design of programmes of public expenditure. The Romanian public administration has benefited from skills transfer and assistance to develop modern administrative systems required for adoption of the *acquis*. The PHARE investment programme has had an impact on improving the management of public procurement.

and reducing institutionalisation of children in line with government policies for the reform of child protection. This is being financed under the PHARE 1999 programme through a EUR19 million grant scheme known as Children First. PHARE is also supporting associated measures that include technical assistance and a public information campaign. The first two contracts were signed on 21 May 2001 under the programme for development of child welfare services.<sup>101</sup>

The main objectives of this programme are to:

1. Reform and develop the child protection system in Romania
2. Reduce the number of abandoned and institutionalised children
3. Develop community integrated services as alternatives to child-care institutions at local level
4. Inform parents about existence of such services.

A key financial component in the programme comes from Children First for funding projects at a local level to develop alternative services.<sup>102</sup> 243 project proposals were submitted by 46 out of 47 specialised public services for child protection under this component and their evaluation and contracting were finalised by the end of June 2001.

Two contracts involve technical assistance and public awareness campaign.

➤ *Technical assistance*

The project, worth EUR1.8 million, has been set up for the selection of reform projects to be funded under Children First. The objectives are to ensure a transparent evaluation and selection process of project proposals to be funded, and adequate monitoring of their implementation, as well as necessary information on project proposals, their selection and their status of implementation.

The head of the EU's delegation in Bucharest, Mr Fokin Fotiadis, believes that this programme will make a "historical difference to the reform of institutionalised children protection in Romania." He recognises that poverty is the main reason for child

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<sup>101</sup> EUR25m allocated to these two projects. The signature of the contracts is the actual go ahead for activities to be carried out within the programme as a whole

<sup>102</sup> EUR19m.

abandonment but stresses that there are alternative solutions to institutionalisation for children.<sup>103</sup>

➤ ***Current stage of the programmes***

The opening session took place on 23 May 2001 for the 232 projects submitted. 40 projects were concerned with the closure of the old type institutions and 192 projects to deal with alternative services.<sup>104 105</sup>

Implementation of the 112 projects approved began from September. The European Council has said that it is sufficiently satisfied by the quality of projects drafted by the counties that it will encourage child protection in the assistance programs of PHARE for 2002.<sup>106</sup>

➤ ***Public awareness campaign***

This has been set up to prevent the abandonment and institutionalisation of children and aims to bring about changes in parental attitudes and behaviour.<sup>107</sup> It is designed to inform parents about the importance of family environment for a child's growing-up process and to make them aware of the negative effects that child abandonment and institutionalisation might have. It offers information about how and from whom assistance and services can be obtained to prevent or avoid child abandonment or institutionalisation.

The contract was signed at the beginning of May with Saatchi & Saatchi. Preparation for the campaign started immediately. After extensive field trials, the campaign started in September 2001. There will be focused exposure on national television at a later stage.<sup>108</sup>

➤ ***Twinning Projects***

One of the main challenges Romania faces is the need to strengthen its administrative capacity to implement and enforce the *acquis*. Twinning now covers all sectors relevant

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<sup>103</sup> EC Delegation in Romania, News Brief, 2 May 2001.

<sup>104</sup> EUR10m and EUR35.7m respectively.

<sup>105</sup> The contract was signed with P L S Ramboll at the beginning of May 2001.

<sup>106</sup> The counties involved are Teleorman, Ia\_i, Neam\_, Timi\_, Cluj, Bac\_u, Maramure\_, Harghita, District no3 of Bucharest city.

<sup>107</sup> EUR2.6m.

<sup>108</sup> NACPA, 2001b, pp.4, 5.



to the *acquis*. There are 372 twinning projects in a range of sectors of which social policy is one. Under PHARE 2001, there are twelve twinning projects, one of which covers public administration reforms.

There have been delays in drafting the 1999 covenants, which led to less time being available for the actual implementation of some projects. However the preparation for the twinning projects under PHARE 2000 is well on track.

➤ ***Current stage of the programme***

The twinning component comprises a pilot project carried out in certain counties. The project aims to re-evaluate the role, the position and the structure of the commissions for child protection. A re-evaluation jointly undertaken by the Ministry of Education and Research and the Ministry of Health and Family will also be carried out to apply the best and most efficient organisational way for the observance of child rights. The French government is to assist the Romanian government and a convention of co-operation was signed on 4 June 2001.

NACPA is in the process of identifying four pilot counties in which the project will be carried out. A reassessment of the role and the structure of the commissions for child protection will take place to establish a single commission for the evaluation of children in difficulty at local level. Diversified social services will be assessed for the prevention of abandonment/institutionalisation of children in difficulty.<sup>109</sup>

## **THE CASES OF FRANCE AND THE UNITED KINGDOM**

➤ ***FRANCE***

***Proposal for a new law: the proposition Mattei***

The shortage in France of French adoptable children has encouraged inter-country adoption. This prompted Mr Mattei, deputy in the department of Bouche-du-Rhône and a professor of medicine, to table in 1999 a proposal for a new law to facilitate national and inter-country adoption procedures. The text proposes that legislation relating to adoption of children abroad comes under French law under which *adoption plenière* (full adoption) takes place. This entails adoptive parents accepting full responsibility for the child, who

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<sup>109</sup> NACPA, 2001b, p. 5.

thus loses all contact with his/her past and the culture of the country of origin. The full adoption gives the same rights to an adopted child from abroad as for indigenous French children.

There have been strong reactions to this new legislation. For example, the *Défence de l'Enfance Internationale* (DEI) says that this is a mockery of international law.<sup>110</sup> The French NGO Enfance et Familles d'Adoption (EFA) has also some concerns, which they argue require discussion and debate. Nonetheless the law as tabled has government backing.

***Law no. 2001-111 of 6 February 2001 relative to international adoption***<sup>111</sup>

As a result of the Mattei proposal, new Articles 370-3 to 370-5 have been inserted in Chapter III, Title VIII of the 1<sup>st</sup> Code Civil. [It should be noted at this point that France signed the Hague Convention on 5 April 1995 and thus follows its requirements in respect of the protection of children and in co-operation on international adoption.<sup>112</sup>]

The new Articles state that the conditions for adoption are subject to the national law of the prospective adoptive parent and, if a couple has two different nationalities, under the laws of each partner.<sup>113</sup> Legal consent for adoption is required from a legal representative on behalf of the child. It must be free, without constraint, and cleared from the consequences for adoption especially for full adoption. A regular adoption procedure abroad will have the effect in France of a full adoption, which results in the child having no ties with his/her birth family unless stated otherwise.

Article 5 establishes the creation of a *Conseil Supérieure de l'Adoption* (National Committee on Adoption). It is composed of representatives from:

- The National Assembly
- The state
- General committees
- Judiciary
- Authorised or recognised bodies for adoption
- Adoptive family associations

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<sup>110</sup> The *Défence des Enfants International - France* (DEI) is the French branch of the NGO *Defence for Children International*, which was established in 1979 in Geneva. This NGO co-ordinates legal and social defence teams, training programmes, reports on international standards related to children's rights, and participates in an international network on juvenile justice.

<sup>111</sup> See Annexe M.

<sup>112</sup> See Annexe O.

<sup>113</sup> If this is the case, the most restrictive law on adoption will apply. If the law of one of the spouses prohibits international adoption, the couple will not be able to proceed with their application.

- Adopted persons
- Social services department helping immigrants
- International Mission for Adoption
- Any other qualified persons.

A meeting is held once every six months. Its objective is to receive, analyse and formulate all useful propositions relevant to adoption, including inter-country adoption. The committee is consulted on legislative measures and regulations taken.

The *Mission de l'Adoption Internationale* (MAI) has laid down the procedure to follow in France together with the players involved in inter-country adoption procedures. These are available in English in the Annexe.<sup>114</sup>

French social security provisions are generous to parents in the process of receiving adopted children. For example, parents are given paid time off work depending on the family circumstances and the number of adopted children. Following adoption, ten weeks off work is given for up to two dependant children and eighteen weeks if the parents have three dependent children. If they adopt more than one child, the parents benefit from twenty-two weeks off work. The time given can be shared between parents in two periods of which neither may be shorter than four weeks.

To benefit from this time off for adoption, parents are to contact their social security branch. A certificate of eligibility with the date of arrival of the adopted child will be handed to the parents together with the agreement to this effect. For international adoption, the child adopted must possess a visa mentioning the title MAI.

### ***Effect of Romanian ban on inter-country adoption in France***

EFA reports that the official reason for the ban on inter-country adoption in Romania is to prepare a new law on adoption. However, EFA also notes that it is widely believed that the ban was actually prompted by the publication of the highly sceptical European Parliament report of which Baroness Nicholson of Winterbourne was the *rapporteur*.

As we have seen the report is very critical on the situation of children and in particular on the conditions in which the Romanian authorities have authorised certain adoptions. The

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<sup>114</sup> See Annexe N.

Romanian President's address published in the 2001 European Parliament Report admitted and condemned inter-country adoption abuses.<sup>115</sup>

EFA agrees that Romania needs as a matter of urgency to create an efficient welfare system for children and families.

- The Romanian Committee for Adoption (RCA) has renewed the ban on inter-country adoption. This is to include all applications received before the original ban. EFA is very worried about this. EFA believes that, as a matter of urgency, solutions need to be found for all the applications, which had been processed before the imposition of the ban. EFA considers that suspending inter-country adoption does not have beneficial consequences for children, especially those in institutional care.<sup>116</sup>
- The French government is sensitive to the plea of prospective adoptive parents concerning the Romanian ban. Indeed President Chirac had presented this "delicate subject of the adoption of Romanian children by French families" to the Romanian Prime Minister, Mr Adrian Nastase, during his official visit to France on 28 November 2001.<sup>117</sup>
- During the Mr Nastase's visit, President Chirac mentioned the dilemma of prospective adoptive parents, whose adoption applications had been initiated before the ban on inter-country adoption was introduced. He stressed the need for those applications to be dealt with in the near future. Mr Nastase has promised that each application will be examined and an answer will be given in the weeks to follow. EFA strongly supports this examination of cases. So far, the Romanian government has not produced any concrete engagement on those interrupted applications and no date has been given to restart those applications or for a new process of adoption.<sup>118</sup>
- Following Mr Nastase' visit, the Romanian authorities turned to consider adoption already in process before the original ban of 21 June 2001. However they have not committed themselves to any other aspect of the process. In particular no date has been put forward for the renewal of inter-country adoption.<sup>119</sup> An emergency ordinance dated 7 December 2001 envisages that only in exceptional cases would the ban not apply (and the ban is expected to continue until 9 October 2002). Details on

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<sup>115</sup> See above page 36.

<sup>116</sup> Interview with Janice Perye, Chairperson EFA Public Relations, 23 January 2002.

<sup>117</sup> EFA, 2001b.

<sup>118</sup> MAI, 2002.

<sup>119</sup> MAI, 2002.

this derogation are not yet available but MAI believes that the criteria will be very restrictive (for example, only permitting action in the case of separated siblings).

### ***Bilateral relations between Romania and France***

Cultural and political links between Romania and France date from the eighteenth century. Politically, France promoted the young Romanian state in Europe in the nineteenth century. Solidarity between the two states was reinforced during the First World War. Today France's full support for Romania's accession to the European Union may be seen as the result of this tradition of privileged relations, which unites both countries.

### ***Collaboration protocol in the field of child protection between French and Romanian governments***

The general objective of this collaboration is to support child protection reform in Romania. The Protocol, signed on 13 June 2001, addresses the following issues:

- Training for child protection specialists and exchanging information
- Co-operation over legal framework
- Prevent child abandonment and reintegrate children in their families.

At this date, the programme is structured over three years and three of the projects listed below have been agreed for financing:

- To provide training for heads of services for the protection of children with special needs
- In the field of legal co-operation, to provide support for drafting the normative texts concerning the legal protection of the young and for establishing specialised services
- To provide training for specialised trainers
- To provide support for setting up a school to train social workers
- To provide training for the prevention of child abuse and mistreatment
- Co-operation between Romanian judges and similar French departments.

In 1999, the French Ministry of Foreign Affairs gave an emergency aid package of FrF4m to Romanian institutions for abandoned children. The ministry has also actively participated in the twinning projects as mentioned above.

## THE UNITED KINGDOM

A consultation document on the implementation of the Adoption (Inter-country Aspects) Act 1999 was published on 12 November 2001 as part of the Government's commitment to improving safeguards for all adopted children.<sup>120</sup> Comments are to be received by the 13 February 2002. The regulations and guidance will be revised if necessary allowing the government to meet its commitment to ratify the 1993 Hague Convention of the Protection of Children in the spring of 2002.<sup>121</sup> Implementation of the 1999 Act is a necessary step before ratification can take place.

Ms Jacqui Smith MP, the Minister of State (Health), confirmed the government's commitment to protecting vulnerable children at home and abroad, noting that: "Adoption is a service for children - not for profit." She added that the government is also committed to ensure that inter-country adoption only takes place where the same safeguards as for domestic adoptions have been applied" and furthermore is in the best interests of the child following proper assessment and approved procedures. The government's approach is designed to facilitate adoption procedures for the adopters whilst keeping in mind children's interests and in providing a reliable and consistent service.

The Adoption and Children Bill further tightens the controls on advertising, payments and ICA.<sup>122</sup> It will be an offence for a British resident to bring into the UK a child adopted overseas in the previous six months if the correct approved procedures have not been followed. Tougher penalties are to be introduced.<sup>123</sup>

A new provision is one to ensure that, in future, adoption orders made overseas will be recognised in the UK only when the system in the relevant country meets criteria set out in British regulations. The most important of these is that the birth parents consented to the adoption and that no financial profit was made.<sup>124</sup>

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<sup>120</sup> UK, 2001h

<sup>121</sup> Equivalent consultations are planned to take place in the near future in Scotland and Northern Ireland.

<sup>122</sup> The Bill went through its second reading on 29 October 2001 and was then referred to a Special Committee.

<sup>123</sup> Maximum penalty raised from 3 months imprisonment to twelve months with possibility of unlimited fine.

<sup>124</sup> The consultation document is available at <http://www.doh.gov.uk/adoption>

### ***The Adoption and Children Bill 2001***

This Bill replaces the Adoption Act 1976 and reforms the existing legal framework for domestic and inter-country adoption in England and Wales. It consolidates the Adoption (Inter-country Aspects) Act 1999.<sup>125</sup> The Bill is relevant for national and inter-country adoptions.

Chapter 6 of the Adoption and Children Bill 2001 entitled 'Adoptions with a Foreign Element' concerns bringing children into and out of the UK. Clause 80 clarifies for whom the restriction on bringing children into the UK for adoption applies. It also refers to the Adoption of Children from Overseas Regulations 2001 on the procedure to follow.

Clause 81 refers to parental responsibility prior to adoption abroad but section 81(3) states that a High Court order (clause 80(1)) giving parental responsibility for the child to the prospective parents will only be given if the requirements prescribed by the regulations are met.

A guide was published in April 2001 and updated on 19 November 2001.<sup>126</sup> It contains the following information.

Councils in the UK have a duty to provide an adoption service for national and inter-country adoption. Councils may arrange for the provision of an ICA service in their area by a Voluntary Adoption Agency (VAA) and to agree jointly policies and standards of professional practice. Independent social workers may be employed under supervision by the Councils to carry out assessments. Four agencies work independently on ICA in England alone.

The functions of Councils and VAA are to provide information on overseas procedures, counsel prospective overseas adopters, and conduct assessment on their suitability. They arrange most placements and offer post placement/adoption services.

### ***The Adoption (Inter-country Aspects) Act 1999<sup>127</sup>***

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<sup>125</sup> Section 1, 2, 7 and the Schedule 1 of the 1999 Act are to continue in force for England, Wales and Scotland. The remaining provisions will not apply for England and Wales anymore but be incorporated into the new Bill.

<sup>126</sup> UK, 2001b.

<sup>127</sup> See Annexe P for copy of Act.

The Adoption (Inter-country Aspects) Act 1999 provides a statutory basis for the regulation of inter-country adoption in England, Wales and Scotland. Safeguards to ensure that ICA takes place in the best interest of the child now exist and the child's fundamental rights as recognised in international law are to be respected. The Act makes provision for giving effect to the Hague Convention on protection of children and co-operation in respect of inter-country adoption.<sup>128</sup>

Co-operation between signatories of the Hague Convention will ensure that those safeguards continue to be respected; it is also expected to prevent child trafficking. Section 14 (section 56A, 1976 Adoption Act) establishes that, from 30 April 2001, it is an offence to bring children into the UK without following the prescribed procedure. It will secure the recognition of adoption orders between convention countries.<sup>129</sup> Clause 4 and 8 of the Adoption (Inter-country Aspects) Act 1999 defines the meaning of 'convention adoption' and 'full adoption'.<sup>130</sup>

### ***The Adoption of Children from Overseas Regulations 2001***<sup>131</sup>

The Regulations impose requirements of compliance for a person habitually residing in the British Isles before and after bringing a child from abroad for the purpose of adoption.

At present, not all overseas adopters follow the correct procedure. Some overseas countries do not require the assessment and approval papers or the home study report completed in the UK. This undermines the safeguard put in place in the UK, putting at risk the welfare of children.<sup>132</sup>

In 2000, 351 certificates of eligibility were issued in the UK.<sup>133</sup> However, about 100 prospective adopters brought in children without assessment or applications. The number of adoption applications increased from 1999 and is expected to rise further.<sup>134</sup> The number of people bringing children from overseas without going through the procedure is also likely to rise. The objective of the regulations is therefore to protect children by

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<sup>128</sup> See Annexe P, p.1.

<sup>129</sup> UK, 2001b.

<sup>130</sup> See Annexe P, point 4, p.3.

<sup>131</sup> Statutory Instrument 2001 No.1251 - made 29 March 2001, Laid before Parliament 29 March 2001, Coming into force 30 April 2001.

<sup>132</sup> Regulatory Impact Assessment, Adoption and Children Bill 2001, Department of Health, 19 November 2001.

<sup>133</sup> 292 eligibility certificates for England and Wales.



detering people from bringing children into England and Wales without the appropriate procedure but also by monitoring the children placements once in the UK.

A prospective adopter will be assessed for approval by the council or VAA prior to adoption and will be notified by the Secretary of State that a certificate of eligibility will be issued before the child is brought into the UK for the purpose of adoption.<sup>135</sup> He will be guilty of an offence for failing to do so. Failing to go through the procedures before bringing the child into the UK, is an offence (Section 56A of 1976 Act - inserted in section 14 1999 Act). The prospective adopter is to give notice to the local council of his/her intention either to adopt or not within 14 days from entering the child into the UK. Failing to do so is an offence.<sup>136</sup> The Regulations also set out clearly the requirements placed upon the councils and adopting agencies and panels in England once they receive an application. The correct procedure must be followed in relation to the assessment and approval of an applicant's wish to adopt overseas, the Secretary of State must also be provided with the relevant information.

The most effective way to meet the Regulations objective is to bring forward the regulations under part of Section 56A of the Adoption Act 1976 inserted into section 14 of the Adoption (Inter-country Aspects) Act 1999. It will become compulsory to go through the assessment and approval procedures before bringing a child into the UK. The obligation to notifying the council of the child's arrival in the UK will also enable monitoring. This will reduce the risk for a child to live in an unsuitable home. The checks also applying to domestic adoptions will secure same level protection to all children making the law clear and unmistakable. The monitoring will also ensure a successful placement. The regulations will act as deterrent for those people avoiding the normal procedures and will encourage them to follow the procedures. The regulations will not impose extra obligations on the VAA but may benefit from them.<sup>137</sup> The VAA assess people's suitability as inter-country adopters. Under the new regulations, they need not accept additional requests but may find it difficult to identify the necessary extra capacity needed to deal with the increase of applications.<sup>138</sup>

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<sup>134</sup> 280 applications in 1999, 351 in 2000.

<sup>135</sup> The certificate confirms that the prospective adopter has been satisfactorily assessed and that the child will be authorised to live permanently in the UK once entry clearance is granted and the adoption order is made.

<sup>136</sup> 3 months prison sentence or £5,000 fine.

<sup>137</sup> The actual fee VAA charge for assessment is about £4,000 and is to remain the same.

<sup>138</sup> This is so also for councils.

The Department of Health has been in consultation with Lord Chancellor's Office, the Home Office, and the Joint Entry Clearance Unit. Other government organisations and NGOs support the Regulations and participated through a consultation meeting and written comments.<sup>139</sup>

***Practice and procedures for inter-country adoption (ICA)***

Once a council and approved VAA agree to proceed an application for ICA, they will perform their functions as mentioned above.

For adoption in the UK the usual process is for interested persons to approach their local council or a VAA, which carry out assessment for ICA. The council or VAA then explain the procedures and costs involved and offer preparation classes, advice and counselling. Adoptive applicants submit a written application. Police and medical checks are completed and home study assessments are undertaken and submitted to the Adoption Panel. This panel makes recommendations. A decision is then made by the agency decision-maker. The Department of Health in England then endorses successful applications.<sup>140</sup> The Secretary of State issues a certificate of eligibility and informs applicants, stating the suitability of the prospective adopters and that the adopted child will be given leave to enter the UK subject to entry clearance and the making of an adoption order.

Post-assessment consists of papers notarised/legalised as required and then passed on to the relevant overseas authority for consideration. The authority identifies a child to be matched with the prospective adopters who make a decision. They travel to meet the child and adopt him or her overseas. A contact is made with the nearest British embassy, consulate/high commission as appropriate to seek clearance for the child to enter the UK. Once the papers are checked, the entry clearance officer contacts the Department of Health in England to ask whether a British court is likely to grant an adoption order and, once satisfied, will decide whether to issue entry clearance.

The council will monitor the placement of an adopted child from a non-designated country under Section 32 to 37 of the 1976 Act and will carry out its duty to investigate

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<sup>139</sup> NGOs and NGOs: Association for Directors of Social Services, the Local Government Association, the Welsh LGA, British Agencies for Adoption and Fostering, and the President of the Family Division.

whether the child was placed with the applicant in contravention of Section 11.<sup>141</sup> The prospective adopters apply to the UK court for an adoption, and the council produces a Schedule 2 report to comment on the suitability of the applicants and to inform the court when making a decision on the making of an adoption order. The local authority notifies the Home Office of the application if the child did not receive entry clearance. It also informs the Home Office on the adoption progress as the child is subject to immigration control but will automatically receive British nationality once the adoption order is made in the UK court.

The council will treat a child as privately fostered under Sections 66 and 67 of the Children Act 1989 under an interim adoption order from a designated country. Regular welfare visits will be carried out until the full adoption is made.

Most countries require post placement reports on the progress of the adopted child and adopters are under a duty to do so. The council or VAA helps if necessary.

Under Section 57 of the 1976 Act, the councils and VAA may charge prospective adopters 'reasonable fees and expenses' to cover costs.

If the council or agency suspects an offence has been committed under section 14 of the 1999 Act, it must report it to the appropriate law enforcement body within six months of noticing it and within three years of the offence taking place.

### **THE ADOPTION LAW REFORM GROUP - UK ('ALRG')**

This group, organised by the British Agencies for Adoption and Fostering (BAAF) and previously known as the Adoption Legislation Lobby Group, identifies shared views on the principles that should, in its view, underlie adoption.<sup>142</sup> ALRG has been concentrating on promoting new legislation and has set out its proposals. The organisations represented in ALRG and the Association of Directors of Social Services (ADSS) support the proposals but not necessarily the detail. All members of the Group strongly support action to meet what they regard as the urgent need for new adoption

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<sup>140</sup> To the National Assembly for Wales in Wales.

<sup>141</sup> Under Section 22(2) and (3).

<sup>142</sup> BAAF, 1995.

legislation in England and Wales in the interest of the child and the adult(s) affected by adoption.<sup>143</sup>

The organisation believes that there is a general agreement for the government to bring forward the legislation as soon as possible, which will be supported if it follows generally the line set out in this statement.<sup>144</sup>

ALRG called on 29 June 2000 for urgent changes in adoption legislation in England and Wales if "adoption services are to meet the needs of children and the lifelong needs of all those affected by adoption."<sup>145</sup> The Group claimed that plans to facilitate the adoption of children in care cannot be realised under existing laws, which are outdated and could be in conflict with the Human Rights Act.

NORCAP (a member of ARLG) supports the following proposals as it recognises "the unique and lifelong impact of adoption upon individuals and families and provides for the adoption process to be so much better in the future."<sup>146</sup> NORCAP argues that existing law is insufficiently child-centred.

A new Adoption law should:

- Consider the child's welfare a priority
- Amend existing law to remove the differences between domestic and inter-country adoption as set out in the Adoption (Inter-country Aspects) Act 1999
- Make the child a party in court proceedings with the right to be heard
- Recognise that delay is contrary to the child's welfare
- Oblige courts and agencies to respect the child's religion, race, culture and language
- Admit joint applications for adoption orders from unmarried couples
- Permit courts to do without a parent's agreement only if it is advantageous to the child over any other alternative, which must be given full consideration.
- Recognise that agreement to adopt must be given freely by the birth parents, accepting that adoption is the only appropriate plan for the child

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<sup>143</sup> The members of the Group are Adoption UK, BAAF, British Association of Social Workers, Catholic Children's Society (Westminster), Family Rights Group, National Children's Bureau, NORCAP, Overseas Adoption Helpline, and Parenting Plus.

<sup>144</sup> The government set up the Interdepartmental Review of adoption law in 1989 and actions on its proposals is long overdue.

<sup>145</sup> BAAF, 2001h, p.1.

<sup>146</sup> BAAF, 2002h, p.1.

- Recognise that the current Freeing Orders procedure to re-involve birth parents are unsatisfactory and take too long. Freeing Orders could violate the child's right to family life and be challenged under the Human Rights Act<sup>147</sup>
- Require active consideration by courts and agencies as to whether a contact agreement is desirable and offer mediation services
- Impose clear enforceable duties to improve post-placement services
- Revise duties placed on local authorities such that there is an obligation to provide a comprehensive adoption service removing uncertainties
- Define the status of an adopted child to acknowledge the child's former legal relationship with the birth parents
- Reform the joint adoption procedure for step-children, which NORCAP finds illogical and unnecessary for the birth parent
- Fill the gap between an Adoption Order and a Residence Order with a Guardianship Order.
- Remove restrictions on foster parents wishing to adopt.

## **BAAF**

### *Purpose of the organisation*

The organisation aims to promote and develop high standards in adoption, fostering and child placement services. It seeks also to encourage a broader understanding of adoption and fostering and the needs (developmental, racial, cultural religious, and linguistic) of children who do not live with their birth families. BAAF provides an information service and aims to influence policy makers, legislators and those responsible in child welfare.

### *Strategy Plan 2002 - 2007*

BAAF sees a need to adapt but also focus on priorities, developing the organisation's structure and capacity to deliver quality services to their members. BAAF's second objective is to "support the implementation of Country and National Standards for adoption, including inter-country adoption aspects and fostering services".<sup>148</sup>

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<sup>147</sup> Especially for children 'freed' but not adopted.

<sup>148</sup> See Annex Q.

### ***BAAF's comments on the Adoption and Children Bill 2001***

The Adoption and Children Bill had its First Reading in Parliament on the 22 October 2001. BAAF supports this Bill and is delighted with the government commitment to improve adoption services for children.<sup>149</sup>

The new Bill addresses the loophole allowing prospective adopters to adopt overseas according to the relevant country's legal requirements but without approval from the UK as to their suitability. BAAF believes that those adopting in this way should be prosecuted in the UK on arrival. The Bill stresses the importance of defining parents' suitability through proper assessment and approval procedures. Support services for families after adoption are to be improved under the new Bill.

Ms Felicity Collier, Chief Executive of BAAF, welcomes the government's commitment to re-introducing the Adoption and Children Bill to Parliament as a huge step forward in modernising the law to prioritise child welfare. In her view it will restore the public's confidence in adoption. She believes that the bill will integrate adoption legislation with existing law related to children such as the Children Act 1989. In addition its implementation will enable the UK to ratify the Hague Convention on international adoption by ensuring that proper checks are carried out on prospective adopters through mandatory home study reports. The Adoption Register, which it will introduce, will reduce delays for children waiting to be adopted.

In its Memorandum of Evidence to the Special Standing Committee on the Adoption and Children Bill in the House of Commons on 9 November 2001, BAAF makes some comments on Section 80 of the Bill concerning inter-country adoption. BAAF notes that:

*"Clause 80 extends the restrictions on bringing children into the country to include cases where the child has been adopted abroad but without the proper (UK) procedures being followed. We appreciate the intention behind this provision but the precise wording of the clause may require further consideration. Greater safeguards are in practice likely to be achieved by the exercise of great care by the Secretary of State in deciding which countries' adoptions may be specified as 'overseas adoptions' under clause 83."<sup>150</sup>*

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<sup>149</sup> BAAF, 2001f.

<sup>150</sup> BAAF, 2001f, p.6.

BAAF in association with the Refugee Council has published a report mapping the numbers of unaccompanied asylum-seeking children in the UK between September 2000 to March 2001.<sup>151</sup> The report suggests that there is evidence of a growing number of unaccompanied children over the last two years coming into the UK. Both agencies are keen to develop services to those children in need with a better understanding of their location. In the year 2000, out of a total of 2735 asylum-seeking children, aged 17 or under, 40 came from Romania.<sup>152</sup> Other Eastern European countries are Yugoslavia (665+35), Czech Republic (20), Poland (15), Turkey (155). The report also reveals the number of referrals has decreased slightly from 4529 in 1999-2000 to 4276 in 2000-2001. Referrals come from a wide range of agencies from around the world.<sup>153</sup> The report has recorded 74 referrals from Romanian agencies. This is quite a high figure compared to other countries listed in the Appendix Five.<sup>154</sup> The average age of referrals range between 4 to 21 with highest in number from 15 to 17 years old.<sup>155</sup>

The authors are Judith Dennis, the Refugee Council policy adviser for unaccompanied children, and Selam Kidane, Refugee Project consultant for BAAF. They reported that some of the agencies they contacted in collating data did not see the use of information and were reluctant to share them with others. However other agencies/organisations realise the crucial importance of central source of data and are calling on the government to take this need up.

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<sup>151</sup> BAAF, 2001g.

<sup>152</sup> See Annexe R, Appendix 3.

<sup>153</sup> See Annexe R, Appendix 5.

<sup>154</sup> See Annexe R, Appendix 5.

<sup>155</sup> See Annexe R, Appendix 5.

## CHAPTER FIVE

### *PROJECTS, ACTIONS, RESULTS: ROMANIA AND THE INTERNATIONAL COMMUNITY*

#### **A ROMANIA AND CHILD WELFARE**

##### **Romanian government strategy on child welfare 1997-2001**

###### *Local communities and their role in child welfare*<sup>156</sup>

Institutional reforms on the protection of children's rights started in 1997. Residential facilities were re-organised to improve the living conditions of institutionalised children. Policies were changed in the intervention procedure to protect the child in support of foster care and adoption. The degree of organisational and financial intervention of county councils and specialised public services was increased as well as the role of private organisations.

These developments were positive and progressive but NACPA identified some malfunctions:

The absence of support from the local community in supporting child welfare system is the result of the transfer of material, financial and actual intervention tasks to county authorities. NACPA believes that local communities alone are best to identify children in need of protection and in monitoring the effectiveness of that protection if the Romanian child welfare system is to become effective. Specialists in child welfare in Romania share this view.

NACPA reports the decrease in residential type protection and believes that family type care can only benefit the child. A number of old type care institutions closed down during that time and NACPA recorded a drop in the actual number of children in care.<sup>157</sup> Obvious changes took place in the structure of the target audience, presently made-up of

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<sup>156</sup> NACPA, 2001h.

<sup>157</sup> NACPA, 2001h.



children with serious family problems, whose needs are financial, physical, biological and educational. However, social solidarity declined and this has concerned the government, which is much too aware that it should not overlook the international use of terms and phrases bringing about a structural change in the approach of intervention for the protection of children's rights.<sup>158</sup>

In its strategy, the government took into account the need for people to trust again the state and local authorities. Their intervention has too often been inappropriate, inconclusive, and inefficient. The government has looked at a new approach of intervention, consisting in shifting more responsibility to local communities. It is also prepared to assess accurately the existing legal provisions in the Romanian legislative system.<sup>159 160</sup>

The government has realised that local authorities are best placed to intervene when families are in difficulties and to keep in mind the best interest of the child in the provision of adequate protection. They are the agencies best placed to secure a few essential rights. These may be listed as the right for children to:

- Remain in their natural family, their own social and cultural environment
- Receive appropriate care relevant to the child's circumstances and needs
- Privacy, the observance of family circumstances
- Stay in residential care no longer than strictly needed.<sup>161</sup>

According to NACPA, the government is aware of the general public lack of knowledge and interest concerning children in difficulty.<sup>162</sup> People know little about care institutions

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<sup>158</sup> The 1994 Salamanca Statement, for example, uses the term 'persons with special needs'. This means that those special needs are demanding for local communities, and requires developing the feeling of social solidarity.

<sup>159</sup> Law No.69/1991 on local public administration regarding guardianship authority attributed to mayors. The Report of the People's Advocate made clear specifications of mayor's rights and obligations as holders of guardianship authority.

<sup>160</sup> The Government Emergency Ordinance No.12/2001 regulates the obligation of local authorities to provide financial support from their own resources to the system for the protection of children's rights.

<sup>161</sup> This view was put forward by Constantin Stoenescu, secretary of the county council of Ialomita, NACPA, 2001h.

<sup>162</sup> Aspects taken into account were the awareness and interest of the problem of children in difficulty and attitudes towards the various categories of those children. Also, the awareness of actors involved in children in difficulty issues and of protective measures in place and perspective of actors in charge of the protection of children in difficulty were aspects included.

and about the emotional and social needs of children.<sup>163</sup> The idea of isolating children with special needs in special schools or centres rather than integrating them into society is still very strong. It is true that previous measures were more financial and medical in nature. This is also the view that, for street and delinquent children, measures tend to be more punitive than rehabilitative.<sup>164</sup> People seem to understand best the problems relating to abandoned and orphan children and their need for affection and family environment. The public at large believes that all categories of children in difficulty need protection but is really detached from their specific problems and see the state as the main provider for their protection and needs.

Within the government's strategy for 1997-2001, child protection had become a national priority. Brândusa Predescu, the Secretary of State, said that the only way to achieve accession to the EU is to observe the political criteria established in Copenhagen on the observance of children's rights.<sup>165</sup> Attention is focused mainly on the most disfavoured children and actions need to be introduced without discrimination. Romania has ratified the UN Convention on the Child's Rights (Law 18/1990), which requests all public or private institutional actors in child welfare to respect the 'fundamental and unbreakable bond between children and their family'. On the grounds that educating parents and the guarantee of a decent level of living will contribute to the decrease of children in difficulties, a balanced relationship between the child, the family and society is crucial in child welfare.

The 1997-2001 Romanian strategic framework for actions and measures respects the international convention provisions and treaties that Romania has ratified. Naturally it also takes into account Romania's particular socio-economic and cultural context. There have been more reforms, bringing positive results but also increasing attention to other aspects that the system has not solved.

#### **Romanian Government Strategy on Child Welfare 2001 - 2004**

The 1997-2001 government strategy for action in child welfare has been reviewed and improved. The new strategy is based on certain principles: to observe the child's interest, non-discrimination and equal opportunity, to consider provisions for family environment,

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<sup>163</sup> NACPA, 2001h.

<sup>164</sup> Rural uneducated people on low income hold most extreme view of isolation and discrimination.

<sup>165</sup> NACPA, 2001j.

of decentralisation and solidarity, inter-sectoral and inter-disciplinary intervention, and partnership.<sup>166</sup>

It identifies the priority target groups. They are children in residential care, abandoned children or at risk of abandonment by their own family, children neglected or abused by their own family, special needs children, including those in residential care, HIV-infected or AIDS-diseased children, children coming of age in residential care and street children.

The government has realised that improving children in difficulty goes hand-in-hand with improving the family's general situation and increasing the entire population's living standard. This process is to involve the participation of all central state administration structures with responsibilities in child welfare and social, family and education policies. Local authorities will be increasingly responsible for solving specific problems. Private and voluntary non-governmental sectors will collaborate at the same time in organising child and family welfare to develop co-operation and connection of services, together with bilateral and international co-operation for the improvement of all children's living conditions.

The goal of the strategy to promote children's rights is to increase community awareness and responsibility in childhood issues in line with existing practices in western countries. It aims to clarify responsibilities, roles and relationships between the institutions involved, on various levels. Increasing efficiency will bring results and management abilities will ensure transparency in the management of funds. In applying the strategy, the level of professionalism in human resources is expected to increase in all types of services and at various levels.

There is in the Annexe a detailed list of the Romanian government actions concerning child welfare.<sup>167</sup> The new Government strategy aims at:

- 1) **Developing and diversifying the modalities of intervention in order to prevent abandonment and to reduce institutionalisation for children in difficulties, or with disabilities including special educational needs.** The government has prepared a legal and methodological framework through different activities. The government's objectives are to:

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<sup>166</sup> NACPA, 2001j.

<sup>167</sup> See Annexe F.

- Reduce the number of children institutionalised by 2004
- Increase placements within the child's family or other alternatives,
- Double the number of maternal assistants and increase the number of children benefiting from their services
- Restructure 40 residential care institutions by the end of 2002
- Set up a national monitoring system
- Provide standards and methodological guides on quality of standards for services, on assessment, training and monitoring of adoptive families
- Co-operate between specialised public services and authorised private bodies employing maternal assistants.

2) **Preventing child abuse and neglect under any form, as well as preventing all phenomena that may make a child get into difficulty.** There are activities within the legal and methodological framework and within implementation. The government's objectives are to:

- Provide an adequate legal framework to prevent child abandonment and maltreatment
- Set up a procedure of identification and intervention for abused and neglected children
- Produce regular reports, studies and directories
- Establish around 300 local prevention services by 2004
- Propose about 47 therapy and social integration services by the end of 2004.

3) **Continuing decentralisation from county to local level and consolidating local institutional capacities in order for them to assume responsibility in approaching the problems related to children in difficulty.** There are more activities in the implementation process than in the legal and methodological framework and two of the projects are permanent. It is expected that the number of trained social assistants and workers will increase by 1,400 in 2004. Furthermore the strategy seeks:

- To increase the number of interventions at local level in the prevention and identification of children at risks
- To increase by 700 the number of local community services by 2004

- To increase the number of children in alternative care placement and reduce institutionalisation by 10,000 children by the end of 2001
- To provide methodologies for the organisation and operation of integrated community services.

4) **Creating and developing specialised services and integrative practices for children with special needs in order to improve their opportunities for a full and harmonious development.** The various activities within the legal and methodological framework and implementation are to benefit children suffering from the HIV/AIDS virus in public care or substitute families. It is expected to provide the following results:

- To increase by 40% the number of diversified, integrated services to children with special needs by 2004
- To reduce the number of children in institutions suffering from HIV/AIDS virus by 6,000 in 2004 and increase their placement in alternative care systems.
- To draft standards and methodological guides.

5) **Developing a set of measures and mechanisms dedicated to young people who, before the age of 18, have benefited from one of the legal forms of protection, that can facilitate the acquisition of the skill necessary for their educational, occupational and social integration.** The activities under this heading concentrate on the implementation rather than the legal and methodological framework and are to benefit children aged between 14 to 18 years old, including special need persons. It is expected to invite more young people to participate in social and professional orientation programmes and integrate them professionally.

6) **Disseminating information and raising public awareness concerning the rights of the child in order to improve the overall attitude and behaviour related to the problems specific to children and families at risk or in difficulty.** The legal methodological framework and implementation activities are to benefit children in difficulty but as importantly the public at large. As a result:

- A national communication strategy shall be drafted by the end of 2002

- The media will present a better image of child protection system
- Inform the public about the objectives, achievements and difficulties of the reform process
- Understand children in difficulty
- To increase social cohesion through public awareness
- Encourage volunteering among Romanians.

7) **Encouraging adoption as a special measure for the protection of the rights of the child.** This strategy aims to promote national adoption and use international adoption only as a last resort once domestic solutions have been exhausted in accordance with the Hague Convention 1993 on International Adoption.<sup>168</sup> This programme will review, on recommendation from the European Parliament, the groundwork of international adoption.<sup>169</sup> Most activities are permanent and are to benefit children in difficulty, who can be adopted under legal conditions in order to:

- Provide a stable permanent environment appropriate for the child's development in observance of the fundamental rights recognised for children.<sup>170</sup>
- To promote and value adoption within Romanian families
- Increase the number of national adopters
- To involve more actively and effectively local communities in finding alternative care for children without parental care
- To follow a unitary and coherent approach in promoting and observing the rights of the child by adoption.

8) ***Effective management of the human and financial resources involved in the child protection system.***

These activities (Legal Methodological Framework and Implementation) will benefit directly the staff in the system and indirectly children in all sorts of difficulties. This strategy is expected to:

- Provide a training strategy

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<sup>168</sup> Convention on the Protection of Children and Co-operation in Matters of International Adoption, adopted in the Hague on 29 May 1993, ratified by Romania by law no.84/1994.

<sup>169</sup> Romania, 2001g.

<sup>170</sup> Romania is party to the UN Convention on the rights of the Child and the Hague Convention.

- Periodical studies on training needs
- Train staff on the rights of the child
- Validate occupational standards within the professions involved with children
- Training models validated and implemented at national level
- Improve professional level of staff within the system
- Provide training for staff made redundant after closure or re-structure of children residential care institutions
- Promote and observe the rights of the child.

The government is following the criteria established by the European Council in Copenhagen and by the European Parliament's Resolution on Romania's accession to the European Union.<sup>171</sup> It is giving priority to child welfare, and children's rights. The government is backing the activity of the High level Group, which was created to promote and implement a coherent approach in children's protection, and was co-ordinated by the prime minister and Baroness Nicholson. Jointly with the delegation of the European Commission in Romania, the government is also determined to ensure the implementation of the PHARE programme 'Children First' (EUR25 million).<sup>172</sup>

Under the governing programme for 2001-04 to fight poverty and unemployment, the government is aware that a radical shake-up in the approach to social policy is necessary.<sup>173</sup> It realises the necessity to ensure legal, collective and other guarantees as much as individual responsibilities so as to involve citizens in social life. As the government's strategy is to rely on the balance between competition, co-operation and solidarity, more jobs and social solidarity are needed. The government proposes to combine measures of social security and welfare for certain groups, and actions that will contribute job security and increase stable income as an essential pre-requisite in improving the standard of living of workers.

Concerning welfare strategy, within this programme, the government puts the family as the focus of social concerns making it a priority in all public assistance programmes. There will be two types of social aid for families: the subsistence allowance to fight

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<sup>171</sup> See Chapter 2 above. The 2001 Regular Report of the European Commission on Romania is available at <http://www.europa.eu.int.comm>

<sup>172</sup> See above Chapter 3.

<sup>173</sup> Romania, 2001f.

poverty for low-income earners and the family development allowance (FDA) for mothers aged 30 or less. The aim of the FDA is to improve the role of the family in society, reduce poverty (especially amongst one-parent families), and decrease the number of subsistence allowances. The government is to promote a law on preventing social marginalisation so as to facilitate access to work, housing, healthcare and education.

In 'Improving the Health of the Population, and Child Welfare', the government's programme for 2001-04 proposes measures to help families, marriage and family relations, and work to create a network of services to provide support for families including financial support.

➤ *National Programmes and Projects*

NACPA endorsed the National Interest Programmes (NIP) on 31 May 2001 and are entirely dependent on state funding. NACPA programmes aim at protecting families but also seek to promote, secure and observe the rights of children within the objectives of the reform strategy. There are six NIP programmes:<sup>174</sup>

- NIP-1 concerns the continuation of reforms in the system of services and care institutions, protection and promotion of child's rights.
- NIP-2 relates to the prevention of abandonment and protection of children in their family environment
- NIP-3 aims to restructure the transferred residential institutions into specialised public services
- NIP-4 focuses on promoting protection for handicap children in need and those suffering from AIDS in professional maternal assistant families.
- NIP-5 aims to develop a social workers network.
- NIP-6 concentrates on the social integration of street children.

## **B THE INTERNATIONAL COMMUNITY**

### ***Projects supported by World Bank, United Nations Children's Fund (UNICEF)***

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<sup>174</sup> See Annexe AD.



### ***Project to Reform the Child Protection System 1999-2001***

The World Bank has provided US\$5m and the European Bank for Reconstruction and Development (EBRD) EUR10m Euro to run this project. The objective is to promote children's rights through restructuring and developing community services. Out of 99 projects selected from 33 counties, 56 sub-projects were passed for implementation. These sub-projects are made of 109 community services for child protection in 28 counties.<sup>175</sup>

Certain sub-projects are designed to prevent child abandonment. Centres to help mothers and children to reintegrate into society have been opened. The rate is modest but not negligible: there appear to be about twenty beneficiaries per month. Some centres offer counselling and support to families and children, including children with psychological and social problems but also those with disabilities. Others offer emergency reception.

Other sub-projects have been accepted and are now in the preparatory bidding stage. The World Bank has also financed various projects on street children. One contract for building a shelter in Ferentari for street children has been signed. Negotiation on a second contract was due for completion in December 2001.

#### ***What has been the impact of these programmes?***

According to the programmes, the number of children in public institutions is expected to decrease significantly as a result of the successful completion of these projects. For the time being, there are about 56,000 children in public care. This number is expected to decrease by 10,000 by the end of 2001 to reach about 25,000 by the end of 2004. By the end of 2002, it is expected that at least 10% of the 400 old institutions will have been re-structured. There are hopes that a higher percentage will be attained if there is continuous good co-ordination, thus maximising the effort made.. At the moment there are three programmes running to re-organise and close some of the institutions.

There are 133 community services running at the moment. It is hoped that this number will increase.

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<sup>175</sup> See Annexe T

It is estimated that, the end of 2002, there will be about 80 new services funded from the same institutions. The European Commission PHARE programme is also expected to finance services.

### ***UNICEF's MONEE Project***

UNICEF launched the MONEE Project in 1992 to monitor the impact on children of social and economic change in the CEECs and the FSU . MONEE gathers data specific to children and women and collects other information on aspects of human welfare. In particular, the project aims to highlight the impact of the transition on children and to act as an advocate for the social safety nets and health and education systems that they need.

The work is carried out by researchers at the Innocenti Research Centre in Florence using external consultants and with the central statistical offices and research centres of each country in the region. The project is co-financed by the Italian government, UNICEF, the Regional Office for the CEECs/CIS/Baltics, and the IBRD.

The project's issues a Regional Monitoring Report analysing overall welfare trends and explores a different issue in depth every year. In 1997, for example, the report focused on children (see below). It provides an update on welfare changes affecting families and children, and investigates the different risks facing children during transition, with a special analysis on children in public care. What follows is an account of two research projects.

➤ ***'Children at risk in Central and Eastern European Europe: Perils and Promises'  
Regional Monitoring Report Summary No.4, 1997***

#### ***Children in public care***

The report identifies children unable to live with their parents as forming a vulnerable group and argues that their welfare deserves special attention. Looking at the different trends in the region in the use of public care, the report reveals a great deal about changing patterns of risk for children, parental coping strategies, and levels of social cohesion in society as a whole.

The conditions of Romanian orphanages were very poor at the beginning of the transition period. However, the report stresses that institutional care in other CEECs manifest high death rates, tend towards the emotional harm of those institutionalised, and often result in the withering of family ties. Clearly this conflicts with the UN Convention of the Rights of the Child.

The report observes that the system of public care in Romania is based on outdated practices. Children are easily removed from their families into large-scale institutions leading usually to loss of family ties. There has been a preference for institutional care rather than fostering. Adoption was rarely used as an alternative to public care. Social services were not developed to help families generally and to reduce the need to take children into public care. This reflects the ideology of the collective above the individual. The report argued that sweeping reform was needed.

Since the transition period, hopes ran high for swift progress but the reality has been different. There have been many obstacles. Ministerial responsibilities have been divided, financial resources are increasingly limited, reforms are unevenly supported, and the preventive system of support within the community is stagnant. In Romania, numerous initiatives supported by international assistance have not succeeded in alleviating the pressure on orphanages. The report notes that this is also the case in Bulgaria, Russia and the FSU.

The number of children living in orphanages (permanently or temporarily) or in similar child institutions or placed with foster parents has increased especially since 1989. This means that children born during the transition period have faced a higher risk of entering institutions. Currently there are about one million children living in public care across the eighteen countries monitored in the report. In Romania, the number of placed children aged between 0 to 3 years old has risen by about 35 to 45% against 20% in other countries.<sup>176</sup>

### ***Foster care***

The report makes some interesting remarks on foster care. Trends for the number of children in foster as opposed to institutional care give reason for both concern and

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<sup>176</sup> By May 2001, according to NACPA (Romania) statistics, there were 56,330 children living in protected institutions, 52,137 in public placement centres against 4,193 in private placement centres.

optimism. Although there are more children in foster care, there are also more institutionalised children, thus a higher number of children needing public care in Eastern European countries. The government of Romania for example claims to have made foster care a priority but the rate of fostered children is still very low and in decline since 1991 (actually the number of children fostered has declined slightly since 1991) and most children in need of substitute care end up in institutions. This is better than the state of affairs in Bulgaria, which has no formal foster care programme.

The report does not mention the quality of care in Romanian institutions. Zamfir (1997) describe these institutions up to 1989 as appalling especially for disabled children who were treated like animals.<sup>177</sup> These improved dramatically after the revolution following the Western media exposure of conditions in institutions but still need further improvements. Generally speaking the quality of institutional care in most other countries has dropped considerably since transition. It has improved in the Czech Republic since 1992 and, since 1994, in Poland, where it has returned to pre-transition levels. The conditions in Bulgarian and Slovakian institutions continue to worsen. The report concludes that, despite modest recent improvements here and there, the quality of institutional care has deteriorated substantially in parts of the region, making the increasing use of this form of public care all the more disturbing.

### *Adoption*

The report states that "adoption offers the best prospects for a secure upbringing for young children who have no chance of remaining with or returning to their own parents."

Whilst the total number of adoptions has declined in much of the region, the rate of adoption for the 0-3 age group has remained the same. In May 2001, there were 1, 181 children were adopted in Romania. A sharp decline since 1993 with a total legal adoption (national and international) of 4,840 and a total of 4,178 in 1994.<sup>179</sup>

In Belarus, Moldova, Russia, and Ukraine (the so-called western CIS) and in Bulgaria and Slovakia, the number adopted and adoption rates generally have increased.<sup>180</sup> The

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<sup>177</sup> UNICEF, 1997b.

<sup>178</sup> UNICEF, 1997a, p.16.

<sup>179</sup> See Annexe D.

<sup>180</sup> The western CIS countries are Moldova, Belarus, Russia, and Ukraine.

report explains this rise as the result of increased orphanhood. The geographic distribution of adoption trends is consistent with the sharpest increase in adult mortality.

It is also explained by the growing importance of international adoption. Living standards have fallen both in Romania and in the region as a whole, and this has had a negative impact on domestic demand for adoption as well as on natural births.

The report provides percentages of international adoptions among all adoptions as follows:

Romania, 1995	42%
Lithuania, 1994	45%
Latvia, 1995	45%
Bulgaria, 1995	22%

The report argues that inter-country adoption is poorly controlled in the region and concludes that the absence of proper controls affects the rights and interests of children. Romania has tightened its regulation since 1990 and revision is under way in other countries such as Ukraine, Albania, Poland, and Russia.

Following the media exposure on living conditions in institutions in the 1990s, a flux of people came to Romania to adopt children from orphanages. Within a year, Romania supplied about one-third of children adopted annually throughout the world. According to the report most of the children being adopted by 1991 were not being 'rescued' from institutions but procured directly from their biological families, usually in exchange for consumer goods or money. The report suggests that prospective foreign adopters may be prepared to pay thousands of dollars to obtain a child in a country in which US\$200 is a good monthly salary.

The report states that in many countries, there is no information, nor data for entry of children into public care. However, concerning Romania, Zamfir (1997) believe that the main reason for abandonment of children into institutions is poverty.<sup>181</sup>

Policy plays a role in reducing the likelihood of risks. The report identifies and juxtaposes the 'pyramid of risks' (income loss, environmental degradation, and so on) against the pyramid of public responses to address them - ranging from the broad to the

specific.<sup>182</sup> If risks become so extreme that there is no other suitable alternative, the authorities may finally decide to 'rescue' the child through separation from the biological parents and place him or her in adoptive or foster families or as the last resort in institutional care. It may be also noted here that, according to Zamfir (1997), the public authorities in Romania do not intervene for children neglected or abused within their families and that intervention mainly comes in cases of economical hardship. It is the family who approaches the public authorities and not the other way around when a child is to be put into public care. This means that there is no state control of children's welfare within the family home in Romania. The Zamfirs argue that reforms are necessary on this point as a matter of urgency and expose a new category of children at risk in Romania.<sup>183</sup>

### *Social services*

The report argues that the development of social services is a priority. In Romania, social work as a profession was deliberately suppressed for ideological reasons. The establishment of a social work sector implies an intermediate level of help between the family and the state.

In creating social welfare services, the challenges for policy in Romania and most of Central and Eastern Europe are to improve general support, to reform the nature of crisis-level intervention, and to extend the medium level of support. The report highlights key areas for action.

NGOs play an important and dynamic role in Romania in providing social services. Outcomes are by no means assured as NGOs may compete with each other for limited funds and monitoring of service provision or organisational management may be non-existent or inadequate. The report notes that businesses run for profit but disguised as NGOs undermine public confidence in the genuine organisations.

Substantial reform is needed in the system of public care to reinforce legislation and infrastructure. The report suggests that:

*"Systems of public care require urgent attention. Legislation and infra-structure need to reinforce the premise that the family is the best context in which to raise a*

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<sup>181</sup> UNICEF, 1997b.

<sup>182</sup> See Annexe U.

*child. Laws should be revised to make it difficult for parents to give up their children. Foster care should be stimulated and used more flexibly. Proper recruitment and selection programs are needed together with support and monitoring. Home adoption also needs development. And to help those children who will remain in institutional care, conditions within children's homes must be rigorously monitored to ensure an adequate quality of care."*<sup>184</sup>

The state of the economy is a key factor in inter-country adoption. As the table below indicates, the economic recovery in Romania has been slow. Children in the region - with the exception of those in the Czech Republic and Slovenia - have been more affected by the increase of poverty than other traditionally vulnerable populations, such as the elderly.<sup>185</sup> Unemployment and reductions in family benefits have had a disproportionate effect on families with children. Coping strategies have put some children at risk and there is evidence of growing child maltreatment. This may result from loosening social controls and daily tensions relating to making ends meet.

Although the report does not provide the rate of male mortality in the region, it believes that the rate of male mortality is still important and argues that it needs to be taken into consideration because it affects the economic stability of the family. The loss of a parent increases the chances of a child to be placed in public care or given away for adoption. The Report estimates that "when excess parental mortality in other countries than Russia is taken into consideration, the total number of children who lost a parent in the region rises to an estimated 700,000 children".<sup>186</sup>

Women do marry very young in Romania and the rate of births to teen mothers has remained the same (15%) in the period between 1989 to 1998. The rate of births to unmarried women has increased from 17% in 1993 to 23% in 1998. There were 20.2 divorces per 100 marriages in 1989 but 27.5 in 1998. Furthermore the number of children involved in divorce has increased from 4,600 in 1989 to 5,700 in 1998.

Secondary school enrolment rates in Romania were 14% lower in 1995 than in 1989 despite the fact that child allowances were linked to school enrolment and attendance.

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<sup>183</sup> UNICEF, 1997b.

<sup>184</sup> UNICEF, 1997a, p.21.

<sup>185</sup> See Annexe V.

<sup>186</sup> UNICEF, 1997a.

Thus the child protection, equalising and social functions of the school were eroded, placing many poor and socially marginalised children at higher risk.

According to the report, the incidence of juvenile delinquency in the region has risen but UNICEF underlines the increase in the risk of children themselves becoming the victims of crime.<sup>187</sup> The report notes that data on crime against children is not collected uniformly across the region and registered cases represent only part of the problem.

Following the European Commission Annual Report on Accession 2000, and the High Level Group Report 2000, criticisms of Romania's record on child welfare has led to the government banning inter-country adoption. This report, however, shows that the risk of unmet needs is not confined to only a small percentage of children (that is the abandoned children) in Central and Eastern Europe and is certainly not limited to Romania. It stresses the necessity for a new approach to social policies as an investment in the future of all children in the region, and thus of society as a whole.

***'Child Well-being in the EU and Enlargement to the East'*<sup>188</sup>**

In this paper, the authors note that children's standard of living of children in institutions in Romania has been identified as an issue by the European Commission's regular reports on the accession process. They argue that effort should be made to eradicate child poverty in the region as a whole.

The paper also gives figures indicating the disturbingly high level of violent death among teenagers and young adults in the Baltic States.<sup>189</sup> The authors observe that this rate of death reveals a side to society not picked up by the standard economic indicators of progress in the Baltics and argue that it raises questions as to whether these countries are ready to join a 'union of shared values'. By this grim comparison, we can comment that Romania is in fact doing quite well.

The authors highlight the dimensions of well-being not studied under the current interpretation of the Copenhagen criteria governing EU entry. They draw attention to the fact that human rights extend beyond those considered in the EU progress reports, namely

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<sup>187</sup> The rise of crime is linked to the removal of social and political controls, disintegration of public order, economic deterioration, inadequate social support for adolescent, family pressure: UNICEF, 1997a, p.11

<sup>188</sup> UNICEF, 2000a.



in respect of the treatment of minorities, realisation of basic civic and political freedoms, and so on.

### **The Centre for Europe's Children**

The centre was set up in 1997 and aims to promote children's rights.<sup>190</sup> It is the documentation and information centre for Europe's Children.<sup>191</sup> In creating it in co-operation with UNICEF, the intentions of the Council of Europe are to inspire and guide senior policy-makers and all those who actively support children's causes in their respective activities.

The centre has developed an information base. It promotes good practice and policies; stimulates research and evaluation; and develops networks of policy makers and interested parties to share ideas and information. It services the information needs of practitioners, policy makers, civil servants, academics, experts and others responsible for child related activities. The centre also provides the mechanism for the dissemination of information in the field of children's rights activities.<sup>192</sup> It also hosts information from other sources.<sup>193</sup>

### **Development of the accreditation system for service providers in the field of child protection**

The Romanian National Authority for Child Protection (NACPA) regards this project as of great importance and progress in the reform process. It is to be completed by the end of 2002 with the help of UNICEF and the UK's Department for International Development (DFID). The project aims to define the minimum compulsory standard for each type of service realised in the year 2001 and completed in 2002. These services range from centres for day care, emergency placements, mother and baby units, counselling and support for families, placements for children with severe handicaps, day care and recovery, services for delinquent children and for youth, and assistance services to facilitate children wishing to express their opinions.

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<sup>189</sup> The rates are: Latvia (235 deaths per 100,000), Estonia (226) and Lithuania (188). Interestingly Romania (72) is lower than Austria (102), Belgium (92), Finland (88), Portugal (87), France (80), Spain (77), Ireland (76), and Greece (76). The rate for Italy is 72 death per 100,000.

<sup>190</sup> See Annexe W.

<sup>191</sup> Established through Recommendation 1286 by the Council of Europe Council of Europe, 2001a.

<sup>192</sup> It currently does this through <http://www.coe.fr/index.asp> The Centre also hosts information provided by UNICEF, including details of the MONEE project.

<sup>193</sup> New services are being developed with the Centre now hosting exchanges of information through the interactive participation of users.

## **Memorandum of Understanding**

This project is based on the strategy program 2000-04 and was signed by the Romanian Ministry of External Affairs on behalf of NACPA and by UNICEF on 9 December 1999. UNICEF's initial financial participation was US\$3,562.

Under the project UNICEF will assist in setting up the priorities identified in the government's strategy in the field of the protection of the child in need for 2001-04, will elaborate a child welfare policy, and will participate in a mass-media campaign to support parents.

UNICEF is also involved in the preparation of a Children's Act and in improving standards of care for social services dedicated to children and monitors trends in indicators nationally.

The project supports efficient local social services, educational activities for parents, and the design of local strategic and operational plans.

## **The Medico-social Unit for the Recovery and Reintegration of Street Children**

This unit was set up by government decision with the support of WHO, UNICEF and the United Nations Fund for Population (UNFPA). It is to be established not far from Bucharest and will be monitored by a medical specialist. Placement centres will either be reconverted or closed down and children will be placed in 'family-kind modules'. The Centre Saint-Ecaterina will be reconverted by the end of this year and new spaces for arranging modules have been identified.<sup>194</sup>

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<sup>194</sup> Romania, 2001b.

## **CHAPTER 6**

### ***THE INTERNATIONAL LAW DIMENSION***

#### **A The 1989 UN Convention on the Rights of the Child<sup>195</sup>**

This Convention is the first formal commitment to seek to realise and monitor the human rights of children and to:

- Provide a common ethical and legal framework to develop and agenda for children, which constitutes a common reference to assess progress
- Create obligations and responsibilities on its members, which have to be honoured and respected
- Reinforce state obligations to realise human rights to value transparency and public scrutiny associated with it
- Promote an international system of solidarity designed to achieve the realisation of children's rights
- Defend the role of families in children's lives.

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<sup>195</sup> See Annexe X.

By October 1999, 191 countries were state parties to the Convention. More countries have ratified the Convention than any other human rights treaty in history. Somalia and the United States of America have not. The US intends to do so.

The Committee on the Rights of the Child reviews country reports and urges all levels of government to use the Convention as a guide in policy-making and implementation to:

- Elaborate an extensive national agenda for children
- Develop permanent bodies or mechanisms to support co-ordination, monitoring and evaluation of government activities
- Ensure the compatibility of legislation with the Convention
- Introduce child impact assessments in policy development processes
- Data collection and usage
- Provide training on the Convention to those involved with government policy making or children
- Involve civil society
- Promote child rights through the setting up of independent statutory bodies such as ombudsmen.

The Convention has been effective in Romania in helping to incorporate human rights principles into legislation. A national policy reform is related to children in public care. UNICEF believes that the Convention on the Rights of the Child is the most concisely and fully articulated piece of legislation in one international human rights treaty as well as the most accepted human rights instrument universally. This reinforces the Romanian government's commitment to children's rights in entrusting themselves to be accountable for their guarantees before the international community. The Convention puts children at centre-stage in the pursuit for the universal application of human rights.

The Convention on the Rights of the Child is the first legally binding international instrument to incorporate the full range of human rights - civil and political rights - economic, social and cultural rights. Two optional protocols (children in armed conflict and sale of children/prostitution/pornography) have been adopted to strengthen the provisions of the convention in these areas. They enter into force in 2002.<sup>196</sup>

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<sup>196</sup> See Annexe Y.

### *The rights of the child*

The Convention reflects a new vision of the child as human being in his or her own right, an individual and a member of a family and community. The Convention reinforces the fundamental human dignity of the child as it is nearly universally accepted by all nations. Articles 5, 10, and 18 with the preamble highlight and support the role of the family in children's lives.<sup>197</sup> The Convention seeks respect for children through a mechanism, which enables them to express their own views, which in turn are taken into consideration. The Convention endorses the principle of non-discrimination in all its instruments and establishes clear obligations on signatory states to bring their national legislation into line with its provisions.

Furthermore, the theme in the Convention is that a child is entitled to grow in a family and children have a right to their parents. The preamble says that:

"The child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding."<sup>198</sup>

Under the Convention, parents have primary responsibility for the upbringing and development of the child (Art. 18:1) and the state is to respect that responsibility but also the rights and duties of the parents and the extended family when applicable (Art. 5).

- The Convention confirms that "children's relationship with their parents is their most fundamental need."<sup>199</sup> For that reason, the Convention requires host countries receiving solitary refugee children to trace the child's parents so that the family may be reunited eventually.
- The Convention also outlines that the state is obliged to assist and facilitate parents' exercise of responsibility for the child's upbringing taking all appropriate legislative and administrative measures (Art. 3:2).<sup>200</sup>
- The state has a duty to intervene when a child is not able to remain with his or her family on a temporary or permanent basis and to offer alternative protection and

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<sup>197</sup> See Annexe X.

<sup>198</sup> UNICEF 1989, Preamble, paragraph 6 in Annexe X.

<sup>199</sup> Sweden, 1998, page 9.

<sup>200</sup> See Annexe X, Article 3:2. Measures are described in Article 26 concerning social security legislation, Article 24 on healthcare and Article 27 on the right to reasonable standard of living.

assistance such as foster care, adoption or, if necessary placement in a special institution (Art. 20).

- The UN Committee on the Rights of the Child is the authoritative interpreter of the Convention. The Committee interprets Art. 20 as stipulating that institutional placement of children should be seen as the very last resort, when no other options are available. The concluding observations of the UN Committee in Italy were that:
  - "Comprehensive measures should be provided for responsible parenthood and for support for needy families, in order to assist them in their child-rearing responsibilities in the light of Article 18 and 27 of the Convention, thus limiting of institutionalised children and limiting the recourse to institutionalisation to a measure of last resort."<sup>201</sup>
- A placement within the extended family, or an alternative family environment such as foster care or adoption, should be preferred to institutionalisation, which should be opted for only as a last resort.<sup>202</sup>
- The objectives of measures following the UN Convention on the Rights of the Child are that no children need grow up in an institution. Measures should be provided mainly within the family framework, and those institutionalised children should be guaranteed the rights due to them under the Convention.

Maj-Inger Klingvall, the Swedish Minister for Development Co-operation, has stated that:

*"Implementation of the UN Convention on the Right of the Child imposes requirements for international development co-operation. It calls for long-term, general inputs that pave the way for children's development. It also calls for special inputs for disadvantage children, such as those in institutional care."*<sup>203</sup>

For this reason, the Minister argues that the objective of international development co-operation should be to minimise the number of institutionalised children by providing support to families. He believes that most institutions should be abolished and replaced by alternative forms of care. Existing institutions should be improved to safeguard the rights of those children who can only be institutionalised.

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<sup>201</sup> Italy IRCO, Add.41, para 17, from Sweden, 1998.

<sup>202</sup> UNICEF, 1998, p. 259.

<sup>203</sup> Sweden, 2001, p. 3.

### *Inter-country adoption*

- Inter-country adoption may be considered as an alternative means of providing a family for a child who cannot be cared for in a suitable manner in his or her own country. However, under the Convention on the Rights of the Child, a solution should be sought first within the child's extended family. If this is not feasible, adoption may give the child a new permanent family to grow up in a family in the child's own country is the first option.
- Inter-country adoptions should take place in the best interest of the child and with respect for his or her fundamental rights as recognised in international law
- Safeguards and standards equivalent to those which apply in domestic adoption should be applied in inter-country adoption to protect the welfare of the child
- Profit should not be made from the process.

### **B Hague Convention 1993 on Protection of Children and Co-operation in respect of Inter-country Adoption<sup>204</sup>**

As it stands today, the Convention places safeguards around inter-country adoption and its main principles are:

- Subsidiarity - international adoption should only be envisaged if there is no national solution<sup>205</sup>
- To ensure that the international system protects the rights of the child
- To provide recognition of adoptions internationally
- The prohibition of profit-seeking
- To make the right of the child a priority.

The 1993 Convention lists the key requirements as follows:

- The child's home country must ensure that the child has been freely given up for adoption and that this has not been induced by payment or compensation of any kind.
- Attempts must be made to place the child in a family in their home country. If this is not possible, it must be confirmed that inter-country adoption is in the child's best interests. This decision must be taken with respect for his or her fundamental rights as recognised in international law.

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<sup>204</sup> See Annexe Z.

- An adoption can only take place if the adopter has been approved as suitable to become an adopter in the receiving state (i.e. in their home country) and the receiving country confirms that the child will be allowed to reside permanently in that country.
- All appropriate measures must be taken by the states to prevent improper financial or other gain in connection with adoption and to deter all practices contrary to the objects of the convention.
- The state must appoint a central authority and accredit bodies to work as adoption agencies. These bodies must be non-profit making, and be directed and staffed as specified in the Adoption Agencies Regulations 1983.
- Adoptions made in countries that have ratified the Convention must be recognised by other countries that have ratified the Convention.

### *The UK and the Hague Convention*

The UK signed the Hague Convention in 1994. The main provisions of the Adoption (Inter-country Aspects) Act 1999 provide for the regulation of inter-country adoption in England, Wales and Scotland. One of its main provisions is that it will enable the UK to ratify the Hague Convention. However, beforehand, legislation must be put in place in all four home countries to allow the UK to ratify the convention. Regulations and Guidance should be put in place early in 2002. Then the UK can ratify the Hague Convention.<sup>206</sup> The UK is hoped to implement the Hague Convention by mid-2002.<sup>207</sup>

When the 1999 Act is brought into force in full, and the UK has ratified the Hague Convention, prospective overseas adopters will be able to choose to adopt children from:

- Countries that have ratified the Hague Convention - Romania is one of them.

Or, non-Convention adoptions:

- Countries that are included on the Designated list
- Countries that have neither ratified the Convention nor been included on the Designated list.

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<sup>205</sup> It follows the principle supported by the 1989 UN Convention on the Rights of the Child that "ICA should only occur when other possibilities for a family are not available in the child's country of origin."

<sup>206</sup> Ratification is the formal declaration by a Member State that it has in place the necessary legislation and procedures to comply with the Convention and that it will apply its articles from a certain date. This date must be a minimum of three clear months after providing the relevant Regulations to the Permanent Bureau in the Hague.

<sup>207</sup> Once this is done, the UK will give notice to the Permanent Bureau of its intention to denounce the 1965 Convention which had little impact (ratified in the UK in 1978).



In all cases, adopters have to follow the same assessment and approval procedures as a domestic adopter.<sup>208</sup>

### ***France and the Hague Convention***

The Hague Convention came into force in France on 1 October 1998. France was then in liaison with eight other 'receiving' states (Spain, Canada, Finland, Sweden, Denmark, Norway, Netherlands, and Andorra; and, since 1 December 1998, with Australia) and fourteen countries of 'origin' (Mexico, Romania, Sri Lanka, Cyprus, Poland, Ecuador, Peru, Costa Rica, Burkina Faso, and Philippines, Venezuela, Moldavia, Lithuania, Paraguay and, since 1 November 1998, Columbia. The Hague Convention entered into force in New Zealand, the Mauritius Islands and Burundi in 1999.

The entry of the Convention in France brings:

- A guarantee to the adoptive parent that the proposed child is legally adoptable
- Facilitates and speeds the delivery of an entry visa for the child
- The child the same legal status in his/her country of origin as in France
- Facilitation of the recognition of the 'full' adoption in France ('adoption plenière') where the child loses all contact with his family of origin, with the adoption pronounced in the country of origin of the adoption.

### ***Hague Conference on Private International law, 28 November to 1 December 2000***<sup>209</sup>

An important international conference took place between 28 November and 1 December 2000 on inter-country adoption in the Hague to revise the 1993 Convention on the Protection of Children and Co-operation in Respect of Inter-country Adoption.<sup>210</sup> In April 2001, the Conference published a 'Report and Conclusions of the Special Commission on the Practical Operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Inter-country Adoption'.

The Conference was organised by the Hague Conference on Private International Law, the Hague-based international organisation responsible for drawing up the 1993 Inter-country Adoption Convention as well as the 1980 Convention on the International

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<sup>208</sup> See Annexe P.

<sup>209</sup> See Annexe.Z

<sup>210</sup> Hague Convention, 1993.

Abduction of Children and the 1996 Convention on the Protection of Children amongst other treaties.<sup>211</sup>

The objective of this Conference was to revise and make the Convention on inter-country adoption more secure (Convention No. 33). The scope of the Convention (defined in Article 1) is to:

- Establish safeguards to ensure that inter-country adoptions take place in the best interests of the child
- Provide a system of international co-operation amongst the states.
- Secure in contracting states the recognition of adoptions made in accordance with the Convention.

Although, it is understood that the Convention cannot solve all problems relating to children, however important they may be, the Conference also aimed at establishing better safeguards to protect the best interests of the child and to prevent the abduction of, the sale of, or trafficking in children. There were 57 States present at the Conference, including France, Romania, the United Kingdom and the United States of America. The 1993 Hague Convention has 41 state parties with the US and Russia preparing to implement it and over 150 experts attending.

It was agreed at the Conference that international adoption had increased significantly since 1960s and that this posed serious problems with insufficient existing domestic and international legal instruments not covered by the 1965 Hague Adoption Convention but that there was a need for a multilateral approach.<sup>212</sup>

Experts during the conference discussed the legal loophole in the Convention, which leave authorities powerless.<sup>213</sup> This concerns the situation of pregnant women who travel into another state to give birth to their baby, who will subsequently be adopted in that country. The child has not been moved after his/her birth and the situation is outside the scope of

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<sup>211</sup> The 'Hague Conference on Private International Law' refers to the inter-governmental organisations, which work for the progressive unification of the rules of private international law under Article 1 Hague Conference.

<sup>212</sup> See Annexe AA.

<sup>213</sup> See Annexe Z, Points 102 and 103, page 42 in text, 'Avoidance of the Convention'. Full Text also available at [http://www.hcch.net/e/conventions/adospec\\_e.html](http://www.hcch.net/e/conventions/adospec_e.html)

Article 2 of the Convention; and the adoption can proceed as an internal adoption without the safeguards appropriate to an international situation.

Furthermore, between countries where there are no travelling restrictions, nothing can be done to prevent a *de facto* international adoption, where a couple brought a child from one country to another.

The Report concludes and recommends the following:

- Division of responsibilities under the Convention between central authorities, public authorities and accredited bodies to identify clearly the entities and responsible to act under the Convention as well as the mechanisms by which they interact. The Report recommends the permanent bureau to develop a model chart to help countries in providing this information (paragraph 10)
- Information concerning the operation of the Convention in Contracting States should be improved
- The need for adequate resources and appropriately trained staff in Central Authorities was accepted, as well as the importance of ensuring a reasonable level of continuity in their operations (paragraph 13)
- Accreditation: The following principles should apply to the process by which accreditation is granted under Article 10, to the supervision of accredited bodies provided for in Article 11 *c*), and to the process of authorisation provided for in Article 12:
  - a) The authority or authorities competent to grant accreditation, to supervise accredited bodies or to give authorisations should be designated pursuant to clear legal authority and should have the legal powers and the personal and material resources necessary to carry out their responsibilities effectively
  - b) The legal powers should include the power to conduct any necessary enquiries and, in the case of a supervising authority, the power to withdraw, or recommend the withdrawal of, an accreditation or authorisation in accordance with law
  - c) The criteria of accreditation should be explicit and should be the outcome of a general policy on inter-country adoption

- d) Accredited bodies should be required to report annually to the competent authority concerning in particular the activities for which they were accredited
  - e) Review or the re-accreditation of accredited bodies should be carried out periodically by the competent authority (para. 23).
- The importance of the model form for the statement of consent previously approved by the 1994 Special Commission was re-emphasised (para. 32)
- Inter-country agency finances should be controlled and accredited bodies should be required to maintain and submit their detailed accounts to the supervisory authority
- Prospective adopters should beforehand be notified of the costs of the adoption process with the co-operation of both countries (receiving and of origin) to provide this information (para. 41)
- The costs, expenses and fees from inter-country adoption should be made available to the public (para. 41)
- Donations by prospective adopters to bodies concerned in the adoption process must not be sought, offered or made. (para. 42)
- Receiving countries are encouraged to support efforts in countries of origin to improve national child protection services, including programmes for the prevention of abandonment without undermining the integrity of inter-country adoption process or creates financial dependency deriving from inter-country adoption. Decisions concerning the placement of children for inter-country adoption should not be influenced by levels of payment or contribution (para. 47)
- Application of Convention principles to non-Convention countries: the Special Commission recommends that States Parties, as far as practicable, apply the standards and safeguards of the Convention to the arrangements for inter-country adoption which they make in respect of non-Contracting States (para. 56)
- The Special Commission agreed on the importance of obtaining (in confidence) a full and accurate medical report on the child (para. 58). The idea of a rigid model form was not approved but the form for the medical report on the child (see Appendix B) helps to improve the quality and standardising of reports on the child drawn up in accordance with Article 16, paragraph 1 of the Convention. (para. 60)
- Authorities are asked to be thorough and objective in the receiving country in assessing and preparing prospective adopters, and in drawing up the report on the applicants in accordance with Article 15. (para. 62)

- The Report stresses the importance within the adoption process of the requirements of Article 17. In those States where agreements under Article 17 (c) may be given by bodies other than the Central Authority, the bodies that may perform this function should be specified (para. 68)
- The certificate of conformity provided for by Article 23 of the Convention is important and should identify the authority or bodies competent to issue such certificates and promptly issued following the adoption (para. 76) Ideally, parents should be provided with a certificate before they came to take the child/children. The Central Authority in the receiving State should also be given a copy of the certificate (para. 74)
- The recommended model form for the certificate of conformity of inter-country adoption” approved in the 1994 Special Commission of October 1994 was emphasised (para. 75)
- Discussion in the Special Commission revealed a clear trend in favour of according automatically to the adopted child the nationality of the receiving State (para. 80)
- The Special Commission recommended that the permanent bureau should prepare a form for statistics along the lines suggested, taking into account the matters raised during the debate (para. 88)
- There was general agreement on the need to consider how best to regulate the different types of international placement falling outside the scope of the Convention. The value in this context of Article 33 of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children was recognised (para. 101).

## **C The EU and Human Rights**

Some EU MS are signatories of the Convention on the Rights of the Child and in consequence have national legislation in respect of it. At EU level, there has been an agreement under the Treaty of Nice to attach the European Charter of Fundamental Rights to this Treaty. The Charter is not legally binding on MS and is only a political declaration. However the European Commission, in any external relations actions, complies with the rights and principles contained in the Charter of Fundamental Rights officially proclaimed in the Nice Summit in December 2000, to develop consistency between the EU internal and external approaches.

The EU Charter of Fundamental Rights used principles of human rights from common constitutional traditions, international instruments and from the European Convention of Human Rights. The objective of the Charter is to stress the relevance of human rights to EU citizens. The EU is unique in the sense that the 15 Member States support the same Treaty-based principles for internal and external policies. In this context it gives the EU weight, influence and purpose.

➤ ***The EU and Human Rights***

What has the EU done in the last decade?

- It adopted a number of Communications relating to human rights and democratisation. These are:
- The European Union and the External Dimension of Human Rights Policy [COM (95) 567 final]
- The Inclusion of Respect for Democratic Principles and Human Rights in Agreement between the Community and Third Countries [COM (95) 216 final]
- Democratisation, the Rule of Law, Respect for Human Rights and Good Governance: the Challenges of the Partnership between the European Union and the ACP States [COM (98) 146 final]
- Countering Racism, Xenophobia and Anti-Semitism in the Candidate Countries, [COM (99) 256 final]
- Communication on EU election Observation and Assistance [COM (2000) 191 final]
- The Council and the Commission adopted a Joint Statement on the European Community's development policy, which was approved by the European Parliament.<sup>214</sup> This new development policy respects the principle of sustainable, equitable and participatory human and social development and includes the promotion of human rights, including the rights of the child, democracy, the rule of law and good governance to be mainstreamed into co-operation activities. It also provides, together with the reform of management of external assistance, a new framework for the implementation of EC development policy and for the European Commission's actions in support of human rights and democratisation.

The Commission's Communication to the Council and the European Parliament [COM (2001) 252 final] on 'The European Union's Role in Promoting Human Rights and Democratisation in Third Countries' notes that

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<sup>214</sup> Available at: [http://europa.eu.int/comm/development/lex/en/council20001110\\_en.htm](http://europa.eu.int/comm/development/lex/en/council20001110_en.htm)

*"Changes in the external environment, as well as internal Commission reforms, require a re-focussing of human rights and democracy strategies, in particular, to ensure that these issues permeate all Community policies, programmes and projects."*

The Commission is determined to meet the EU policy goals through prioritisation, focus, delivery and impact.

The Communication however warns of the dangers of globalisation affecting the poorest and the vulnerable. It stresses the need for the EU to encourage multinational corporations and other global actors to be involved in increasing respect in human rights and believes that the promotion of human rights and democracy is an essential complement to the EU support for multilateral trade and investment facilitation.

In the 1993 World Conference on Human Rights, the European Union confirmed its commitment to uphold the 'universality and indivisibility' of human rights (civil, political, economic, social and cultural). In the 1995 Beijing Declaration and Platform for Action, the EU declared the absolute indivisible right of women and girl-child as part of universal human rights.

### ***The Amsterdam Treaty***

Article 6 confirms that:

*"The European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles that are common to the Member States."*

Article 49 requires applicant countries to the EU to respect these principles. Article 7 sets up a mechanism of sanctions for EU Member States in serious and persistent breaches of human rights. This mechanism has been reinforced under the Treaty of Nice. The Treaty underlines the EU commitment to human rights, whose main objectives are to promote a pluralist democracy, guarantee effective laws and eradicate poverty. The Treaty of Nice also extended Article 118bis TEC, in order to promote respect for human rights and fundamental freedoms, from development co-operation to all forms of co-operation with third countries.

### *The European Charter of Fundamental Rights*<sup>215</sup>

The Charter does not yet apply to Romania, of course, but the following observations seems relevant bearing in mind the on-going process of convergence with the *acquis*. The Charter may be found in the Annexe and the following Articles seem especially pertinent:

- Article 7: 'Respect for private and family life'
- Article 9: 'Right to marry and right to found a family'
- Article 21: 'Non-discrimination'
- Article 24: 'The right of the child'

**Article 9:** On the basis of this Article, there could be a legal argument that the Romanian ban is contradictory to the principle of this Article for European citizens wishing to found a family by adopting (specifically for one reason or another) a Romanian child?

**Article 21:** On the face of it this seems likely to be more relevant to Roma children than to others. The Roma population has for a long time suffered discrimination in Romania as in other Eastern European countries. It could be argued that because the population of Roma children is higher in Romanian orphanages, the ban is indirectly discriminating against them because they have less chance to be adopted in Romania. As it is commonly agreed that institutionalisation should be the last resource for a child, this leaves the Roma parents with little or no alternative that to try 'to get rid of' the child by other means.

EFWC has drawn attention to an article by Francesco Viviano in La Repubblica on 16 March 1999 suggesting that 20,000 Roma children aged 6 or 7 years are slaves in Italy alone.<sup>216217</sup> Under Article 24 of the Charter ('the right of the child'), the EU and Italy (in this instance) have responsibility towards those children.

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<sup>215</sup> See Annexe AB.

<sup>216</sup> EFCW: European Forum for Child Welfare is an NGO sustaining a network across Europe seeking to promote child welfare with 80 members and subscriptions from 21 countries. It aims to raise the profile of child welfare within EU institutions.

<sup>217</sup> This Article was based on findings by Danielle de Condat, journalist, anthropologist and founder of the International Committee for the Defence of Migrants Children in Palermo.



*Actions of the Commission in human rights activities.*<sup>218</sup>

- a) Promotion of greater consistency and coherence between European Community, other European Union and Member State activities
- b) Mainstreaming of human rights and democratisation through dialogue, assistance and other policies such as training Commission's staff
- c) Adoption of a more strategic approach to the European Initiative for Democracy and Human Rights (EIDHR) and to joint co-operation projects with the UN and other international organisations.<sup>219</sup>

**D Co-operation with the United Nations and other international organisations**

The EIDHR is a significant tool for co-operation with international organisations. Joint projects have been maintained for several years with the Council of Europe and OSCE/Office for Democratic Institutions and Human Rights (ODIHR). In 2000, the Commission with the Office of High Commissioner for Human Rights (OHCHR) established a comprehensive programme of co-operation in the domain of human rights. This programme emphasised on providing support to the World Conference against Racism. This programme is the result of an agreement between the UN and the EC on the principles applying to the financing of programmes administered by the UN

Co-operation between the European Commission and international organisations is significant to pursue EU human rights and democratisation objectives. This co-operation should become more effective and based on the relative interest of the organisation and the priorities of the EC as set up in the EIDHR programme. The UN, the International Committee for the Red Cross (ICRC) or other international bodies may have in specific countries privileged access to work to improve the human rights situation. This makes them natural partners for the Commission. In order to guarantee that the EC contribution emphasises the priorities the EU affiliates to human rights causes the Commission and international organisations need to work together. This can be done with the Commission's attempt to agree co-operation strategies with certain international

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<sup>218</sup> European Commission, 2001c.

<sup>219</sup> The EIDHR came under criticism from the European Parliament (Lenz Report, 1997) and the Commission (the Imbeni Report, 1996 and Roubatis Report, 1995) and from various evaluations, amongst others the European Court of Auditors Special Report 12/00 (OJC 230, 10 August .2000). Overall criticisms were directed at the management of programmes, lack of focus on priorities, limited sustainability of action, and the need for a more strategic vision in using available Community instruments in support of human rights and democracy objectives.

organisations and prescribe achievable and realistic medium/long term goals. It will identify co-financed programmes and projects coherent with such strategic plans.

Co-operation with the OHCHR is particularly important. It reflects the weight the EU attaches to the signature, ratification and application of international human rights instruments by the third countries with whom it has partnerships, and to recommendations by UN bodies. Enhanced co-operation involves projects, but also assistance to the UN mechanisms (e.g. special rapporteurs) especially if they correlate with topics recognised as a priority for the EU. This enhanced co-operation would promote strengthening the multilateral framework to which the EU is committed. An approach of this kind identifies OHCHR as a partner of the EC on an ad hoc basis and conforms to the Communication on building an effective partnership with the UN.<sup>220</sup>

The Communication concludes that it has identified three areas in which the Commission can play a more effective role in the pursuit of the EU's human rights and democratisation objectives:

- Through the promotion of coherence and consistency across EU and EC policies
- On mainstreaming human rights and democratisation objectives in the EU relations with third countries
- By adopting a more strategic approach to the EIDHR.

The Commission will promote coherence and consistency both between EU actions under the different Treaty pillars and between EC actions and those of Member States. The Commission's dialogue with third countries should be pursued in a consistent and coherent way and be based on internationally agreed human rights standards and instruments, in particular those of the UN. The Commission will seek to promote corporate social responsibility.

The Commission will pursue new approaches and actions identified in consultation with the Council, the European Parliament, civil society and other donors and international organisations.

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<sup>220</sup> Communication on 'Building an effective partnership with the United Nations in the field of Development and Humanitarian Affairs'.

The chief responsibility for democratisation and promoting respect for human rights lies with governments. But on the basis of the objectives it has set itself in this Communication, the Commission will regularly evaluate whether progress is being made, and the extent to which EU activity has contributed to that progress and report on this.<sup>221</sup>

***Overview of the 56<sup>th</sup> session of the UN Commission on Human Rights***

At this session, the EU in co-operation with GRULAC (the Latin American and Caribbean Group) introduced and later adopted a resolution on the Rights of the Child. Once adopted, the US objected to the idea that the Convention of the Child is the best and only standard for promoting the right of the child. The US contested both the notion that non-state parties would have obligations based on the Convention and references to a rights-based approach.

A relevant point to our report is that the EU believes the UN and the international community play a crucial role in assisting countries to build the necessary national structures and capacities in defence of human rights standards. These may be in the form of technical assistance, the training of judges, lawyers, prosecutors and other law enforcement officers in co-operation with national government to be complementary to national efforts. The EU is aware that demand for technical assistance exceeds the funds available and it encourages voluntary contributions in addition to the necessary resources to be provided through the regular UN budget. The EU supports fully the OHCHR and its programme of advisory services and technical co-operation.

The EU is committed to supporting activities to promote human rights and is with its Member States among the largest donors to the annual appeal. EU Member States also provide assistance through their bilateral and multilateral development co-operation, and through the European Commission's own activities.

***The European Union Annual Report on Human Rights 2001<sup>222</sup>***

Concerning the trafficking in human beings, the Council in this report notes that women and children are particularly vulnerable in respect of trafficking. On 13 December 2001, the EU signed the UN Convention on Transnational Organised Crime and its two accompanying protocols on Prevention, Suppression and Punishment of Trafficking in

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<sup>221</sup> See Annexe S.

<sup>222</sup> European Council, 2001.

Persons, especially Women and Children. The protocol on trafficking provides measures to repress trafficking and to protect the victims of it.

The Council Report also states that the EU strongly supports most of the special machinery set up by the Commission on Human Rights in respect of economic, social and cultural rights and the Member States are ready to co-operate with the human rights arrangements and prepare to implement them. The EU supports the UN Secretary General's efforts to integrate human rights within the system of the United Nations and so acknowledges the importance of linking closely the internationally recognised rules in the field of HR and the work of the UN Specialised Agencies in this field.

### ***The Round Table on Children's Rights in CEE***<sup>223</sup>

The Round Table on Children's Rights in Central and Eastern Europe was organised by Rädde Barnen from Swedish Save the Children, Astrid Thors MEP and Maartje van Putten, President of the European Network on Street Children Worldwide (ENSCW). The Round Table met on 17 March 1999 in Brussels to discuss the main issues concerning children and youth living in the region. Children at risk was the main focus of discussion, included Roma children and those in public care. The list of participants included representatives of the Council of Europe, the European Commission, experts and researchers from UNICEF, and NGOs working in Russia and Romania.

The Round Table observed that the current deep economic crisis and social changes in the CEECs do not spare children. Poverty affects a growing number of children who find themselves victims of abuse and are denied basic rights. The participants concluded that children's problems are not only economic but also political and thus a holistic approach is needed, involving citizens and promoting actions for the children at risk. The idea of holistic approach has been adopted during the European Union Human Rights Forum on 13 December 2000 and its report quotes that the European Charter of Fundamental Rights has been accepted as a '*factor enhancing the holistic approach of the EU human rights vision*'.<sup>224</sup> The Round Table also concluded that the considerable experience and expertise of NGOs should be used to disseminate good practice in Europe.

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<sup>223</sup> EFCW, 1999b.

<sup>224</sup> European Commission, 2000a.

Astrid Thors called for a genuine canalisation of funds from the European Commission for projects benefiting children, and to monitor the application of the UN Convention on the Rights of the Child.<sup>225</sup> Maartje van Putten stressed the need to include support for human rights, social and environmental policies in the orientation strategy for enlargement and co-operation. She also called for the creation of networks and organisations in the CEE and CIS countries to develop further child programming.

The delegate from the European Commission, Pernilla Bengtsson, spoke of the need to deal with prevention by tackling the causes putting children onto the street in the first place (i.e. poverty, family breakdown, and socio-economic change).

The concerns of Nicolas Fenton, Director of Childhope UK, were that the PHARE-Lien Programme was coming to an end. He regretted the lack of continuity and long-term strategies of most of the European programmes, which in his view should last between 10 and 15 years if they are to deliver concrete results. He pointed out the difficulties that NGOs have in working through the European financial labyrinth. Mr Fenton and the person responsible for the Lien Programme called for the creation of a platform of CEEC NGOs.

Gaspar Fajth, Monnee Project Officer from UNICEF, was even more ambitious and called for a shift from a market-economic society to a rights-oriented society. He emphasised the point that, whilst there were signs of an economic recovery in the regions, the number of children in institutions had increased (for example, by about 40% in the Baltic region).

Gabriela Alexandrescu from Save the Children Romania was most concerned about the conditions of Roma children. She pointed out that, whilst poverty amongst Roma children was a serious barrier to their integration, enduring racism and xenophobia were the main impediments.

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<sup>225</sup> Astrid Thors: born 1957; member of the Swedish People's Party (itself a member of the Group of European Liberal, Democrat and Reform Party) and a Swedish-speaking Finnish MEP; a member of the EP bureau; Chairman, UNICEF Finland.

## *CONCLUSION*

In the last two decades, international adoption has increased very significantly.<sup>226</sup> Following the 1989 revolution in Romania, the media gave global exposure to the appalling conditions of children in institutional care. For the best of motives, a number of people rushed to the country in the hope of taking home a child abandoned by its family and apparently deprived of most basic human rights. We have seen in chapter 2 that, since 1989, Romania's economic and political fortunes have been patchy. When the country applied for accession to the EU, the European Commission allocated funds to restructure the welfare system.

The European Parliament realised very quickly that there had been little progress in the restructuring of the Romanian welfare system, particularly in the domain of child welfare. The government was very grateful to receive such aid as was granted but had little expertise in managing funds to the satisfaction of the donors. There seems to have been little or no corruption; merely a deficiency in skill in dealing with funds of that scale. Government actions were closely monitored by the European Parliament and this led the EP to ask the government to establish the HLG to guide the Romanian public authorities in managing the funds and monitoring the progress made in child welfare. The EP's Committee on Foreign Affairs, Human Rights, Common Security, and Defence Policy appointed Baroness Nicholson of Winterbourne as its *rapporteur* on this subject. Two reports have so far been submitted to the EP.

### ➤ *What are the problems today?*

The Commission's regular report for 2001 shows that the ineffective and under-resourced public authorities and judiciary is a major drawback in the child welfare system in general and thus has a bearing on the question of inter-country adoption. This is one explanation as to why progress in child welfare has been so limited. Furthermore the judicial system is still lacks genuine independence: judges have been intimidated and they have also been forced to accept transfers to other posts. This report does not allow us the

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<sup>226</sup> See Annexe AC.

space to examine these problems with the care they deserve but they should be carefully monitored in the context of child welfare jurisdiction.

➤ ***The renewal of the ban is counter-productive to the welfare of the child at risk***

EFCW believes that originally the ban was necessary to put some order in inter-country adoption procedures. Romanian agencies were not working very well and the point system encouraged malpractice. EFCW is in the process of publishing a report on Romanian progress towards enlargement in response to the Commission 2001 Report. The mainly NGO contributors to this report all agree that the ban on ICA is too long and is having adverse effects on the children - in some cases, indeed, it may be causing them actual harm. The contributors agree that the ban is harming the gypsy children in particular, a large proportion of whom are in institutions or are abandoned or sold by their parents for slavery in Europe.

➤ ***Most projects are too short to be realistically effective***

EFCW affirms that huge improvement has been made in the practice of institutions concerned with the welfare of the children. However substantial problems still remain, of which the following seem the most important:

1. According to EFCW contacts in Romania, children who come out of institutional care and back into society are completely lost. There is not sufficient guidance on the spot to help them adapt to their new surroundings. The organisation believes that more needs to be done in this connection as a matter of urgency.
2. Some at least of the PHARE projects are too short to have any enduring impact.
3. Agencies, both governmental and non-governmental alike, lack relevant Romanian expertise and experience. In particular, they can not cope with the recent changes and their staff have not been trained to deal with the problems they face nor with managing the funds they receive.

➤ ***The situation of the Roma children***

Most organisations (and certainly EFCW) recognise that the Romanian government has made considerable effort to improve conditions; and they approve of the government action plans on the Roma population and children. However the reality is that Roma children are still the most disadvantaged. It is the Roma that is in the greatest number in institutions and on the street, abandoned or sold abroad as slaves. EFCW believes that the ICA ban has worsened the fate of Roma children.

➤ *The relation between corruption and inter-country adoption*

The relation between corruption/child trafficking and ICA has been made far too often by official reports of the European Commission and the European Parliament. UNICEF reports make it clear that corruption in ICA is a consequence mainly of families giving away their children to foreigners for goods or money. Families were obliged to do this in order to survive.

We believe that it is necessary to have further legislation in place to control human trafficking. This will help to clear genuine ICA agencies from any accusation that they are involved in this practice. In addition we may expect it to allow foreign parents to adopt Romanian children placed in orphanages: there is widespread agreement that this is the least attractive option for unwanted children. UNICEF believes that fostering and adoption (national or international) is the best solution for the well-being of the child and this is shared by the cabinet office of the prime minister.

Thin lines separate ICA, trafficking in human beings and corruption. An automatic association of the three is too easily made. In fact genuine ICA is a discrete issue. It is essential that legislation keeps in mind the interest of the child and recognises that institutionalised life is not likely to be in the child's best interest. As long as Romania, through lack of funds not least, still fails to implement measures to protect families, children, and women and children, and recognise the specific needs of Roma children in particular, a ban on ICA seems inappropriate.

It follows that, if there is a significant number of children still living in residential care for whom there is no demand from Romanian adopters, it seems that the ban on ICA should be referred to the ECHR. The court needs to decide why and on which grounds the Commission and Parliament support the Romanian government ban on ICA and whether there really are sound reasons for associating it with human trafficking.

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