

**ABANDONED CHILDREN AND INTERNATIONAL ADOPTION:
AN ANALYSIS OF UNINTENDED CONSEQUENCES OF
INSTITUTIONAL ARRANGEMENTS IN ROMANIA, 1990-2001**

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ABSTRACT

Building on Merton's notion of the unintended consequences of purposive social action, this thesis examines the causes and consequences of international adoption in Romania between 1990 and 2001. Based on archival data and interviews with actors in the Romanian child welfare system, I identify poverty, lack of parenthood-centered education and a communist-era cultural expectation that childrearing is the state's responsibility, as primary reasons behind child abandonment. International pressure toward institutional isomorphism has resulted in inefficient childcare institutions, creating a tension between globalism and localism that has generated multiple unintended consequences, such as corruption and child trafficking. Abandoned children's weak political position further impedes effective governmental solutions, as is illustrated through the effects of a recently imposed moratorium on international adoption.

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INTRODUCTION

Empirical science, in all its major branches, seeks not to describe the phenomena in the world of our experience, but also to explain or understand their occurrence: it is concerned not just with “what?” “when?” and “where?”, but definitely, and often predominantly, with the “why?” of the phenomena it investigates.
Carl G. Hempel, “The Logic of Functional Analysis.”

The reshaping of the socio-economic and political environment in East Central Europe following the 1989/1990 systemic changes has led to the emergence of new social structures and institutions as premises for the development of capitalist democratic societies, but also to the manifestation of a range of previously nonexistent or not acknowledged social problems that require governmental intervention. Relying on Merton’s insights that “institutionalized patterns of social behavior” are subject to unanticipated consequences (Merton, 1936), this thesis analyzes from the point of view of children’s interest, the Romanian government’s response to the challenge of children deprived of parental care, a problem Romanian authorities publicly admitted only after 1989. Specifically, my study focuses on international adoption in Romania as part of the institutional response to the social problem of abandoned children, and its unforeseen outcomes.

In assessing the social character of child abandonment, I apply the main criteria that for Merton (1966) define a social problem, namely a significant discrepancy between social standards and social actuality, far-reaching negative social consequences of the given phenomenon and the belief in the possibility to correct, or at least to reduce its scale. The phenomenon of child abandonment fulfills all these criteria. First, to leave children in hospitals, placement centers or in other public places is against the general social standards of human rights and the value system surrounding the family. Second, child abandonment produces a wide range of social consequences. The first affected are children, who face the risk of growing up without a permanent family and of social marginalization during childhood as well as later in adulthood. The effects of abandonment however extend beyond the population of children. The entire society experiences them, because (a) the society must provide alternative means of care and (b) it has to deal with the problem of young adults, former institutionally raised children, who lack much of the necessary skills to function in adult society.

Finally, significant for the social character of child abandonment are the institutional responses to this problem. Faced with the challenge of children deprived of parental care, social actors have developed an international legal mechanism to ensure recognition of children's fundamental rights and to regulate alternative protection measures, such as foster care and adoption. However, despite its positive intention, social action can produce unintended effects that harm precisely those whose interest it was designed to protect, namely children, a situation that occurred in post-communist Romania through the unsuccessful reform of the child welfare system.

The Romanian government's long-lasting deficiency in solving the problem of abandoned children is related to processes of institutional isomorphism (see DiMaggio & Powell, 1983) within the field of child protection, as well as to the unique position that children deprived of parental care occupy among marginalized social groups. Under international political influence, Romania engaged in building a network of public and private child protection institutions to provide for abandoned children. The complex nature of this process, which included reproducing models set through international treaties such as The Hague Convention and/or agencies of Western democratic countries, and adapting them to the national context, favored the occurrence of unintended outcomes detrimental to children. Because the replication of structural (administrative) features of international models was performed without the necessary adjustment to the particularities of the Romanian socio-economic environment, it led to institutional dysfunctions that affected the efficiency of the child protection system.

In addition to difficulties stemming from institution building, the government's response to the problem of children deprived of parental care was also influenced by the particular position children themselves occupy in society. According to the pluralist perspective, the state is a reflection of interest-group pressures, which determine governmental action (see McCaffrey, 1982). In this case, because of their inability to directly voice their interest and stand up for their rights, abandoned children represent a weak actor in a pluralist polity, which affects the intensity of the institutional reaction to issues concerning their well-being.

This thesis comprises seven chapters. The first chapter grounds the study in Merton's (1936) theoretical framework of manifest and latent functions of purposive

social action and identifies the expected consequences of international adoption. The second chapter summarizes the data collection. The third chapter examines the social problem of child abandonment. The fourth chapter discusses the effects of institutionalization and foster care on child development. The fifth chapter identifies the social actors involved in the decision-making processes surrounding the practice of intercountry adoption in Romania. The sixth chapter focuses on the legal reaction to the social problem of abandoned children and its unintended consequences. In the last chapter of the thesis, conclusions stemming from this analysis are presented.

Research Question

My main research question stems from Merton's insights that, due to a combination of imperfect information and inability to foresee all possible future events, intentional behavior is subject to unanticipated outcomes. Focusing on Romania between 1990 and 2001, I examine whether international adoption as the manifestation of social actors' purposive action met its goals. If not why, and with what consequences for the population of abandoned children.

Using archival data and interviews, I analyze a chain of events: (a) an increasing supply of abandoned children since the Communist period; (b) the institutional response to this problem, through the reform of the domestic child protection system and the regulation of intercountry adoption; (c) the occurrence of a wide range of unintended consequences of the practice of intercountry adoption; (d) the moratorium imposed on international adoption as the government's response to the negative consequences that were seen as new social problems.

To gain insight into the development of social problems within the Romanian childcare system and the institutional responses to these problems, I rely on legal acts and official publications of national and international social actors involved in child protection. Further on, I draw on interviews with actors involved in the child welfare system to gain insight into the competing contextual pressures that shaped the Romanian laws on child protection and to identify attitudes and consequences of legal outcomes.

CHAPTER 1

INTERNATIONAL ADOPTION IN ROMANIA: AN ANALYSIS OF UNINTENDED CONSEQUENCES

1.1. Consequences of Purposive Social Action

A core insight in sociology is that the intentions of agents do not exhaust the outcomes of their actions. Merton explains this relationship between motives and multiple results on the basis of “the unanticipated consequences of purposive social action” (Merton, 1936), a concept particularly interesting in functional analysis. Merton argues that the explanation for the disproportionate relationship between purposive social action and practical outcomes lies in the fact that human anticipation cannot be completely accurate. Various factors distort the image of resulting outcomes, preventing actors from knowing the entire range of consequences of their behavior. Hence, once put into practice, intentional behavior produces not only the consequences actors pursued, but also unintended outcomes. Thus, the number and diversity of results exceed the expectations that spur social action (see also Ardent, 1958, *The Human Condition*, and Luhman, 1995, *Social Systems*).

1.2. The Intended Purpose of International Adoption

Let us consider the measure of international adoption. In recent decades, the concern for child protection as an essential part of the broader spectrum of human rights protection became a global issue. States developed transnational legal mechanisms to insure general recognition of children's fundamental rights, including growing up in a family. Yet, to comply with its content, states encounter a major problem: there are children who, for various reasons, cannot be raised by their biological family or by another family in the child's country of origin. For these children alternative means of care that are in the child's best interest must be provided.

It is at this point that states must choose between prioritizing foster care, institutionalization or international adoption. "Recognizing that the child, for the full and harmonious development of his/her personality, should grow up in a family environment" (UN Convention, 1989) and considering the positive effects of the permanent character of adoption, states established intercountry adoption as an instrument of child protection applicable when national adoption is not possible. In this context, the manifest function of intercountry adoption is to provide "a permanent family to a child for whom a suitable family cannot be found in his/her state of origin" (The Hague Convention, 1993).

Despite the fact that social actors, to ensure the ethical character and the positive goals of intercountry adoption, created international legal treaties that state the rules and conditions under which this measure should be taken, the practice of international adoption can generate unforeseen negative outcomes, as it is the case in Romania. The following chapter presents the data I rely on to analyze international adoption in Romania, and the method of analysis.

CHAPTER 2

DATA AND METHODS

To gain insight into the development of the social problems within the Romanian childcare system and the institutional responses to these problems I focus on two types of official documents: legal acts and official publications of national and international social actors involved in child protection¹. By analyzing the content of Romanian and international laws on child protection I identified the goals behind their adoption and distinguished between the intentional and unintentional character of the laws' practical outcomes.

2.1. Archives

With regard to national laws, I did archival work on the legislative measures taken in the area of child welfare between 1990 and 2001. I identified the governmental responses to the social problems related to child protection as well as the relationship between institutional mistakes and these problems by examining legal changes. Although

¹ The complete list of national and international legal acts analyzed for this study is provided in Appendix A.

I focused predominantly on laws adopted after 1989, to uncover the social causes of child abandonment and the situation Romania faced after the breakdown of Communism, I also examined the two laws between January 1954 – December 1989 that supported the child protection system: The Family Code and Law no 3/1970 regarding the protection of minors.

The prime documents I analyze for international law are the UN Convention on the Rights of The Child (1989) (hereafter, the UN Convention) and The Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption (1993) (hereafter, the Hague Convention). The UN Convention, binding under international law for 186 states, and The Hague Convention (1993), binding under international law for more than 40 states, set the conditions under which intercountry adoption produces its manifest functions and represent the “standard” to which Romanian legislation has to be aligned.

The other type of official documents used in this thesis are publications of the European Union, World Bank, UNICEF, U.S. Department of Health and Human Services, the Romanian government, Child and Family’s International Foundation and the Federation of NGO’s Active in Child Protection. Statistical data gathered from these publications reveal the magnitude of child abandonment and institutionalization in Romania. They also enabled me to assess the impact of the Romanian economic situation on child abandonment, institutionalization, as well as on the level of national adoptions.

2.2. Interviews

Twenty-three interviews with people who between 1989 and 2001 have been involved in protecting children's rights constitute the second major data source. These interviews enabled me to identify attitudes, the competing contextual pressures that shaped the Romanian laws in the child protection system, and the consequences of legal outcomes. I used information from interviews to weave together the historical chronology from legal documents with the political struggle for changing the laws and adjusting emergent social problems, and the resulting policy outcomes.

The interview sample was constructed to represent three relevant areas of the child welfare system: state-run placement centers for children, nongovernmental foundations involved in developing social programs for protecting children's rights, including national and international adoption, and the public system for child protection. For each of the three categories I interviewed between 5 and 10 persons who, because of their profession and social position, have in-depth knowledge of both child health, state-run institutions and the legal changes that occurred in Romania over the last 10 years. In choosing the respondents I relied on personal referrals and snowball sample techniques. People had to have worked for at least two years in the child welfare system to be included in the sample; the majority has over 8 years of experience in this area. All respondents have university degrees.

Using a semi-standardized questionnaire, I conducted all interviews over the telephone², in Romanian. They lasted between 30 minutes and one and a half hours. I

² Thanks to the OSU Department of Sociology, Sociology Graduate Research Support, for funding these calls.

took extended field notes during interviews and entered them afterwards into word format files. The interview guide and respondents' demographic characteristics are presented in Appendix B and Appendix C. The interviews explored two themes. The first theme was common for all three categories of respondents. I asked opinion questions relevant to all actors, such as causes for child abandonment in Romania, the social categories most prone to abandon their children, causes for child institutionalization, the foster care system in Romania, consequences of suspending international adoption, etc. (see Appendix B for detailed questions).

The second theme was specific to each category of respondents and consisted of knowledge questions. These questions were related to the particular field in which respondents were working. Interviews with people working in state-run residential childcare centers focused on the concrete conditions existing in these settings. Interviews with persons working in private nongovernmental organizations involved in child protection focused on social programs for protecting children's rights and on national and international adoption. In interviews with actors from the public system of child protection I focused on the evolution of their collaboration with the private nongovernmental organizations involved in international adoption, on resources for the foster care system and state-run institutions, and on the system of maternal assistants.

CHAPTER 3

ABANDONED CHILDREN AS A SOCIAL PROBLEM IN ROMANIA

The first step in analyzing the effects intercountry adoption produced in Romania is to understand why the Romanian public authorities have relied on this measure to begin with. I identify as the primary reason behind the practice of international adoption the existence of a large population of children deprived of parental care, which was initially a “legacy” of the communist regime, but whose amplitude, significant even 11 years after the systemic change, continues to challenge the Romanian government. The objective of this chapter is to examine the social problem of child abandonment by focusing on two time periods: (1) the Communist era, which contains the roots of the problem, and (2) the 1990 - 2001 period, to see why child abandonment continued to occur at a high rate.

3.1. The Communist Period: The Paternalistic Role of the Romanian State

The problems Romanian authorities face nowadays in the field of child and family protection have their origins in the socialist policy of massive industrialization. This process required a large and continuous supply of workers, which the ruling party decided to acquire by increasing the country’s population size. Hence, beginning with the mid 1960s the Communist party proclaimed rapid demographic growth as a major

goal of the socialist republic. To achieve it, ideological and economic means were put into play, and the state used simultaneously continuous propaganda for increased childbirth, monetary allowances for each additional child, prohibition of abortion and of contraceptives as well as economic penalties for childless persons, in the form of additional income taxes³.

This aggressive pro-childbirth policy was practiced in a context of general economic hardship, which deepened beginning with the early 1980s, when Romania engaged in paying off its external debts. Basic food products (i.e. milk, sugar, oil, bread) were rationed⁴ and even so were hard to find, leading many parents that were unable to cope with child rising to place their children in state run residential care centers, at that time the only available alternative⁵.

In addition to poverty, the other main factor that led to a significant increase in the number of abandoned children was the socialist child protection system. Legally⁶ as well as in every day life, institutionalization was promoted as a main alternative solution for child rearing and families unable or unwilling to raise their children could easily give them up to state care (UNICEF, 1997, p.63-64).

³ Childless couples, including those biologically infertile, as well as childless unmarried persons over the age of 25 years had to pay an extra 30% tax on their income.

⁴ Each person was allowed to buy only a fixed quantity/month.

⁵ Children abandoned in the 1970-1989 period where: (a) born in uncertain family conditions, (b) born into families that experienced a rapid depreciation of their economic situation, and (c) handicapped children that were abandoned primary because of lack of special resources for care ("The Maltreated Child", 2001, p. 42).

⁶ Law 3/1970 regarding protection measures for minors.

As one of my informants put it,

“Mothers with precarious economic conditions were encouraged to place their children in institutions, and this by pediatricians, because if a child got sick and died within a pediatrician’s activity area, he/she was held directly responsible for the decease.”

Continuously repeated over years and implemented into the national policy, the propaganda that children represent the future of the socialist society, that the state and the Communist party ensure their rearing and education, created among the lower class population a mentality that ultimately children are the state’s responsibility. This mentality became so embedded in the popular consciousness that it continues to influence the rate of child abandonment even in the late 1990s, long after the collapse of the communist regime.

“Child abandonment now is a main consequence of the mentality created during communism, that the state provides for all children, that it takes them to raise them.” – pediatrician, 35 years experience, high ranking official in NGO involved in child protection.

The socio-economic and political conditions in socialist Romania led many parents to institutionalize their children believing that the state will provide for their "normal physical, mental and intellectual development" (Law 3/1970). This was not true. Conditions in state run institutions were so bad that children who at the time of their placement did not have any serious handicaps, ended up mentally and/or physically retarded.

“Most ‘orphanages’ before ’89 were lacking food, heating, warm water, space and personnel. The results were persistent malnutrition, sickness, children sitting in their feces for hours before someone would change their clothes. Minimal adult stimulation impeded children’s cognitive development, their verbal abilities and even physical development, especially in the case of infants and toddlers who could not leave their cribs. Sexual abuses as a consequence of having boys ranging

from 6 to sometimes over 15 years on same floors or even in same rooms, was another perturbing factor for normal development. Although by the time of their placement many children were suffering no, or only minor, retardation (i.e. undernourishment, “rabbit lip”), the institutional environment was turning them into seriously disabled persons.” – pediatrician, 30 years experience.

Since information about this situation would have contradicted the political image of the Communist party, and as such of the state, the extent of the phenomenon of child abandonment and institutionalization, as well as the conditions in residential settings, were concealed from the public until the early 1990s, when for the first time the Romanian government publicly acknowledged the social problem of child abandonment.

3.2. Child abandonment in post-communist Romania

3.2.1. Definitions

Child abandonment took on different forms once Communism, and thus close individual supervision, ended. Instead of the ‘traditional’ solution of residential placement, nowadays it is more common that parents leave the child in various institutions of medical and social care, usually maternity and pediatric hospitals. This leads to two different perspectives, one juridical, the other one medical, on child abandonment.

According to the legal dispositions, a child under the care of a state institution for social or medical care, of a legally set up private institution or legally entrusted to a physical person, may be declared abandoned by court decision if, for a period of at least six months the parents have not contacted the child in any way (Law 47/1993 art.1). From the medical perspective on the other hand, the child is considered abandoned in the medical unit if, following two weeks after any kind of medical care ceases to be

necessary, the child is not taken home (The Maltreated Child 2001, coordinator Serban Ionescu, p.40).

This distinction has important practical implications. First, medical institutions do not wait for six months to start the procedures for solving the cases of abandoned children.

“Most frequently, abandonment of new-born occurs in maternity and pediatric hospitals. The mother just runs away, in most cases without declaring the birth to the authorities, which leaves the child without legal identity. This creates serious problems, since children cannot benefit from any social protection measures as long as they do not legally exist. Also, G-d forbid that the child dies during this period, for how should you get a death certificate since you don't have a birth certificate to begin with?! Hence, 2 weeks after any medical intervention is no longer required, we consider the child abandoned and begin the procedures for solving their case. This shorter term also helps in regards to the procedures for birth registration when the mother cannot be found or she is unwilling to declare her child. If the child is less than 1 year old, the mayor has the authority to release the birth certificate. If the child has already reached the age of 1 year, only the court can fulfill this task, which is a much longer and laborious procedure.” –social worker, 5 years experience.

Second, parents who placed/left their children in institutions often contact them just before the six months term expires, to prevent the loss of parental rights. Consequently, these children cannot be legally declared abandoned, despite the fact that they are abandoned *de facto*. Third, as long as there is no juridical declaration of abandonment, the child cannot be placed for adoption. This means that, until a child is abandoned *de jure*, he/she can benefit only of temporary protection measures.

3.2.2 The Persistence of Child Abandonment After the Systemic Change

Considering the high number of institutionalized children primarily the result of the former regime's imposed demographic growth policy, one of the first measures the new government took was to legalize abortion and the use of contraceptive methods. The expectation was that leaving childbearing at individuals' choice would reduce the number of unwanted children and therefore the occurrence of child abandonment. In practice however this did not happen, although the total fertility rate decreased from 2.2 in 1989, to 1.4 in 1994 and to 1.3 since 1997 (World Bank, 2003). In 1994, the proportion of abandoned children was already higher than in 1989, with the increase in child abandonment occurring both in relative and in absolute terms (The Maltreated Child, 2001, coordinator Serban Ionescu, p.42). For the time period 1990-1997 UNICEF (1999:15, 136.) also records a steep increase in the rate of institutionalization in infant's homes (places for children aged 0-3) (Dickens, 2001).

The analysis of the data used in this study, confirming previous findings, indicates that economic circumstances and educational factors are largely responsible for continued child abandonment in Romania. Economically, the main cause of institutionalization and/or abandonment is poverty (Stephenson et al. 1997; F.I.C.F. 2001), which affects an increasing segment of the population. If in 1994 21.4% of the population was living below the national poverty line, in 2001 the proportion more than doubled to 44.5% (CIA Factbook 2002, Romania). This situation is related to the economic transformations that occurred in the transition process from state to free market economy. Downsizing or closing of inefficient state enterprises and price liberalization produced high

unemployment and inflation, both of which plague the Romanian economic environment for the past 11 years (Table 1).

[See Table 1]

Under these circumstances, many parents find they cannot raise their children and instead abandon them, often believing that the decision serves their child's best interest. The social categories most prone to abandonment are those worst off economically, namely very young and/or unmarried women (Dambeanu et al, 1999, data from interviews conducted for this study) and Romany (Gypsy) women (The Maltreated Child, 2001). Previous studies (The Maltreated Child, 2001, Stephenson et al, 1994) as well as all my informants indicate that Roma are over-represented among abandoned children, which in itself creates a new social problem, since over 90% of Romanian prospective adoptive parents refuse to adopt a child of Roma ethnicity. One of my informants, an adoption lawyer for over 11 years, makes the following point:

“Romanians’ general reticence towards gypsies is obvious when it comes to adoption. Most Romanians don’t want gypsy children first because of their personal reluctance towards this minority, and secondly because they fear the ostracizing reaction of the Romanian community.”

On the one hand, the lower social position of the Roma population might weaken their ability to push for child protection. However, my sense based on discussions with informants is that the institutional problems associated with child abandonment would have persisted even if none of the abandoned children were of Roma descent. Instead, the primary effect of Roma ethnicity works through poverty and low education. As such, the political focus on Roma ethnicity will probably be most effective on abandonment

prevention measures. Politically, the Roma ethnicity has gained a fair amount of international attention, and is starting to gain representation in the parliament.

The impact of poverty on child abandonment is further reflected by the expansion of the phenomenon beyond the social categories of very young, unmarried women at their first birth, traditionally considered to be at risk. After 1989 women 35 to 40 years old, who have at least one child at home, make up a significant proportion of abandoning mothers (The Maltreated Child, 2001, p.43, information from my interviews).

Education is the other major cause for the persistence of child abandonment and consists of two complimentary factors. First, a low level of parenthood centered education leads to a high number of unwanted children, despite the availability of economically affordable contraceptive methods. Second, the idea that the state is always responsible for children's upbringing, inoculated through years of communist propaganda, continues to be deeply ingrained in the mentality of lower class people and to influence child abandonment to a large degree. Asked about their opinion regarding the major causes for child abandonment in the contemporary Romanian society, all interviewees mentioned that, aside of poverty most relevant are peoples' belief that the state will raise the child anyway and the lack of parenthood centered education. The majority of my respondents considered the mentality factor to be as powerful as poverty.

In conclusion, after a brief period of time during which child abandonment in Romania was considered to be an inherited social problem that would disappear once the new government put and end to the forced demographic growth policy, national and international social actors involved in child protection realized that this was not the case. Parents continued to abandon their children at a high rate, and the government was

compelled to develop a protection system able to provide for these children in accordance with international law. Under these circumstances, Romanian institutions in the public and in the private sector employed a combination of measures – national and international adoption, foster care and ultimately institutionalization, to solve the social problem of abandoned children. The next chapter examines these alternative means of care from the perspective of their compliance with the international principle of the best interest of the child.

CHAPTER 4

WHAT IS IN THE BEST INTEREST OF ABANDONED CHILDREN? AND WHAT IS NOT?

In Romania two dimensions, one theoretical, the other practical can define the context in which child abandonment occurs and has to be dealt with. The theoretical dimension is given by the legal frame for child protection, specifically by the requirement that “in all actions considering children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration” (UN Convention, art. 3 alin.1). The second dimension is defined by the circumstances in which children deprived of parental care are actually growing up. Most of these children continue to be raised in residential institutions, despite the joined effort of public and private actors involved in child protection to shift the weight to foster care. By the end of May 2002, 42,952 children were living in state-run institutions (48.86%), 4,952 in private placement centers (5.63%) and 40,012 children were protected through foster care (substitutive families and professional caretakers) (45.51%) (ANPCA, 2003).

Given this situation, it is important to know to what extent institutional rearing and foster care provide the adequate environment for children’s normal development. To answer this question I consult previous research on the effects of the two alternative

means of care on child development and draw on information provided by the social workers and pediatricians interviewed in this study.

4.1. Residential Institutions and Child Development

For over fifty years, studies conducted in various countries ranging from The United States to England and Iran, have consistently found that institutionalization has negative effects on child development. The disruption of the parent-child relationship and the insufficient physical and social stimulation in institutional settings are linked to attachment difficulties and delays in physical, emotional and social development (Bowlby, 1951; Dennis, 1973; Freud & Burlingham, 1973; Provenance & Lipton, 1962; Spitz, 1945). Institutionally reared children often manifest decreased investment in persons and objects, frequently engage in stereotypical behavior (i.e. rocking, watching their hands) and have difficulties in forming strong attachments to others. Attachment behavior⁷ affects cognitive growth in institutions (Hunt et al., 1976). For children with long term exposure to an institutional environment, developmental delays have been encountered not only while institutionalized, but also after adoption (Flint, 1978; Goldfarb, 1943). Institutionally reared children experience cognitive deficits, such as poor reading ability (Pringle & Bossio, 1960; Mapstone, 1969), learning problems (Goldfarb, 1943), and deficits in intellectual functioning (Goldfarb, 1944a, 1944b).

⁷ Attachment behavior is defined as seeking and maintaining proximity and emotional connection with a constant caregiver early in life (Bowlby, 1969). The ability to form attachments is acquired as a child moves through the developmental stages, with the first 3 years being the most important. Attachment to a primary caregiver is essential to the development of emotional security and social conscience (Lieberman, 1995).

Further more, institutionalization increases the likelihood that children will suffer psychiatric impairments as adults (Frank, Klass, Earls & Eisenberg, 1996).

This range of negative consequences of institutionalization has been found despite the fact that the majority of children under study were raised in settings where well-trained staff and adequate material resources were available. Given the poor condition of the Romanian residential institution, the even greater amount of developmental problems found in Romanian institutionalized children would be expected.

4.1.1. Developmental outcomes in Romanian Institutionalized Children

Studies on the effects of institutional rearing on Romanian children document serious negative effects in the areas of socioemotional, mental and physical development. Longitudinal comparative studies of (a) children who prior to adoption into Canadian families had spent at least eight months in a Romanian institution, (b) Romanian children adopted before the age of four months who had spent less than four months of institutionalization and (c) never institutionalized Canadian born children, revealed that children with at least eight months of institutionalization had more behavior problems, i.e. “rocking” and “watching their hands”, more medical problems (Ames, Fisher & Savoie, 1994) and also a stronger deficiency in forming strong attachment relations than children in the other two categories (Chisholm, Carter, Ames & Morison, 1995).

Eleven months post adoption, children with the longest institutional experience were still having more developmental delays than children with little or no institutional experience, although only 46% of them (compared to the initial 95% severely developmentally delayed children) were still displaying delays in three or four areas out

of five (fine motor, gross motor⁸, adaptive, personal-social, and language) (Morison, Ames and Chisholm, 1995). About four and a half years post adoption, children with more than eight months of institutionalization who at the time of adoption did experience delays in only three areas of development did not differ any longer from children in the other two categories, neither on behavioral and social problem, nor on attachment (Ames, 1997).

Romanian institutionalized children also experience adaptive behavior problems (Cermak & Daunhauer, 1997; Haradon et al., 1994, Sweeney & Bascom, 1995), cognitive retardation and difficulties in processing sensory information due to depriving circumstances of their rearing (Rutter, 1998, Cermak & Daunhauer, 1997; Sweeney & Bascom, 1995; Haradon, Bascom, Dragomir & Scripani, 1994). Further on, studies document a clear relationship between length of institutionalization, and growth and developmental delays. Weight, height, length, head circumference, weight for height ratios decreased and delays in fine motor and gross motor skills increased as the period of institutionalization increased (Groze & Ileana, 1996, Miller et al., 1995), and it has been estimated that children lose one month of linear growth for every three to five months in an institution.

Despite the fact that Romanian institutionalized children “were more severely deprived, physically and psychologically, than almost any other sizable group of children previously studied” (Rutter et al., 1998, p.474), through their adoption into well-functioning families, most of the trauma appears to be remediable. Two factors best

⁸ Physical development can be broken up in three month intervals and divided into 2 categories: gross motor skills and fine motor skills. Gross motor skills refer to the child’s ability to control different parts of the body; fine motor skills refer to the child’s level of coordination of the different body parts.

predict positive outcomes: (a) how well the child's needs match the family's resources, and (b) the age of the child at the time of adoption (Rutter et al., 1997; Ames, 1997; Morison et al., 1995).

In addition to the impact of institutionalization *per se*, children's normal development is also challenged by the interaction with the "outside world." My informants repeatedly pointed to the fact that institutionalized children experience discriminatory treatment when attending community kindergarten and schools. Teachers (under the pressure of the other children's parents) tend to marginalize them, by seating them in the back of the classroom or sometimes even suggesting that they leave.

"In many cases, parents of the other children have made petitions and protests because they did not want their children to interact with those from placement centers. The reason behind this attitude is the belief that institutionalized children are sick, have infectious diseases, AIDS. In vain did we provide the actualized medical records that proved their health, the mentality is wrong." – pediatrician, module coordinator at one of Bucharest's largest placement centers, 10 years experience.

4.2. Developmental Issues For Children in Foster Care

To reduce the risks of developmental retardation institutionalized children are exposed to, as well as the costs generated by residential rearing, the Romanian child welfare system is trying to prevent and/or reduce institutionalization through foster care. Since consistent legal regulations of a Romanian foster system have been ratified only after 1997, at this moment there are no published studies regarding developmental outcomes in Romanian children in foster care. Therefore, I draw on international research within this field and link its findings with the experience of Romanian social workers and pediatricians.

Two main characteristics of the measure of foster care have to be taken into account when analyzing its compliance with the principle of the best interest of the child. First, children are placed in a family environment, thus escaping many of the risks of institutionalization. Second, foster care is a temporary measure, which should last until the child can be reintegrated into his/her biological family, or if this is not possible, until the child's adoption.

Whereas family placement is a positive aspect of foster care, the temporary character of this measure may negatively affect children's normal development. According to the American Academy of Pediatrics, "any time spent by a child in temporary care may be harmful to the child's growth, development, and well-being" (American Academy of Pediatrics, 2000, *Health Care of Young Children in Foster Care*). Most children enter foster care in the early years of life (Children and Youth Survey, CA: The Field Institute, 1997; Dawson et al., 1994; Illig DC, 1998), which represent critical periods for brain development and personality formation, since it is during the first three, four years in a child's life that the nerve connections and neurotransmitter networks are forming. Negative environmental conditions, including emotional and cognitive disruptions influence this process and can impair the brain growth (Perry et al., 1995).

Besides their potential to impair children's brain development, placement disruption and instability have been also linked to the occurrence of attachment deficiencies and behavioral problems (Fanschel et al. 1973, Van der Kolk, 1987) such as motor hyperactivity, anxiety, mood swings, impulsiveness, and sleep problems (Perry et al, 1995). These problems increase the risk that a cycle of placement instability will be perpetuated (Fanschel et al., 1990), which in turn affects child well being. Multiple moves

while in foster care, with the attendant disruption and the uncertainty they produce, can be deleterious to children's brain and mental development, as well as to their psychological adjustment, especially if the disruption occurs within the interval of six months to three years of age.

These reasons of concern regarding foster care in general are even more justified when considering the foster system in Romania. To rapidly develop this type of childcare, in 1997 the government created the occupation of "professional maternal assistant." Besides common legal requirements⁹ the only special condition a person has to fulfill before being entrusted a child is a 60 hours training in child development, organized within the Public Services Specialized for Child Protection. Since in Romania many people face unemployment and/or difficult economic circumstances, and the wages offered for this new type of occupation are at the level of a basic grade social worker (approx. US\$50/month; Dickens, J, 1999) many persons are willing to become foster parents.

The combination of these factors produces two unintended effects that increase the risks Romanian foster children are exposed to. First, because Romania does not have a strong system of social workers, supervision of foster parents and of the child after his/her placement within the foster family is insufficient, which increases the likelihood that children experience inadequate treatment.

"The professional maternal assistant is an occupation; interested persons must take a course on child development, which is insufficient to begin with: only 60 hours. After the completion of this course participants obtain, much too easy, an attestation; and because this profession leads to

⁹ Good health condition, no transmissible diseases, clean police records, adequate living space, good relations between family members, the possibility to care for the physical and psychological development of the child.

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material benefits, there are many applicants. These applicants are verified, at least theoretically, to account for their economic situation. But in fact what has to be much closer verified is the caretakers' behavior towards the entrusted child, since the role they have to assume is a very serious one and many are not shaped for it. For this, a very strong social assistance service is needed, to verify and follow up on the foster parents and the children. This we do not have.” – pediatrician, high ranking official in a Romanian NGO in the field of child protection, 12 years experience.

Second, in many cases the measure of foster placement is not followed by any subsequent step towards permanent placement, which leaves the child in an uncertain situation.

“Foster placement is in fact a trap. Many children are placed with families or professional assistants, so when you look at the number of institutionalized children, it results that this has decreased. In reality, foster placement is a temporary measure and since in most of the cases there are no sufficient preparations for a next permanent solution, the situation is bad.” – economist, project coordinator in a private NGO, 2 years experience.

Overall, examining the effects of institutionalization and of foster care on child development leads to the following conclusions:

- (1) among the alternative protection measures for children deprived of parental care, institutionalization is the most detrimental;
- (2) compared to residential rearing, foster care represents a better option, since it offers the child the advantage of a family environment; nonetheless, its temporary nature is detrimental to children's socioemotional, physical and mental development;
- (3) both institutionalization and foster care endanger in a high degree one of the child's fundamental rights, namely the right to a normal, harmonious development;

Based on the empirical results yielded by previous studies on adoption, institutionalization and foster care, as well as on the experience Romanian actors

involved in child protection had with these alternative means of care, the answer to the question “What is in the best interest of abandoned children?” is the following:

Children’s adoption *into well-functioning families* represents the best solution for abandoned children because a permanent family environment allows for the remedy of a large part of the developmental deficits caused by the depriving circumstances of early rearing as well as for a future normal development.

CHAPTER 5

ACTORS INVOLVED IN INTERNATIONAL ADOPTION

The purpose of this section is to map, at national and international level, the network of institutions and organizations that influenced the implementation and application of intercountry adoption. By examining these actors' objective interests as stated in the incident legal dispositions or as clearly implied by the position they held in the social system, I will be able to assess participation in the fulfillment of the goals of intercountry adoption, which later will allow me to analyze the unanticipated consequences that followed from this participation. Figure1 is provided to help describe the relation among actors in Romania.

5.1. Romanian institutions and organizations influencing the practice of international adoption¹⁰

5.1.1. Public authorities

Corresponding to the levels of public administration in Romania, two main categories of public actors are supposed to ensure the protection of children's rights: on

10. I am interested in those activities that result in direct involvement in the realization of the purposes of international adoption. Therefore, although I recognize the influence other important factors, such as the Church, mass-media and political parties exercise, I will only focus on those institutions and organizations which directly participate in implementing and applying intercountry adoption.

one hand are the central public institutions with countrywide responsibilities, on the other hand the local public institutions with attributes at county level.

Central public authorities

The National Authority for Child Protection and Adoptions and The Romanian Committee for Adoptions represent the main public bodies that function in the domain of child protection at the level of central public administration.

The National Authority for Child Protection and Adoptions (hereafter, Authority) was created in 2000 as a specialized body with legal autonomy, subordinated to the Government and conducted by a secretary of state who at the same time fulfills the position of chairman of The Romanian Committee for Adoption. The Authority is responsible for applying policies and creating strategies and national programs as well as for monitoring and evaluating the field of child protection. Among other attributes, the Authority also provides the management and secretariat activity of The Romanian Committee for Adoption and represents this organization before court.

To attain its objectives in protecting children's rights, the authority carries 5 main functions: a "strategy function, to ensure the creation and enforcement of reform strategy and programs in children's rights protection and adoption, a regulating function, to ensure the necessary legal framework for realizing objectives and programs, a management function, to ensure the management of public property and state private property and the management of the public services for child protection, including adoption, a representation function to ensure the representation of the Romanian state, both countrywide and abroad, and the function of state authority, to ensure the supervision of the enforcement of regulations in the field, the control of the observance thereof, as well

as the control of the activity of all institutions and bodies which activate under its subordination and authority” (Emergency Ordinance 12/2001 regarding the establishment of the National Authority for Child Protection and Adoptions, art. 2). In this context, the Authority controls the local public administration authorities in their activity to protect the child in distress.

The other main body at the central public administration level is the Romanian Committee for Adoptions (hereof, RCA). This special body is formed of 14 members plus the chairperson.¹¹ The RCA's membership structure reflects the interplay between ministries that perform various functions concerning the child and family, other specialized organisms of central administration and actors from the local public administration. The RCA's activity is coordinated by the Authority. The purpose for creating this institution has been "the survey and support of activities concerning the protection of children's rights through adoption and inter-country cooperation in this field" (Decision 502/1997, art. 1).

Among others, the RCA's prerogatives include: (1) establishing the centralized records of children who may be protected through adoption; (2) authorizing and supervising Romanian and foreign private organizations that perform activities in the field of child protection through adoption; (3) issuing the confirmation which attests the compliance of terms and legal procedures preceding adoption's court approval; (4) issuing certificates which attest that courtly approved intercountry adoptions comply with

¹¹ The Ministry for Work and Social Welfare, the Ministry of Health, the Ministry of National Education, the Ministry of Justice, the Ministry of External Affairs, the State Secretariat for Handicapped Persons and the Department for Local Public Administration each have one representative in the RCA. The other six members are representatives of local public administration.

the Hague Convention's requirements; (5) following up the adopted child's development and his/her relationship with the adoptive parents, for at least 2 years after an international adoption has been approved.

Since the RCA's function is carrying out the obligations stipulated in The Hague Convention, its position towards the practice of international adoption is unequivocal. "Intercountry adoption represents a means to ensure for the child who lacks the protection of his birth parents a harmonious development of his/her personality, if placement for national adoption or adoption by a family/person living or residing in Romania is not possible" (Decision 502/1997, art. 1). In this context it is the RCA's responsibility to oversee the entire international adoption process and to implement and enforce the normatives applicable for national and international adoption.

Local public authorities

At the local public administration level, the institutions that hold key roles in developing and providing child protection services are the Directorates for the Protection of Children's Rights (hereafter, Directorates), the Commissions for Child Protection (hereafter, Commissions) and the Public Services Specialized for Child Protection (hereof, Service), as the Commissions' executives.

The Directorates, established in each county and subordinated to the county council, are responsible for the protection system of families and children in distress within the county¹². The Directorates' responsibilities include: to coordinate activities for the implementation of the government's policy on child protection, to support foster care

¹² Legally, children are in distress if their "physical or mental development, security or integrity is endangered" (Emergency Ordinance 26/1997, art. 1).

over institutional care, to administrate alternative services offered to families and children and to coordinate public institutions for child protection¹³. The Directorates' position towards intercountry adoption is shaped by their general task to protect children's rights, and more specifically to prevent and/or reduce institutionalization. They regarded international adoption as a way to permanently remove children from residential centers.

The Commissions together with the Services are two further actors that contributed to the realization of the goals of international adoption. Both institutions are responsible for establishing and applying protective measures for the harmonious development of distressed children. In each county, the Service identifies children in need of special assistance and, on individual bases, proposes to the Commission the protection measures. Once the Commission establishes the adequate solutions, the Service ensures their enforcement. In solving matters concerning distressed children, the Commission has to respect the child's best interest. Hence, it takes all possible steps to ensure that children will be raised in a permanent family environment, including international adoption. Since both the Commissions and the Services are directly confronted with insufficient funds and a high number of abandoned children, they have a high interest in the practice of international adoption, which they perceived as a cost-effective child protection measure.

Placement Centers are another type of actors interested in the fulfillment of the purposes of international adoption. Faced with insufficient resources (material, financial and personnel) and aware of the negative effects of institutionalization on child

¹³ Beginning with 1997 the Directorates became responsible for the residential childcare institutions, until then under central public subordination.

development, Placement Centers want children to be placed in families as soon as possible. Considering the best interest of the child to be adopted, as well as that of the remaining children who indirectly benefited from the effects of international adoption (i.e. donations), Placement Centers relied on international adoption to de-institutionalize children and to improve the conditions in the specific settlements.

5.1.2. National Actors in the Private sector

One of the premises indispensable for the fulfillment of the goals of international adoption is placing children only with those persons/families “who have the material means and the moral guarantees necessary for the child's harmonious development” (Emergency Ordinance 25/1997, art 6). Within the private sector, the main role to identifying suitable foreign prospective parents belongs to authorized Romanian non-profit organizations. These actors, who cooperate with national and international authorities to “assess and survey persons interested in completing adoption, ... , both before and after the adoption approval has been granted” (Decision no. 245/1997, art. 2), consider international adoption, due to its permanent character, to be one of the best solutions for abandoned children.

5.2. International Actors Influencing the Practice of International Adoption in Romania

Part of the process of accepting Romania into the community of democratic countries involved the development of an ethical childcare system in compliance with the principles of human rights. To achieve this goal, international actors pressured the

Romanian government to shape national childcare institutions, particularly those surrounding intercountry adoption, after models set through international treaties such as the Hague Convention, and/or well-functioning childcare organizations of Western democracies, a process that favored institutional isomorphism in the Romanian child protection system. In identifying the international organizations that influenced the institutional regulation of intercountry adoption in Romania, I rely on the linkages created through international treaties and intergovernmental collaboration agreements with Romania.

The United Nations is an integral actor influencing the Romanian child welfare system in general and intercountry adoption in particular. Through the UN Convention on the Rights of the Child (1989) the best interest of the child is recognized as a main human rights principle that states must respect when taking any decisions affecting children. At the same time, the Convention conditions the realization of the purposes of international adoption on its character of subsidiarity: “intercountry adoption may be considered as an alternative means of child’s care if the child cannot ... in any suitable manner be cared for in the child’s country of origin” (Convention on the Rights of the Child, 1989, art. 21).

Together with the World Health Organization and the UN Children's Fund (UNICEF), the United Nations worked to improve the economic and social condition of Romanian institutionalized children. UNICEF is mandated by the United Nations General Assembly to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential. UNICEF is guided by

the Convention on the Rights of the Child and strives to establish children's rights as enduring ethical principles and international standards of behavior towards children.

The Council of Europe (of which Romania is a member beginning with 1993), is the oldest European intergovernmental organization. It aims to protect human rights, pluralist democracy and the rule of law. As such, it is interested that intercountry adoption be practiced in the best interest of the child and only when national adoption is not possible.

The executive part of the European Union, the European Commission is another influential actor in regards to how intercountry adoption and other child protection measures have been shaped in Romania. Among other prerogatives, the Commission is responsible for implementing the European legislation (directives, regulations, decisions), it acts as guardian of the Treaties and, together with the Court of Justice, ensures that Community law is properly applied. At the same time, the Commission represents the Union on the international stage and negotiates international agreements. Since Romania strives to become a member of the European Union, it has to fulfill the general criteria of accession, among which child protection represents an important issue.

Further on, The Hague Conference on private international law, as an intergovernmental organization designed "to work for the progressive unification of the rules of private international law" (Statute, Article 1) influences the fulfillment of the goals of international adoption through developing internationally applicable regulations, such as The Hague Convention on Intercountry Adoption. To promote international cooperation, The Hague Conference maintains continuing contacts with international

organizations such as the United Nations, UNICEF, the Council of Europe, the European Union, etc.

In sum, the context in which intercountry adoption was regulated in Romania has been shaped by the interaction between national and international actors involved in child protection. This interaction has not always been smooth. The controversial consequences of the practice of intercountry adoption, such as corruption and child trafficking, have led to strong international pressures towards changes in the child protection system, including the moratorium on international adoption. The following chapter examines the legal reform within the child-protection system and its unintended effects.

CHAPTER 6

THE LEGAL REACTION TO THE SOCIAL PROBLEM OF ABANDONED CHILDREN AND ITS UNINTENDED CONSEQUENCES

Beginning with 1990, two factors are shaping the Romanian government's attitude towards the problem of children deprived of parental care: (a) the phenomenon of child abandonment, and (b) pressures for the implementation of the general principles on the rights of the child, exercised by international actors involved in child protection. The government's response to these influences has been a set of child protection laws designed to solve the problem of abandoned and institutionalized children in accordance with the international requirements.

[See Table 2]

Based on the analysis of the laws' sequence of promulgation and of their provisions, we can identify two main phases in the orientation of the institutional response to the problem of abandoned children.

During the first phase, defined by the legal acts adopted between 1990 and 1994, the main focus was on desinstitutionalization, while during the second phase, defined by the legal acts ratified between 1997-2001, the government focused primarily on preventing and/or reducing institutionalization. The interval 1995-1996, characterized by the ratification of the Convention on Protection of Children and Cooperation in Respect

of Intercountry Adoption (hereafter, The Hague Convention), constitutes the transition between these two phases.

6.1. 1990 – 1994: De-institutionalization through Adoption

Several factors shaped the first phase in the orientation of the government's action: a) the high number of children institutionalized prior to 1989 who already suffered severe physical and psychological deprivations; b) the expectation that child abandonment will decrease once contraception, including abortion, became legal, c) the international pressures on Romania to align its inner regulations to the international standards for child protection.

Responding to these factors' interaction, during the first four years after the breakdown of the communist regime, the Romanian government was primarily interested in removing children from state-run placement centers. Since by that time a foster care system was nonexistent, the quickest and soundest solution for carrying out this task was adoption. As such, the institutional response to the problem of child abandonment and institutionalization was to create the legal context for adoption through ratifying international conventions on child protection and revising the national legislation on domestic and international adoption.

It is in this context that in 1990 the UN Convention became part of the Romanian legal system. This treaty represents a comprehensive statement on children's rights and covers the whole area of child protection and welfare measures. Together with the Hague Convention, the UN Convention establishes the institution of intercountry adoption and sets the frame within which intercountry adoption sets its goals.

Within the framework of the Romanian legislation on adoption, Law No. 11/1990 on the consent of adoption and Law No. 43/1993 with regard to the juridical declaration of child abandonment created the legal path for removing children from residential institutions. *Law No. 11/1999 on the consent of adoption*, abrogated obsolete legal dispositions issued prior to 1989 and transferred the responsibility of solving the applications for adoptions to the courts. Because its dispositions were too basic, a modified version was ratified in 1991, which I focus on below.

Law 11/1990, together with the incident provisions in the Family Code, set the procedures for national and international adoption. It established the RCA to ensure the supervision of adoptions and to promote international cooperation in the field of intercountry adoption and stipulated the subsidiary character of international adoption.

In 1993, *Law No. 47 with regard to the juridical declaration of child abandonment* came into force. The reason for its adoption was the increasing number of children who, although having a family, do not benefit from family care. These children are “forgotten” in maternity and pediatric hospitals, but because of their uncertain legal status¹⁴ they cannot be placed for adoption. To remedy this situation, Law 47/1993 regulates the possibility to declare a child abandoned by court decision.

These pieces of legislation were ratified to enable institutionalized children to grow up in a permanent family environment. However, confirming Merton’s (1936) hypothesis, the legal dispositions produced a series of unintended negative outcomes. Corruption became a serious problem due to the combination of a high number of wealthy foreigners longing to adopt Romanian children and the rising level of poverty

¹⁴ Neither orphans, nor “officially” abandoned.

within the country. Further on, there was the problem of buying children from their birth families¹⁵. This situation was facilitated by the fact that

“before 1995, because of the permissive legislation, aside of lawyers, who for better or worse kept the shine of respecting the law, medical doctors, taxi drivers, translators were coming in court to plead causes of adoption.”
– lawyer, 10 years experience.

These negative side effects of international adoption provoked strong disapproval.

Under the pressure of the Romanian and international public opinion, the government reformed again the adoption legislation and, at the end of 1994, Romania ratified the Hague Convention. The period between its ratification and the substantive legal changes in the field of child protection that began in 1997 represents the link between the two phases in the orientation of the government’s response to the problem of abandoned children.

The Transition Period: 1995-1997

At the end of 1994 Romania ratified the Hague Convention, which establishes the international rules and principles governing the procedures of intercountry adoption. Additionally, to update the domestic legal dispositions according to The Hague Convention, the government further modified Law 11/1990.

Under the new prescriptions, which became active in July 1995, any application for an international adoption had to be addressed to the RCA through an authorized

¹⁵ The reason for preferring to adopt children directly from their families was their better physical and mental condition as compared to that of children in institutions. At the same time, knowing the parents allowed for inferences about the children’s biological inheritance.

public or private organization functioning in the prospective parent's (solicitor's) state of residence. One of my informants, a former high-ranking official of the RCA, explains:

“Each childcare institution had a list with adoptable children, which came to the RCA. Here was also the list with the authorized private organizations, which submitted the files of the foreign families that wished to adopt. Each week there were matching processes between families and children. Let's say we had 3 families that looked for a child with such and such characteristics. We analyzed each family's file, and if the families fulfilled the legal conditions to adopt (social investigation, etc.), based on each family's characteristics, we assigned it that child for which we considered the family to be most suitable for. We informed the organizations about our decision, sent them the child's file (medical report, pictures, etc) and the organization sent it further to the family, which had the option to accept or refuse the child. If the family wanted the child, the RCA submitted the complete adoption file to the court. These procedures reduced tremendously both the intervention of “mediators” and the amount of international adoption of children directly from their birth families.”

While the legal modifications improved the international adoption procedures, they did not address some of the major factors behind children's distress, such as persistent economic hardship of the population, insufficient institutional support for poor families, and the lack of child abandonment prevention programs. The combination of these factors led to an increase in the number of children in institutional care of various forms, whose living conditions, although better than in 1990, were far under the level required by international standards (European Commission 2000 Regular Report on Romania's Progress towards Accession).

By the time the modified dispositions of Law 11/1990 became active, it was clear that child abandonment and institutionalization were social problems with deep-rooted causes that adoption alone could not solve. Realizing the necessity to address these problems through a combination of social protection measures, in 1997 the government

began to restructure the child welfare system and to adopt a new set of child protection laws to prevent and/or reduce institutionalization. Based on these legal dispositions we can identify the second phase of the institutional response to the problem of abandoned children.

6.2. Restructuring the Child Welfare System: 1997-2001

The year 1997 represents the turning point in the orientation of the governmental action on child protection. Instead of relying merely on adoption, the reform of the Romanian child welfare system aimed (a) to develop a foster care system which should prevent/reduce institutionalization, (b) to shift primary responsibility for childcare services from the government to local public authorities, and (c) to improve the national organizational structure to increase the applicability of the Hague Convention's prescriptions. The government aimed to achieve these goals by replicating traits of democratic childcare organizations, thus responding to international pressures for institutional homogenization. While Romanian child protection institutions became more similar to international ones, they were not fitting the particular national context, which generated multiple unintended consequences, such as corruption and child trafficking.

A first step of the child welfare reform was to restructure the public administration at the local level. *Government Decision no. 205/1997 regarding The Organization of Social Service*, and, since 1999 *Government Decision No. 117*, create the system of county departments, Commissions and Public Services that become responsible for childcare services, including the identification of children in difficulty, material and

financial assistance for these children's families, and the development of a network of foster parents.

“The creation of the local Commissions and the Public Services was part of the government's plan to decentralize the child welfare system and to transfer the responsibility for the childcare institutions to the county level. This was envisioned to be a beneficial measure for children in impoverished families as well as for those in residential placement centers, because public local authorities have a better perspective on the situation in their subordinated counties” – former high ranking official of the Ministry of Health, 3 years experience.

Changes at the local public administration level were paralleled by changes at the central level. The government restructured the RCA as the “central Romanian authority charged with the responsibility of fulfilling the Hague Convention's dispositions” (*Decision No. 502/1997 concerning the structure and management of the Romanian Committee for Adoption, art. 10*). This piece of legislation, together with three further laws ratified in 1997¹⁶, were designed to accelerate the pace of de-institutionalization through foster care, to correct the weaknesses of the adoption legislation, and to improve the collaboration between the central and the local public administration, as well as between public institutions and private NGOs. Politically, they represented the government's response to international criticism, especially from the European Union, regarding the prevalence of intercountry over national adoption and the insufficient correlation between the international treaties on child protection and the Romanian laws.

Following the rules enshrined in the Hague Convention, Emergency Ordinance 25/1997 reiterated the conditions under which a child could be adopted and established in

¹⁶ Decision no. 245 concerning the authorization criteria for private organizations that work in the field of protection of children's rights through adoption, Emergency Ordinance No. 25 Concerning Adoption and Emergency Ordinance No. 26 Regarding the Protection of the Child in Distress.

detail the procedures for domestic and intercountry adoptions. Under its provisions, the best interest of the child was proclaimed as the prime consideration behind any approved adoption, and national adoption had to be prioritized over international one. Once the law became active, it abrogated both Law 11/1990 and chapter III “Adoption” in the Family Code.

Emergency Ordinance 26/1997 Regarding the Protection of Children in Distress enlarged the sphere of substitute childcare by regulating foster care and specified the functions of local public administration authorities¹⁷ in implementing child protection measures at the county level. With regard to foster care, besides the high number of institutionalized children and children at risk to be institutionalized, a strong imperative for its development were

“the repeated and vehement requirements of European Union delegates to close as many residential childcare centers as possible and to place children with families. Acceptance to the negotiations for UE membership is a main point on the Romanian political agenda and the government wanted to comply.” – former high ranking official in the Ministry of Health, 3 years experience.

To speed up the process of creating a large network of foster parents, the law established fostering as an occupation. The responsibility for paying the wages belongs primarily to the local public administration authorities, but authorized private NGOs can also fulfill this task.

Ordinance 26/1997 also transferred the responsibility for childcare institutions from the central public administration to the local Commissions and Protection Services. This measure was supposed to increase the standards in residential care centers, but the

¹⁷ The local Commissions and the Public Services Specialized for Protecting Children’s Rights.

immediate effect was actually the opposite: because decentralization was done quickly and the local public administration authorities lacked the experience to raise funds, childcare institutions experienced a decline in living conditions.

Although from the technical point of view the 1997 body of laws was much better than previously adopted regulations on child protection, national adoptions continued to remain numerically far below intercountry adoptions. This pointed once again to the fact that in Romania the discrepancy between their levels is mainly attributable to

“a much higher demand for international adoption. The economic possibilities within the Romanian population are much more limited than those of foreigners. Further on, foreigners have a different conception and attitude towards adoption. The majority is willing to adopt Roma and they adopt even if they have their own biological children, whereas in our country only biological infertile people may consider to adopt. And most of them won't have a gypsy kid”. – former high ranking official in the Ministry of Health, high ranking official in the federation of national NGO's involved in developing child protection programs, 11 years experience.

The rate of child abandonment on the other hand, continued to increase, primarily because of poverty, lack of parenthood-centered education, insufficient support for families in difficulty and a mentality that the state is responsible for raising all children.

To improve child welfare, in 1999 the government linked international adoption to the promotion of other social services through *Decision No. 506 regarding the Methodology of assigning the task of finding an adoptive parent or family and of supervising the adoption for the children registered with the RCA.*

“The state needed money for financing the social programs for children. Private NGO's working in Romania as representatives of international organizations had funds. Through the ‘point system,’ the state decided to link their activity in the field of international adoption to the promotion of other social services for children in distress; that way, once one child was internationally adopted, other 10 of those remaining

behind were to benefit from his/her adoption.” – former director in the Ministry of Health, 12 years experience.

Based on decision 506/1999, the RCA could assign the task of finding an adopting parent/family to authorized Romanian private organizations (hereof, APO) based on the amount of points they received from the local public administration authorities. Activities for which an APO received points included donations and sponsoring granted to public placement centers and to centers of recovery of handicapped minors, restructuring of public placement centers, expenditures for developing the foster care system, for funding programs of abandonment prevention, as well as for establishing own care centers. APO’s also received points for placing a child within their own care centers, for finding an international adoptive family, if the adoption was approved by irrevocable court decision, for finding an adoptive family for children exceeding the age of 6, if an irrevocable decision of adoption approval was issued by the court.

Theoretically, the point system was to offer objective criteria for assigning adoptable children to the various APOs based on their contribution to social services. In practice however, Decision 506/1999 led to an auction of advantages because

“Including sponsoring and donations among the points generating criteria allowed financially more powerful NGOs to give higher donations. In turn they received more points and consequently were assigned more children. Whereas smaller organizations which, although more serious and correct, had less money, received less points. The system generated a competition based primarily on money, and not on the quality of the social services being offered.” - former high ranking official of the RCA, 12 years experience.

The system also amplified corruption within the state apparatus and occasionally led to preferential treatment of international prospective parents. A high-ranking official of the Ministry of Health explains:

“The local child protection service, aware that the child is abandoned de facto, was placing him on the RCA list with adoptable children despite the fact that the criteria for the juridical declaration of abandonment were not yet met. The child was ‘hold’ there until the legal term of six months was completed and the child could be legally declared abandoned. Meanwhile, the private NGO, which already knew about this child, was obtaining the other necessary documents for an international adoption. However, if within this interval a Romanian family was requiring the adoption of that particular child, it was told that the legal procedures for his/her juridical declaration of abandonment were not complete and the child is not adoptable.”

At the same time, the direct link between monetary contributions and the assignment of adoptable children raised the concern that children are treated as commodities, which stirred heated debates over the morality of the adoption procedures.

These factors provoked strong negative international reactions, and in the 2001 draft report on Romania's membership application to the EU and the state of negotiations, the European Parliament's rapporteur stressed that “accession negotiations should be suspended” (p. 8) unless the problems regarding child abandonment, “child abuse and neglect, international adoption and child trafficking” will be seriously addressed. The report also underlines the necessity of suspending international adoption “for at least two to three years” (p.14).

Responding to this requirement, in 2001 the government ratified *Emergency Ordinance no. 121 regarding the temporary suspension of all procedures regarding international adoption* and suspended all procedures regarding the adoption of Romanian

children by foreign citizens or by Romanian citizens residing outside the country for one year following the law's coming into force¹⁸.

This measure provoked a new wave of critical reactions because (a) it suspended even cases for which the court procedures were already started, and (b) international actors, such as the US and Israel were highly interested in the continuation of international adoptions. A high ranking official of UNICEF Romania remarks:

“Let's admit it, the government struggles between two centers of pressure, each requiring the opposite of what the other solicits: on one hand the European Commission requires the suspension of international adoption under the threat of not accepting us into the EU; on the other hand, the US and Israel (but also French senators) make pressures for the continuation of international adoption. Again we want to comply, since we want to be accepted into NATO.”

International pressures proved once again effective and a few months later *Emergency Ordinance no. 161 regarding the completion of Emergency Ordinance 121/2001 on the temporary suspension of all procedures regarding international adoption* was ratified. This law provides that all applications for adoption sent to court before EO 121/2001 became active will be solved according to the legal provisions in force at the time of their sending. Furthermore, the ordinance states that in exceptional situations imposed by the superior interest of the child, at the proposal of the National Authority for Child Protection and Adoption (NACPA), the Government may approve that new applications for international adoptions be sent before court.

¹⁸ October 9th, 2001. In October 2002, the suspension has been extended for another month; in Nov. 2002 until February 1st 2003; at the beginning of February 2003, the term has been again prolonged until the 28th of February 2003.

In conclusion, to provide for children in distress while complying with international child protection standards, within the 1990-2000 interval the Romanian government adopted successively over 23 child protection laws, of which six had as the primary objective to regulate the procedures for adoption (national and international). The legal response did not solve the problem of abandoned children; it produced however serious detrimental outcomes (i.e. excessive bureaucratization, improper financial gains related to the practice of international adoption, child trafficking), which finally led to the moratorium on international adoption. This is not surprising, given that institutional isomorphism is rarely connected directly to organizational effectiveness or efficiency (DiMaggio and Powell, 1983). Instead, organizations change to fit a given accepted practice, even if that practice is not most effective in the given institutional setting. The following chapter sums up the overall implications changes in the Romanian child welfare system had for the population of children deprived of parental care and outlines broader theoretical issues that derive from the Romanian case.

CHAPTER 7

WHO PAYS FOR INSTITUTIONAL MISTAKES?

To solve the problem of abandoned children, in 1990 the Romanian government began reforming the domestic legislation on adoption and developed an organizational network to support implementation. During this process of institutional change, public authorities made a series of errors which, given the complex nature of the ongoing transformations, is in itself not very surprising. What is striking is the fact that after more than 11 years of trial and error those who have to pay for the institutional mistakes are those in whose interest this process started, namely abandoned children. The contribution of this thesis lies in reconstructing the logic beyond the perpetuation of certain social problems (child abandonment) and issues (inability to effectively implement the law) over time, despite purposive social action to solve them.

Broader theoretical issues evident in the Romanian Case

Based on the analysis of institutional arrangements in the field of child protection, I identify four conditions that help explain the difficulties in providing for children deprived of parental care and the high occurrence of negative consequences within the Romanian child welfare system.

1. Romanian public authorities of child protection represent the interests of children weakly, because there is no *direct* pressure towards action from part of the group their interests they represent, namely the population of abandoned children, who, by the definition of abandonment, are not being represented by parents or other family adults.

2. Children are a weak actor in a pluralist policy because they have “no voice”; among all kinds of groups of populations, only two are completely unable to directly express and defend their interests: children of young ages and severely mentally handicapped people. Their interests may, and usually are, represented by other actors, however, the two groups themselves cannot stand up for their rights, which in turn affects their ability to pressure the state for action.

These first two conditions, particular for the Romanian case, lead to the following hypothesis regarding success of governmental action in correcting a social problem: the less able the group that represents the social problem is to express its interests, the smaller the pressure on representing agencies; weak pressure in turn translates into weak representation of the group’s interests, thus diminishing the probability of successful social action. This situation is compounded (i.e. interacts) with rapid institutional change, particularly in the early stages of a transformation from a less democratic to a more democratic social organization.

3. The Romanian government’s conflicting priorities and the multitude of pressures to be satisfied further explain the equivocal outcomes in the field of child protection. At least two primary forces evident in Romanian political decision-making with respect to abandoned children can be identified: (a) factors associated with the rapid response to external pressure and (b) factors associated with the struggle between local

and national public service provisions. The cross pressures associated with internal political differentiation and external political pressure resulted in a political climate ripe for unintended consequences. While evident in the Romanian case, I suspect such features may be more widely general, particularly for nations or communities undergoing significant social change, such as the transformation to a market economy.

On the external side, the Romanian government was facing two strong, but ultimately contradictory pressures. On the one hand, admittance to the EU required building a legal framework that was consistent with that of the EU charter. In purpose, this required providing for the best interest of the child. In practice, however, the rapid *legal* change did not come with the necessary increase in *economic resources* to fund the provisions required by law. On the other hand, wealthy nations such as Israel and the United States continued to express a strong demand for children, providing incentives for reliance on international adoption as well as a ready home for abandoned children. Combined, these forces resulted in an under-funded protection system that was required to make do as best it could, contributing to the development of *ad hoc* arrangements with NGOs, facilitating corruption and child trafficking. This, of course, was in exact contradiction to the EU purpose of an ethical child protection system, leading to the eventual suspension of international adoption, a result that seems, ultimately, not in favor of *currently* abandoned children, and that leads to additional negative pressure from potential child-host nations.

On the internal side, the poor coordination between the central and the local public authorities for child protection, as well as the struggle between provisions at the local and national levels created dysfunctions within the Romanian child welfare system

that affected both the institutions (i.e. improper conditions in placement centers, the weaknesses of the foster care network) and the accuracy of data on institutionalized children. With regards to the latter, in 2002 local public services¹⁹ have repeatedly reported children as *permanently* de-institutionalized, while in reality these children were on summer vacation (ANPCA, 2002).

In sum, faced with conflicting external (EU, US, etc.) and internal forces, public social actors' tendency was to neglect the interest of the group they had to protect in favor of meeting more stringent political requirements. This leads to the fourth reason that explains the perpetuation of the problem of abandoned children, namely lack of political accountability.

4. Public actors in the Romanian child protection system are not politically accountable for not solving the problem of children deprived of parental care. Failing to provide for abandoned children does not lead to the loss of an important share of voters; on the other hand, if major objectives on the political agenda, such as acceptance into the UE and into NATO that signal to the population fulfillment of electoral promises, are not met, the ruling party faces a high risk of losing reelection.

Confirming Merton's theory (1936) that intentional behavior is subject to unintended consequences, the Romanian government's response to the problem of abandoned and institutionalized children has led to negative unanticipated effects, with corruption and improper financial gains from international adoptions playing a central part. The transformations inherent to the transition to a free-market economy and failure

¹⁹ Buzau, Suceava, Vrancea, Olt, Valcea, Bucharest, administrative units no. 2 &4.

to recognize that child abandonment is not an isolated social problem constrained social actors' foresight regarding the outcomes of the Romanian child welfare reform. First, the dynamics of reorganizing the institutional structure according to the principles of the capitalist system and the international standards for a democratic society created an unsettled socio-economic environment, which national political actors had little experience to deal with. Second, the government failed to realize that child abandonment, poverty and corruption are embedded social problems. Furthermore, because public child protection authorities treated child abandonment as merely a legacy of the communist regime, until 1997 the institutional action towards helping children deprived of parental care was largely miss-oriented. The government focused only on de-institutionalization through adoption instead of simultaneously developing measures to prevent child abandonment and institutionalization, such as parenthood centered education, economic support for families in difficulties, developing foster care. Not recognizing that child abandonment is not solvable as long as it is seen in isolation from the complimentary problems of poverty and corruption led to significant drawbacks in implementing legal provisions.

General implications

The case of intercountry adoption in Romania suggests that Giddens' (2000) view of globalization as being not merely an economic process, but rather a complex phenomenon that impacts society at macro and at micro level and leading to global economic change (i.e. emergence of global markets, transnational corporations, global labor force, etc) as well as to transformations of institutions 'traditionally' regarded as

nationally modeled, is accurate. International dynamics and their influence on national systems, however, are not smooth, as reflected by the Romanian case. Following the collapse of the communist regime, beginning with the early 1990s Romania responded to global challenges by introducing new concepts and changing the internal institutional structure in the economic and in the social sphere, more specifically, in the childcare field. International actors (i.e. the EU, UN) solicited Romanian child protection institutions to mirror the features of corresponding democratic agencies, which led to a significant degree of institutional isomorphism but not to increased organizational efficiency. Furthermore, because the internal implementation of international standards did not take into account the specificity of the Romanian socio-economic environment (i.e. high unemployment, poverty, an instable economy) it led to serious problems, such as the increase in corruption among state functionaries and institutional miss-match.

Practically, building new global processes requires a correspondence between international and national development, which in Romania's case was not present. It is worth exploring whether the effectiveness of transformations in response to global challenges depends on member states providing resources to help facilitate such transitions. The role of additional means may be even more important in those cases where the effects of external pressures are amplified through the internal politic-administrative organization. As evident in Figure 1, Romanian social services for children deprived of parental care were provided by a wide array of agencies, with overlapping authority, conflicting constituencies and vast disparities in resources. When legal provisions are carried out in a wide-ranging institutional web such as that found in Romania, the sheer number of intersections makes it likely that the original intention of

legal action is subverted. This can be seen, for example, in the summer 1999 crisis in residential care (produced by the transfer of the responsibility to fund the child welfare services to the local public authorities in conditions of scarce resources and insufficient experience in administering local revenue (OMAS, 1999)), or the growing corruption among public functionaries following the practice of the 'point system.'

The Romanian case suggests that research should look at how legal guides are affected through implementation, focusing on the inter-agency structure of implementing bodies. A hypothesis from this thesis is that unintended consequences are lessened when implementation agencies have a more hierarchical, single-purpose structure. Practical implications for Romania suggest that simplifying the adoption bureaucracy and regulation structure might lead to greater clarity in acting, and thus better results for children. Furthermore, future work needs to examine how tensions between globalism and localism provide a context for unintended consequences inside nations, with a particular focus on the situation in which social policies that require changes internal to a nation to conform to external requirements are not supported by sufficient funding and resources to implement these changes.

APPENDIX A

NATIONAL AND INTERNATIONAL LEGAL ACTS ANALYZED IN THIS STUDY

National Legal Acts

1. Codul Familiei 1 Februarie 1954, The Family Code, February 1st **1954**.
2. Legea nr. 3/26 martie 1970 privind regimul ocrotirii unor categorii de minori (Law No. 3/March 26th 1970 regarding the protection of minors), Buletinul Oficial al Republicii Socialiste Romania (Official Bulletin of The Romanian Socialist Republic) no. 28, March 28th **1970**, Bucharest.
3. Legea nr. 11/31 iulie 1990 privind incuviintarea adoptiei (Law 11/1990 regarding the consent for adoption), Monitorul Oficial al Romaniei (Official Monitor of Romania) no. 95, August 1st **1990**, Bucharest.
4. Legea nr. 18/27 septembrie 1990 pentru ratificarea Convenției cu privire la drepturile copilului (Law 18/1990 for the ratification of United Nations Convention on the Rights of the Child), Monitorul Oficial al Romaniei (Official Monitor of Romania) no. , September **1990**, Bucharest.
5. Legea nr. 11/31 iulie 1990 **republicata** privind incuviintarea adoptiei (Law 11/1990 **republished** regarding the consent for adoption) Monitorul Oficial al Romaniei (Official Monitor of Romania) no. 159, July 26th **1991**, Bucharest.
6. Legea nr. 47/7 iulie 1993 cu privire la declararea judecatoreasca a abandonului de copii (Law 47/1993 with regard to the juridical declaration of child abandonment), Monitorul Oficial al Romaniei (Official Monitor of Romania) no. 153, July 8 **1993**, Bucharest.

7. Legea nr. 84/18 octombrie 1994 pentru ratificarea Conventiei asupra protectiei copiilor si cooperarii in materia adoptiei internationale, incheiata la Haga la 29 mai 1993 (Law 84/1994 for the ratification of The Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption), Monitorul Oficial al Romaniei (Official Monitor of Romania) no. 298, October 21st 1994, Bucharest.
8. Legea nr. 11/31 iulie 1990 **republicata** privind incuviintarea adoptiei (Law 11/1990 **republished** regarding the consent for adoption), Monitorul Oficial al Romaniei (Official Monitor of Romania) no. 159, July 24 1995, Bucharest.
9. Hotararea Guvernului nr. 205/19 mai 1997 cu privire la organizarea activitatii autoritatilor administratiei publice locale in domeniul protectiei drepturilor copilului (Government Decision no. 205/1997 regarding the organization of the activities of the local public administrative authorities in the field of protecting children's rights), Monitorul Oficial al Romaniei (Official Monitor of Romania) no. 100, May 26th 1997, Bucharest.
10. Ordonanata de urgenta a Guvernului nr. 25/9 iunie 1997 cu privire la adoptie (Emergency Ordinance 25/June 9, 1997 regarding adoption), Monitorul Oficial al Romaniei (Official Monitor of Romania) no. 120, June 12 1997, Bucharest.
11. Ordonanata de urgenta a Guvernului nr. 26/9 iunie 1997 privind protectia copilului aflat in dificultate. (Emergency Ordinance 26/June 9, 1997 regarding the protection of children in difficulty), Monitorul Oficial al Romaniei (Official Monitor of Romania) no. 120, June 12 1997, Bucharest.
12. Decizia Guvernului Nr. 245/2 iunie 1997 cu privire la criteriile de autorizare a organismelor private care desfasoara activitati in domeniul protectiei drepturilor copilului prin adoptie. (Government Decision No. 245/June 2, 1997 concerning the licensing criteria for private organizations which work in the field of protecting children's rights through adoption), Monitorul Oficial al Romaniei (Official Monitor of Romania) no. 112, June 5th 1997, Bucharest.
13. Hotararea Guvernului nr. 502/12 septembrie 1997 cu privire la organizarea si functionarea Comitetului Roman pentru Adoptii (Government Decision 502/1997 regarding the structure and functioning of the Romanian Adoption Committee), Monitorul Oficial al Romaniei (Official Monitor of Romania) no. 244, September 18 1997, Bucharest (also available at <http://www.romanianadoptionadoptii.ro/english.506.html>).
14. Legea nr. 87/28 aprilie 1998 pentru aprobarea Ordonantei de uregenta a Guvernului nr. 25/1997 cu privire la adoptie (Law 87/April 28, 1998 for approving Emergency Ordinance 25/1997 regarding adoption), Monitorul Oficial al Romaniei (Official Monitor of Romania) no. 168, April 29 1998, Bucharest.

15. Legea nr. 108/2 iunie 1998 pentru aprobarea Ordonantei de uregenta a Guvernului nr. 26/1997 privind protectia copilului aflat in dificultate. (Law 108/June 2nd 1998 for approving Emergency Ordinance 26/June 9, 1997 regarding the protection of children in difficulty), Monitorul Oficial al Romaniei (Official Monitor of Romania) no. 205/June 2nd **1998**, Bucharest.
16. Hotărârea nr. 117/1 martie 1999 pentru aprobarea Normelor metodologice și a măsurilor tranzitorii de aplicare a prevederilor Ordonanței de urgență a Guvernului nr. 26/1997 privind protecția copilului aflat în dificultate, precum și a Metodologiei de coordonare a activităților de protecție și de promovare a drepturilor copilului la nivel național. (Government Decision 117/1999 for the approval of the Methodological norms and the transitory measures of applying Emergency Ordinance 26/1997, as well as for approving the Methodology regarding the coordination of the protection activities and the promotion of children's rights at national level), Monitorul Oficial al Romaniei (Official Monitor of Romania) no. 105/March 12th **1999**, Bucharest.
17. Decizia Comitetului Roman pentru Adoptii nr. 506/26 august 1999 privind Metodologia acordarii sarcinii gasirii unui parinte sau unei familii adoptive si supravegherii adoptiei pentru copiii aflati in evidenta Comitetului Roman pentru Adoptii (RAC Decision No 506/August 26, **1999** regarding the Methodology of assigning the task of finding an adoptive parent or a family and of supervising the adoption for the children registered with the Romanian Adoption Committee). <http://www.romanianadoptionadoptii.ro/english.506.html>
18. Ordonanta de urgenta a Guvernului nr. 192/ 8 decembrie 1999 privind infiintzarea Agentiei Nationale pentru Protectia Copilului si reorganizarea activitatilor de protectie a copilului (Emergency Ordinance 192/1999 on establishing the National Agency for Children's Rights Protection and reorganizing the children's protection activity), Monitorul Oficial al Romaniei (Official Monitor of Romania) no. 599/ December 8th, **1999**, Bucharest.
19. Hotararea nr. 1315/7 decembrie 2000 privind unele masuri pentru protectia drepturilor copilului prin adoptie (Government Decision 1315/2000 regarding some measures for protecting children's rights through adoption), Monitorul Oficial al Romaniei (Official Monitor of Romania) no. 678/ December 19th, **2000**, Bucharest.
20. Ordonanta de urgenta a Guvernului nr. 12/26 ianuarie 2001 privind infiintzarea Autoritatii Nationale pentru Protectia Copilului si Adoptie (Emergency Ordinance 12/2001 on establishing the National Authority for Children's Rights Protection and Adoption), Monitorul Oficial al Romaniei (Official Monitor of Romania) no. 63/ February 6th **2001**, Bucharest.

21. Ordonanta de urgenta a Guvernului nr. 121/8 octombrie 2001 pentru suspendarea temporara a tuturor procedurilor referitoare la adoptiile internationale. (Emergency Ordinance 121/2001 on the temporary suspension of all procedures regarding international adoption) Monitorul Oficial al Romaniei (Official Monitor of Romania) no. 633, October 9 **2001**, Bucharest.
22. Ordonanta de urgenta a Guvernului nr. 161/6 decembrie 2001 privind completarea Ordonantei de urgenta a Guvernului nr. 121/2001 pentru suspendarea temporara a tuturor procedurilor referitoare la adoptiile internationale (Emergency Ordinance 161/2001 regarding the completion of Emergency Ordinance 121/2001 on the temporary suspension of all procedures regarding international adoption), Monitorul Oficial al Romaniei (Official Monitor of Romania) no. 780, December 7 **2001**, Bucharest.
23. Ordonanță de urgență nr. 123 din 2 octombrie 2002 pentru prorogarea termenului prevăzut la art. 1 alin. (1) din Ordonanța de urgență a Guvernului nr. 121/2001 pentru suspendarea temporară a tuturor procedurilor referitoare la adopțiile internaționale (Emergency Ordinance 123/2002 for the prolonging of the time period stated in EO 121/2001 art. 1 alin. (1), Monitorul Oficial al Romaniei (Official Monitor of Romania) no. 734, October 8 **2002**, Bucharest.
24. Ordonanță de urgență nr. 151 din 7 noiembrie 2002 privind prorogarea termenului prevăzut la art. 1 alin. (1) din Ordonanța de urgență a Guvernului nr. 121/2001 pentru suspendarea temporară a tuturor procedurilor referitoare la adopțiile internaționale (Emergency Ordinance 151/2002 for the prolonging of the time period stated in EO 121/2001 art. 1 alin. (1), Monitorul Oficial al Romaniei (Official Monitor of Romania) no. 821, November 13 **2002**, Bucharest.
25. Ordonanță pentru prorogarea termenului prevăzut la art. 1. alin. (1) din OUG nr. 121/2001 pentru suspendarea temporară a tuturor procedurilor referitoare la adopțiile internaționale.(Ordinance /2003 for the prolonging of the time period stated in EO 121/2001 art. 1 alin. (1), Monitorul Oficial al Romaniei (Official Monitor of Romania) no. 81, February 1 **2003**, Bucharest.

International Legal Acts

1. United Nations Convention on the Rights of the Child (adopted November 20, **1989**).
<http://www.unhchr.ch/html/menu3/b/k2crc.htm>
2. Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Concluded 29 May **1993**).
<http://www.hcch.net/e/conventions/text33e.html>

APPENDIX B

INTERVIEW GUIDE

1. Questions asked for all three categories of respondents (opinion questions):

What do you consider to be main causes for child abandonment in Romania ?
What are the social categories you consider most likely to abandon their children?
What do you consider to be main causes for child institutionalization?
How do you appreciate the evolution of the legal system for child protection in the last decade?
What factors were most important in bringing forth the change in the legislation for adoption during the last 11 years?
What do you consider to be main causes for international adoptions outnumbering national ones? What is your opinion with regard to the risks children adopted internationally are exposed to?
How do you appreciate the feasibility of the foster care system in Romania?
What consequences do you think suspending international adoption have for corruption?
What consequences do you think suspending international adoption have for abandoned children?

2. Questions specific for each category of respondents (knowledge questions):

2.1. People working in child placement centers (orphanages)

How many seats (places) does this establishment have?
How many children are at present in the institution?
What age categories are these children in?
What is the average time period a child spends in this institution?
At present, what is the ratio of caregivers to children?
Are there certain types of children more likely to be adopted than others?
What is your funding source/sources?
Are material resources sufficient in relation to the number of children?
What measures of de-institutionalization are most common for this setting?

2.2. People working in adoption agencies

In which year did the Romanian Adoption Committee accredit this adoption agency?

What are the agency's funding sources ?

During the period 2000-2001 how many children have been assigned to your organization?

During the period 2000-2001, how many children have been placed through this agency with professional maternal assistants?

Are there certain types of children more likely to be adopted than others?

What were the prevailing social programs/activities provided by this agency in order to gather points?

Which is the geographical area this agency covered/covers?

What are the current main activities of this agency?

2.3. People working in the public system for child protection

How did the point system affect the collaboration with nongovernmental organizations involved in international adoption?

By whom are the wages for professional maternal assistants covered?

What is the difference between a professional maternal assistant and a placement family?

APPENDIX C

RESPONDENTS' DEMOGRAPHIC CHARACTERISTICS

Informants	Sex	Age	Education	Base Occupation	Experience in Child Protection issues (years)	Length of Interviews/ Cumulative Time	Number of contacts
1	F	55	University Degree	Sociologist	10 years	45'	1
2	M	47	University Degree	Engineer	2 years	30'	1
3	F	55	University Degree	Lawyer	11 years	2h15'	2
4	F	33	University Degree	Economist	2 years	45'	1
5	M	35	University Degree	Economist	2 years	2h	1
6	F	49	University Degree	Economist	2 years	45'	1
7	M	60	University Degree	Pediatrician	25 years	1h45'	1
8	F	72	University Degree	Pediatrician	35 years	1h15'	1
9	F	31	University Degree	Pediatrician	30 years	1h15'	2
10	F	35	University Degree	Pediatrician	10 years	45'	1
11	F	34	University Degree	Pediatrician	8 years	1h45'	1
12	F	75	University Degree	Pediatrician	40 years	3h30'	3
13	F	53	University Degree	Pediatrician	20 years	4h	3
14	F	50	University Degree	Pediatrician	10 years	1h30'	2

15	F	57	University Degree	Pediatrician	22 years	2h45'	3
16	M	62	University Degree	Pediatrician	30 years	5h30'	5
17	F	29	University Degree	Social Worker	8 years	45'	1
18	F	30	University Degree	Social worker	7 years	1h10'	1
19	F	29	University Degree	Social Worker	5 years	1h40'	3
20	M	57	University Degree	Social Worker	11 years	30'	1
21	F	31	University Degree	Social Worker	4 years	30'	1
22	F	35	University Degree	Social Worker	5 years	30'	1
23	F	30	University Degree	Social Worker	2 years	1h	1

Year	Population Below Poverty Line	Inflation Rate	Unemployment Rate
1992	*	215%	4%
1993	*	200%	9%
1994	21.50%	*	11%
1995	21.50%	62%	10.90%
1996	21.50%	25%	8.90%
1997	21.50%	56.90%	6.10%
1998	21.50%	151%	8.80%
1999	21.50%	41%	9%
2000	21.50%	44%	11%
2001	44.50%	45.70%	11.50%
2002	44.50%	34.50%	9.10%

* Data not available for that year

Table 1: Percent Population Below Poverty Line, Inflation Rate, and Unemployment Rate for Romania 1992 - 2002.

Date	Law	Summary: what the law says / does	Purpose: intended effect of the law	Outcome: unintended/ actual effect
1990	Ratification of UN Convention on the rights of the Child	Sets the international legal framework for the protection of the rights of children.	To provide the general principles and standards for the protection of children	International principles of child protection became part of the Romanian law.
1991	Law No. 11	Abrogated obsolete legal dispositions from pre-1989, created the RCA, transferred the responsibility of solving the applications for adoptions to the courts.	To provide the legal framework for national and international adoption.	International adoption of children directly from their birth families instead of institutions, commodification of children, corruption.
1993	Law No. 47	Regulates the possibility to declare a child abandoned by court decision: a child under the care of a state institution for social or medical care, of a legally set up private institution or legally entrusted to a physical person, may be declared abandoned by court decision if, for a period of at least 6 months the parents did not have any contact with him/her.	To enable children abandoned <i>de facto</i> to become eligible for adoption.	Speeded up the process of providing legal identity to abandoned children. Once decision 506/1999 became active, it amplified corruption: children were “put aside” for international adoption based on the justification that their legal situation needed yet to be clarified.
1994	Ratification of the Hague Convention	Regulates intercountry adoption: establishes the rules and principles for completing adoptions between countries where the child resides (country of origin/sending country) and countries where the prospective adoptive parents reside (receiving country).	To create an international legal mechanism to ensure that intercountry adoption produces its goals.	The international rules surrounding the procedures of intercountry adoption became part of the domestic legislation. Determined the reform of the Romanian legislation on child protection.
1995	Modification of Law no 11/1990	Enlarges the RCA’s competence, requires that applications for international adoptions be addressed to the RCA only through an authorized public or private organizations functioning in the prospective parent’s (solicitor’s) state of residence.	To implement the requirements enshrined in the Hague Convention, to reduce corruption.	Reduced the number of children adopted from their biological families, increased the supervision of international adoption procedures.

1997	G.D. no. 205	Restructures the public administration at the local level, creates the system of county departments, Commissions and Public Services and outlines their generic responsibilities for childcare services.	To increase the efficacy of the child welfare system, to reduce institutionalization through children's reintegration into the birth family, foster care and/or early adoption.	Created the basis for the foster care system. Negatively affected living conditions in institutions.
1997	G.D. no. 245	Establishes license requirements for Romanian and foreign private NGO working in the field of protecting children's rights through adoption.	To allow the RCA to monitorize the activity of private NGO's, to ensure the applicability of the Romanian law to international NGO's active in Romania in the field of adoption.	International NGO's either entered into agreements/ contracts with private Romanian organizations or created their own local entities as Romanian juridical persons. Led to the creation of an extended network of private NGO's working in the field of adoption.
1997	G.D. no 502	Restructures the RCA, expands its authority, details its functions according to the Hague Convention's requirements.	To increase supervision and control of adoption procedures, especially with regard to intercountry adoption, to reduce corruption.	Increased bureaucracy, in corroboration with decision 506/1999 it created new opportunities for corruption.
1997	E.O no 25	Abrogates Law no 11/1990 and other adoption related legal provisions from the pre-1997 period, establishes the procedures for national and international adoption based on the Hague Convention, establishes the requirements prospective adoptive parents must fulfill, establishes the general criteria under which a child is eligible for adoption.	To implement nationally the Hague Convention's dispositions, to improve the legal process of adoption, to prioritize national over international adoption, to establish the best interest of the child as the primary reason for adoption.	
1997	E.O. no 26	Regulates substitute care, establishes the occupation of professional maternal assistant (foster caretaker), sets up the institutions responsible for implementing child protection measures at the local level, transfers the responsibility for the childcare institutions to the	To prevent/reduce institutionalization by creating a network of foster parents, by according assistance to families in difficulty; to improve the conditions in residential childcare centers through de-institutionalization.	Many people became foster parents without having the necessary preparation of caring for a child, insufficient supervision of foster parents and entrusted children; reduced the number

		local public administration authorities.		of institutionalized children only temporarily, affected negatively the living conditions in state-run placement centers.
1999	G.D. no 117	Abrogates G.D. no 205, re-establishes the organization and the tasks of the local Commissions and Public Services with regard to child protection services.	To improve the functioning of the local Commissions and Public Services.	
1999	G.D. no 506	Established the criteria on which the RCA assigned the task of finding adoptive parents to Public Services and/or Romanian private NGO's, created the point system.	To improve child protection programs (i.e. abandonment prevention, foster care) by linking international adoption to other types of social services, to increase the participation of private NGO's in social child protection services.	Created unfair competition among private NGO's, created the idea of a market for children, national social services for child protection became dependent on intercountry adoption, disfavored national adoption, increased corruption.
2001	E.O. no 121	Suspended for 1 year all procedures regarding the adoption of Romanian children by foreign citizens or by Romanian citizens who reside outside the country.	To allow for the development of a better legal system for child protection in general, and more specifically for adoption.	Many foster parents seized to receive their salaries, deprived many institutionalized children of the chance of a family.
2001	E.O. no. 161	Modifies E.O. no. 121, provides that all applications for adoption sent to court before E.O. no 121/2001 became active, as well as those already in an advanced stage of procession, will be solved according to Law no. 25/1997; provides that in exceptional situations imposed by the superior interest of the child, the Government may approve that new applications for international adoptions be sent before court.	To correct for a juridical insufficiency of E.O. no 121/2001.	Creates opportunities for discriminatory treatment based on different judgment of "the best interest of the child".

Table 2: Summary of Legal reforms with respect to international Adoption in Romania

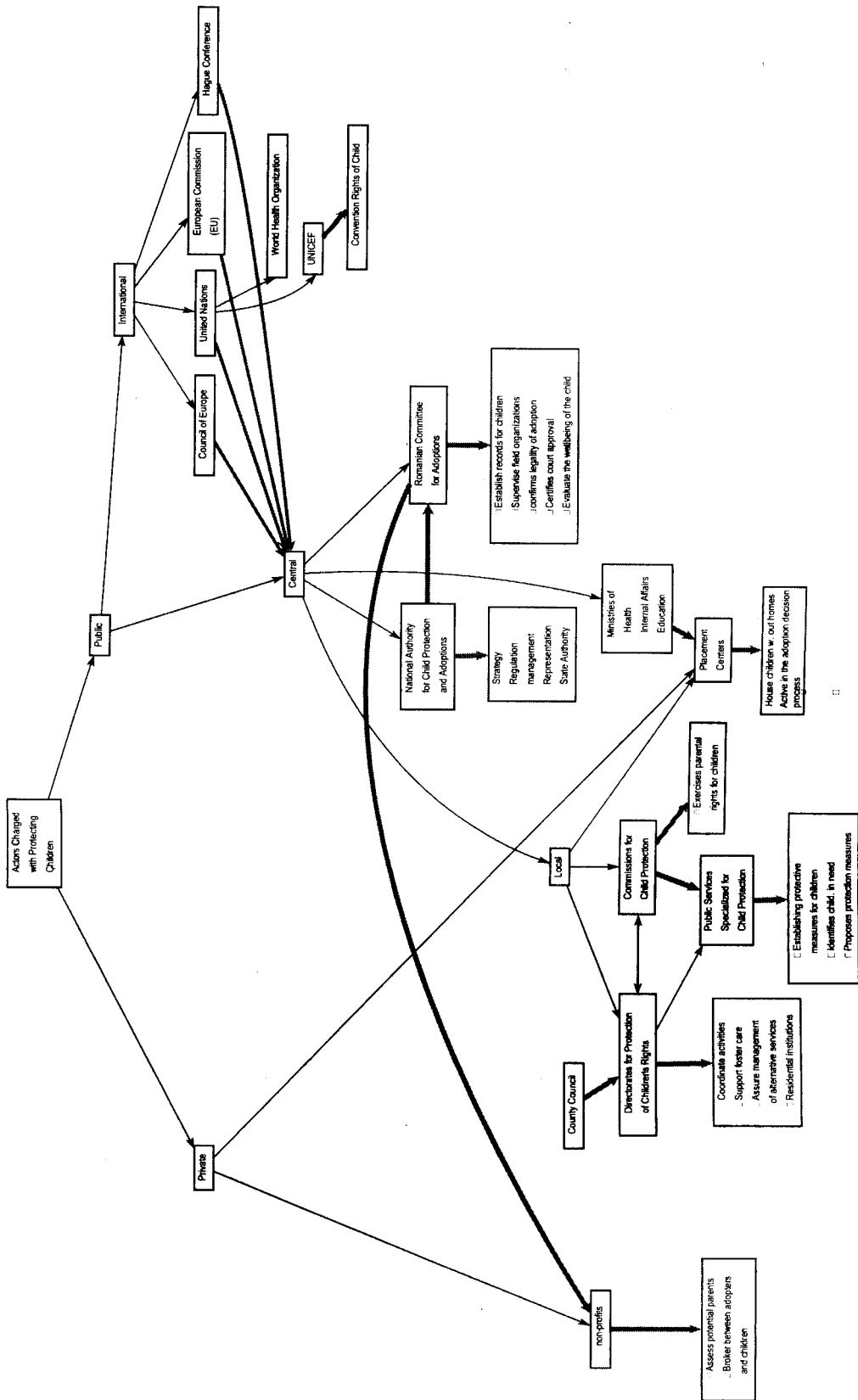


Figure 1. Relations and Duties of key actors in the Romanian Adoption process

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