



EUROPEAN COMMISSION
Directorate-General Enlargement

A – Acceding countries

The Director

Brussels, 13 JUN 2005
ELARG/A/TS rp ktD(2005) 799

NOTE FOR THE FILE

Subject: Meeting concerning the Romanian legislation on Children's Rights and Adoption, 20 May 2005

Independent Panel: [REDACTED]

DG ELARG: [REDACTED]

The meeting was organised at the request of the Commission.

The Independent Panel of Experts on Family Law of EU Member States was set up in 2002 to report to the Commission and the Romanian authorities on whether the Romanian draft legislative package on children's rights and adoption complies with international standards laid down in the UN Convention on the Rights of the Child and the European Convention on Human Rights. The principal criterion (benchmark) for judging Romanian legislation is whether the proposed legal framework would ensure respect of children's rights at a level comparable to that provided by legislation in the present EU Member States

[REDACTED] opened the discussion by stating that Romania has been a very challenging case as regards child protection and that new challenges will come up in the near future, such as the Ukraine that could ask for EU membership in October, and the Western Balkans. Therefore, there is a need for a consistent approach on child protection in the Commission.

The Accession Treaty of Romania has now been signed, and very close monitoring is foreseen by the Commission until accession.

As regards children, the monitoring consists of a legal and a political part (sufficient human resources, training and budgetary allocations). The legal basis must be correct, whereas the political criteria offer more room for manoeuvre. The end-result should be that Romania respects the best European practices in the field of child protection.

[REDACTED] acknowledged that a lot of progress has been made during the past 10–15 years in the field of child protection in Romania. Child care is the fundamental issue; this needs to be in order by accession. Resources are therefore crucial, and the Commission has given a lot of financial assistance in this respect. The Romanian government should now be supported to maintain the political will to allocate sufficient funds.

[REDACTED] had prepared six questions for [REDACTED]

(1) The new Romanian laws on children's rights and adoption are in force since 1 January 2005. Are these laws in line with general practice in EU Member States?

██████████ was of the opinion that many EU-Member States do not have such good laws as the new Romanian laws. But apart from the legislation, it is important to have a good level of protection for children as well as institutions in place to provide such protection. Improving conditions on child care was one of the conditions for opening accession negotiations with Romania in 1999.

When the Panel visited Romania for the first time in 2003 they saw that protection of children was indeed available, but they were also confronted with the exceptional situation that existed, meaning that Romania until the recent moratorium on intercountry adoption exported enormously of children. This was explained at the time by the fact that it was not possible to find families for all the children as well as by the large number of handicapped children. A list of available children had also been established as a result of the abandonment law. At the same time a list of foreigners interested in adoption was created. This created a situation of offer and demand, of a market of children that also led to corruption. This had also led to the fact that too many children had been declared adoptable.

Such a situation is not acceptable for a country that aims to become part of the European Union. EU Member States are held to respect children's rights and provide child protection. In the old EU Member States the rare intercountry adoptions that take place concern mainly cases of family reunification and are not considered as a child protection measure. The exceptional situation in Romania has now been remedied with the new legislation. ██████████ considered that changing the laws at this point would bring a risk.

As regards the Romanian choice to allow inter-country adoption to grandparents only, ██████████ stated that most EU Member states have no special provisions limiting intercountry adoptions of their residents. However, those with a history of intercountry adoptions do have severe limitations (Greece, Ireland, Spain and Finland). The limitation of intercountry adoptions to grandparents is unusual and was a choice of the Romanian government, which was not suggested by the Panel. It was explained as the decision of Romania to put an end to the problems with intercountry adoptions.

(2) What is the difference in interpretation between the EU and the US thinking?

██████████ referred to the video-conference with the US a year ago. It was clear that there is a lot of pressure from US adoption agencies and adoptive parents. There is a large demand for children, and the Americans are looking for a market. There are many children available for adoption in the US, but they are not white and mainly older or handicapped children.

The US are considering the previous problems with adoptions mainly as a case of corruption. However, ██████████ was of the opinion that one can never get to a situation where no corruption exists when there is such a demand for children.

(3) What is your opinion on the pending adoption cases, the so-called pipeline cases?

According to ██████████ the Romanian attitude *vis-à-vis* this issue is well known since approximately two years. The Romanian authorities have repetitively declared that the

6.000 children on the adoption list would not be available for intercountry adoption. The Romanian child protection departments are now re-assessing all these children's legal situation. [redacted] stated that it would be dangerous to let pipeline cases get settled. It risked leading to the effective reopening of intercountry adoptions and could be compared with opening the Pandora's box.

In any case, allowing special cases would require modifying the Romanian legislation on children's rights and adoption. [redacted] assisted in March 2005 to the High Level Group on Children's Rights in Bucharest, where the Prime Minister clearly indicated that he had no intention to change the legislation in the coming years. Focus must be on proper implementation now.

- (4) **The International Commission suggested to be established cannot deliver if Romania does not modify the current legislation on children's rights and adoption. In any case, all decisions on children should be taken by the competent Romanian courts. How theoretical is this discussion, bearing in mind that this discussion will certainly re-emerge later this year or early next year?**

[redacted] referred to the letter of [redacted] former Secretary of State, with statistics on foreign requests for adoptions. The figures indicate that certain firmness towards Romania is necessary. In 2003, there were over 600 requests, and in 2004, 146. This means that the demand is reducing, and therefore one may expect the pressure to decrease, too. Moreover, it is now necessary to maintain sufficient resources for child protection in Romania.

- (5) **What about administrative capacity to implement the Romanian legislation on children's rights and adoption?**

There has been a French Twinning Light project in the framework of which an action plan for the implementation of the new legislation was drafted. Everything has been carefully planned in Romania. It would indeed be good to monitor now the implementation.

- (6) **What should the Commission do in the case of a similar situation of intercountry adoptions in a candidate country, like for example the Ukraine?**

It is important to have legislation that respects the rights of the child. However, it is even more important that first the child protection structures are put in place and child protection services developed. The EU could provide funding for this, as it has been done in Romania.

In the end, [redacted] asked if the Commission could rely on the expertise of the Panel in the future, especially for a review of the Romanian situation in the near future. [redacted] agreed, although of course he would need to discuss this with the other members of the Panel.

[redacted] thanked [redacted] for his valuable explanations.

Encl. List of Members of Independent Panel
CV [REDACTED]

cc. [REDACTED]







ANNEX

Belgium	
Germany	
Netherlands	
Portugal	
United Kingdom	