

DRAFT LETTER TO [REDACTED] – Adonis100674-

Dear [REDACTED],

I hereby transmit to you the 4th report of the Independent Panel of EU Member State Experts concerning the draft legislation on children's rights and adoption.

The Panel takes note of the fundamental change made on the issue of intercountry adoption and considers this essentially in line with the recommendations made in their third report. These recommendations are based on the UN Convention on the Rights of the Child, the European Convention on Human Rights and on current practices in EU Member States. The approach that you are now proposing to pursue on the policy of intercountry adoptions with a very limited exception clearly conforms with these parameters.

As the panel points out, the draft law foresees considerable administrative structures for intercountry adoption, which appear to be in contradiction with a policy choice to strongly limit these. Also, the specific provisions that aim to limit intercountry adoptions are uncommon and, in the absence of explanations in the Explanatory Memoranda, give rise to questions.

The secondary legislation, as well as the development of the administrative capacity at all levels, is now crucial. The Panel will carefully study the draft secondary legislation your services sent to the Commission recently and will report their findings before end of June 2004.

I trust that you will consider the comments made in the Panel's report and congratulate you on your strong political will and your firmness in promoting children's rights.

([REDACTED]).

Main comments on draft adoption law :

Article 39, like the whole section of which is its part, has had a considerable change, in the sense that international adoption is only accepted if between grand parents and grand children. The third report, in its last comment, underlined the necessity to strictly limit international adoptions, which remains a definite and deliberate choice of a state. The new dispositions therefore take the remarks of the Independent Panel into account. In the absence of explications in the Explanatory Memorandum questions remain:

- Why point to the situation of grand parents? Are they not supposed to be naturally to become the legal guardians of their descendents? Is such an adoption, which takes out one degree of the natural order of generations, desirable? Should one not imagine such type of adoptions in the framework of other family ties (between other relatives)?
- This way reducing intercountry adoption to rare cases, is it necessary to maintain such a detailed regulation and such important administrative support as mentioned in this law?
- The reference in the new article 42 to the dispositions of international private law in case the adopted person resides abroad and the adopter in Romania ignores the hypothesis of the adopter residing also abroad. In this case, which law will be applicable?

Conclusion

The presented texts correspond, essentially, to the formal recommendations of the experts. The observations made concerning the secondary legislation to materialise the laws as well as the legal and administrative capacity to ensure the reform need to be maintained, meaning that any secondary legislation must be consistent with the principles of the primary legislation and UNCRC and the European Court on Human Rights.

In order to implement legislation fully and effectively and consistently with the UNCRC and the European Convention on Human Rights, the Romanian authorities will need to have put in place not only the primary legislation but the detailed secondary legislation and have in place the necessary capacity and experience in terms of the judiciary and those working in the child care and adoption fields. It is not possible to comment further without sight of the implementation strategy and the proposed timescale.