

# The Adoptee's Right to Know His/Her Biological Identity in Romanian Legislation

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**ABSTRACT:** The right of the adopted person to know his/her biological identity and to have access to all information concerning the adoption is enshrined in the revised European Convention, on the adoption of children and the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. Therefore, from the perspective of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the consistent case law of the ECHR, “the right to know one’s origins or the right to know one's biological identity has its basis in the broad interpretation of the concept of privacy.” In Romania, the right of adoptees to know their origins is enshrined in the Constitution and is regulated both in the Civil Code, adopted in 2011, and in special laws, which establish that adopted persons have the right to know their origins and their own past and, in this regard, are supported in their efforts to contact their natural parents or biological relatives. At the same time, these legal acts also regulate the way in which the adoptee is informed about the adoption and his/her family of origin, as well as the general legal regime of information on adoption.

**KEYWORDS:** adoption, adopted person, adopted person's right, biological identity, family of origin, confidentiality of information

## 1. Introduction

In Romania, the adoptee’s right to know his/her origins, whether we are talking about “blood kinship” or “civil kinship,” is enshrined in Article 26 of the Constitution (the Romanian Constitution adopted at the meeting of the Constituent Assembly on 21 November 1991) and is regulated by Article 71 on the “right to privacy” of the Civil Code (adopted by the Romanian Parliament by Law No. 287/2009 on the Civil Code) as well as Article 9(2) of Law No. 272/2004 on the protection and promotion of the rights of the child, republished in the Official Gazette of Romania, Part I, no. 159 of 5 March 2014, which provides for the right of the child “to know his/her parents.”

Under the heading “General legal regime for information on adoption,” Articles 75-83 of Law No. 273/2004 on adoption procedure (republished in Official Gazette of Romania, Part I no.739 of 23 September 2016), regulate how the adopted person must be informed about the adoption and about his/her family of origin, as well as the general legal regime of information on adoption. At the same time, in order to help the adopted person to exercise his/her right to know his/her origins and his/her own past, the National Authority for the Protection of Children's Rights and Adoption (A.N.P.D.C.A.) has developed and the Romanian Government has adopted the “Methodology for contacting the birth parents or biological relatives, access of the adopted person to information concerning his/her origins and his/her own past, and access of the birth parents or biological relatives of the adopted person to information concerning the adopted person” (Government Decision No 448/2017).

Finally, it should be noted that all legal provisions in Romanian law, relating to the right of the adoptee to know his/her own origins, are according to the international regulations on the matter stipulated in the *Charter of Fundamental Rights of the European Union* (European Union 2010), the *European Convention for the Protection of Human Rights and Fundamental Freedoms*

(Council of Europe 1950), *International Convention on the Rights of the Child* (United Nations 1989), *European Convention on the Adoption of Children* (Council of Europe 1967), *Revised European Convention on the Adoption of Children* (Council of Europe 2008), *Convention on Protection of Children and Cooperation in respect of Intercountry Adoption* (Hague Conference on Private International Law 1993), as well as with the more recent *Handbook of European Law on the Rights of the Child*, drawn up by the Council of Europe (2015).

## 2. Confidentiality of information on adoption

In view of the above, we can say that adoption, this “noble expression of generosity through which we demonstrate our solidarity,” as Professor Emese Florian (2022, 481) appreciates, is enshrined and even encouraged in Romanian national legislation. According to Article 474 of the Romanian Civil Code, “information on adoption is confidential.” Therefore, we consider that all data on the identification of the persons involved in the adoption operation, regardless of whether the adopted person is a minor, an adult or has full legal capacity, are confidential. The manner in which the adopted person is informed about the adoption and his/her family of origin, as well as the general legal regime for information on adoption, shall be determined by Law No. 273/2004 on adoption procedure, republished. In this regard, Article 1(f) of Law No. 273/2004, republished, establishes two categories of data covered by confidential information, namely “identification data of the adopter (prospective parents) or the adopting family, and data relating to the identity of the natural parents” (Bodoaşcă 2021, 610). By “*adopting family*,” according to Article 2(i) of Law No. 273/2004, republished, it meant “the husband and wife who have adopted or wish to adopt”, under the terms of this normative act.

An analysis of the provisions of Article 1(f) of Law No. 273/2004, republished, according to which the identification data of the adopter or the adopting family, as well as the data relating to the identity of the natural parents are confidential, shows that both the natural parents and the prospective parents do not meet in the adoption process, because “neither party has access to the identification data of the other party” (Motica 2023, 247). For this reason, as the literature shows, “the files on the case lists of the courts concerning adoption are marked in the Ecris system as “confidential,” the data of the parties being anonymized on the court portal” (Stoicescu 2021, 396). For the analysis of the way in which the activity of registration in the field of adoption is carried out and, implicitly, this principle of confidentiality, in articles 119-125 of Chapter X of the Methodological Norms for the application of Law No. 273/2004 - the adoption law (approved by Government Decision no. 579/20016 and amended by Government Decision no. 798/2021), a number of mentions are provided for in the “*National Register for Adoptions*,” which contains all the records of adoptable children, adopters/adoptive families with habitual residence in Romania and ensures the organization, coordination and methodological control of the activity of the directorates, under the terms of the adoption law. It should be noted that according to the provisions of Article 83 of Law No. 273/2004, republished, “relevant information concerning the adoption, the origin of the child, in particular those concerning the identity of the natural parents, as well as data on the medical history of the child and his/her family shall be kept for a minimum of 50 years from the date of the final adoption decision.”

This principle of confidentiality of information on adoption was enshrined in Article 20 of the European Convention on the Adoption of Children, adopted in Strasbourg on 24 April 1967, which provides for the confidentiality of data and information concerning the private life of both the child's natural parents and the prospective parents (Mihăilă 2010, 57-58; Lupaşcu and Crăciunescu 2021, 485).

### 3. The right of the adopted person to know his/her origins and past

As mentioned above, Articles 75-83 of Chapter V (*General legal regime of information on adoption*) of Law No. 273/2004 on adoption procedure, republished, regulates how the adoptee is informed about the adoption and his/her family of origin, as well as the general legal regime of information on adoption. According to Article 75 of Law No. 273/2004, republished, adopted persons have the *right to know their origins and their own past* and are supported in their efforts to contact their birth parents or biological relatives.

The right of the adoptee to have access to all information concerning the adoption is also enshrined in Article 22 of the Revised European Convention on the Adoption of Children and in Article 30(2) of the Convention. (2) of the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption which provides that States have an obligation to ensure “access by the child or his/her representative to such information, with appropriate guidance, to the extent permitted by the law of their state.”

From the perspective of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the consistent case law of the ECHR, “the right to know one's origins or the right to know one's biological identity has its basis in the broad interpretation of the concept of private life” [ECHR, *Călin and Others v. Romania*, Applications 25057/11, 34739/11, 20316/12, Judgment of 19 July 2016, para.92].

For the purposes of the above, according to the provisions of Article 76 (1) sentence I of Law No. 273/2004, republished, adopted persons have the right to request and obtain information on the place of birth, surnames and forenames prior to adoption, institutional background and personal history that does not reveal the identity of the birth parents/biological relatives. According to para. (2) of the same article, the provision of information is carried out by the A.N.P.D.C.A. At the same time, the A.N.P.D.C.A. shall assist the adopted person in searching for and contacting his/her birth parents or biological relatives, as well as in organizing and preparing the meeting with the birth parents or biological relatives (see also Art. 2 of the Methodology on contacting birth parents or biological relatives, access of the adopted person to information about his/her origins and background, and access of the birth parents or biological relatives of the adopted person to information about the adopted person).

The special law on adoption procedure, namely Law No 273/2004, republished, also provides for the obligation of the adopters (prospective parents) to gradually inform the child that he/she is adopted, starting from a very young age. In this endeavor, the adopters benefit from the support of specialists from the adoption and post-adoption department of the General Directorate for Social Assistance and Child Protection, or through authorized private bodies, individual offices, associated offices or professional civil societies of social assistance and/or psychology which have concluded agreements with the A.N.P.D.C.A. [art. 81 par. (1) of the Law No. 273/2004, republished]. If the adopters refuse to inform the child about the adoption, the case manager proposes to extend the post-adoption monitoring period beyond the minimum period of two years, according to Article 100(2). (2) of Law No. 273/2004, republished.

Article 81(2) of the Law also allows for the possibility of disclosing the identity of the natural parents of the adoptee before the latter acquires full legal capacity. Thus, only for medical reasons, the A.N.P.D.C.A. may, at the request of any of the adopters, the adoptee or the representative of a medical institution, accompanied by supporting medical documents, disclose the identity of the natural parents. Therefore, for medical reasons, A.N.P.D.C.A. may, upon request of any of the adopters, the adoptee or the representative of a medical institution, accompanied by supporting medical documents, disclose the identity of the natural parents (Hageanu 2023, 228; Florian 2007, 43).

After having acquired full capacity to act, the adopted person may apply to the court in whose territorial district his/her domicile is located or, if he/she is not domiciled in Romania, to the Bucharest Court, to authorize him/her to have access to the information in the possession of any public authorities concerning the identity of his/her natural parents/biological relatives. It should be pointed out that the action is exempt from stamp duty. Prior to the referral to the court, the adoptee is obliged to apply to A.N.P.D.C.A. for the issuance of a document attesting that the adoption has taken place and whether, prior to the adoption, the filiation to at least one of the biological parents has been established, as well as to attend at least one counseling session to determine whether the adoptee is psycho-emotionally balanced [art. 77 para. (1) and (2) of Law No. 273/2004, republished].

The application to the court for authorization to access information concerning the identity of the natural parents shall be submitted to the court together with a copy of the applicant's identity document, the document attesting to the adoption and the establishment of filiation with at least one of the natural parents, and the report attesting the carrying out of the counseling. In case the counseling activity is carried out by the authorized foreign authorities/bodies, the report shall be submitted to the court in original or certified copy, accompanied by an authorized translation into Romanian. The adjudication of applications for authorization of access to information concerning the identity of the natural parents shall be carried out by summons to the adoptee and the A.N.P.D.C.A. The court shall admit the application if, according to the evidence, it finds that the applicant is an adopted person who has had filiation established with at least one of the biological parents, has received counseling, and the court is satisfied that the adopted person is psychologically and emotionally balanced [art. 79 par. (1) - (4) of the Law No. 273/2004, republished].

Adopted persons who have information on the identity of their birth parents can apply directly to the A.N.P.D.C.A. to contact their birth parents or biological relatives (Avram 2022, 364). In their turn, according to the adoption law, republished, “the natural parents or biological relatives of adopted persons may obtain information concerning the adopted person regarding the confirmation of the adoption, the year of the adoption, the domestic or international nature of the adoption, and whether the adopted person is registered with the authorities as living or deceased. Other information concerning the adoptee may be provided to the biological parents or biological relatives of the adoptee only with the express consent of the adoptee who has acquired full legal capacity or, if the adoptee is a minor, with the consent of the adopting person or family. The agreement shall be requested by A.N.P.D.C.A., as the case may be, through the general directorate or the central authority of the receiving state, respectively the accredited foreign organization involved in the adoption” [art. 80 para. (1), para. (2) of Law No. 273/2004, republished]. On the basis of Article 80 para. (3) of Law No. 273/2004, republished, “the provision of such information shall be carried out by A.N.P.D.C.A.”

#### **4. Conclusions**

At the end of our study on the right of the adoptee to know his/her own origins, we can say that in Romania, although a series of normative acts with different legal force have been adopted and often repeat the same content, they correspond to the times in which we live and are according to the international conventions on the subject that have been ratified by our country. At the same time, the regulations adopted in the Romanian legislation are also compatible with the constant jurisprudence of the European Court of Human Rights.

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