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## **Child Adoption Infringements within the European Union**

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**Abstract:** The reason for choosing the topic of infringements in the field of child adoption in the European Union stems from our conviction that its legal implications are far from being exhausted and also from the hope that we will be able to contribute to the understanding of this complex legal institution. We have attempted to explain both the elements of legislative continuity and those of discontinuity in the process of adoption regulation. The research methodology also involved deepening community and domestic legislation on the process of adoption. The general conclusion that emerges from the research we have undertaken is that both European Union legislation, that of the Council of Europe and domestic legislation on adoption, reflect the importance of family relationships for the child.

**Keywords:** adoption; the European Union; the European Union Conventions; criminal sanctions; crimes

### **Introduction**

In the EU law the most important legal instrument is the UN Convention on the Rights of the Child as the main legal instrument for ensuring the protection of children at the state level. According to art. 19, the states belonging to this organism have an obligation to take legislative, administrative, social and educational measures to protect children against all forms of violence.

Under the law, the ECHR has analyzed the most serious forms of violence (eg sexual abuse, rape, corporal punishment) against children in relation to the European Convention on Human Rights, namely Articles 2 and 3, identifying very clear obligations to states in situations in which children are placed in institutions under its subordination.

The main legal instrument in the European Union law, adopted under Articles 82 and 83 of the TFEU, is Directive 2011/93 / EU on combating sexual child abuse, sexual exploitation of children and child pornography.

In the case of serious forms of ill-treatment of minors, the obligation of states includes the obligation to adopt effective criminal law provisions, in order to be supported by the law enforcement apparatus.

Adopted in the Council of Europe, the Lanzarote Convention regulates the right of children to be protected from sexual abuse. The Lanzarote Convention obliges states to criminalize various forms of

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sexual abuse and sexual exploitation against children and also requires states to take legislative measures to prevent sexual abuse of children, by training specialized personnel, informing children about the risks of abuse and by providing specialized assistance to people at risk of committing child abuse offenses.

Corporal punishment is generally defined as any form of physical punishment designed to cause pain or discomfort. Under international law, corporal punishment is indirectly considered a form of violence against children, falling under Article 19, Article 28 (2) and Article 37 of the CRC.

Child sexual abuse takes many forms, such as harassment, touching, incest or rape. It can take place in different environments, including homes, schools, placement institutions, etc.

Directive 2011/93 / EU seeks to harmonize the minimum criminal sanctions granted by Member States for various offenses of child sexual abuse.

The Directive provides for heavy penalties when acts are committed by people in a position of trust over particularly vulnerable children and / or through the use of coercion. It also states that Member States must ensure that suspected child abuse is prosecuted and that persons convicted of sexual abuse offenses are prevented from engaging in professional activities involving direct or regular contact with children.

Thus, Directive 2011/93 / EU and Framework Decision 2009/315 / JHA279 on the exchange of information belonging to criminal records between member states cover a gap in the protection system, giving the possibility for convicted individuals to work in other member states within institutions working with kids.

Regarding the Romanian legal system - on January 1, 2005, Law no. 273/2004 on the status of adoption, regulates the situations and procedures of national and international adoption.

As a consequence of the realities within the Romanian society as well as as a component of child rights protection, the legislator considered it necessary to sanction the parent or the legal representative to prison sentences for:

- a) the act of the parent or legal representative of a child to claim or receive money or other material benefits for himself or for another for the purpose of adopting the child - for which a penalty of imprisonment from 2 to 7 years and prohibition of certain rights is applied;
- b) the act of the person who without right mediates or facilitates the adoption of a child in order to obtain material or other benefits - for which a penalty of imprisonment from 2 to 7 years is applied and the prohibition of certain rights.

Considering the realities of the Romanian society, the New Criminal Code welcomes and answers the questions regarding the right to privacy, as well as the exigencies of the European Convention on Human Rights.

In most of this fraudulent circumstances the adopter can be a foreign citizen, and this is a situation that requires extreme attention in solving these cases in order to avoid affecting the international relations. The increased interest consists in the fact that no Romanian child crosses the border as a result of dirty interests.

The generic legal object of the infringements is represented by the social relations that are formed and developed in the family background of social coexistence.

The particular legal object of the infringements is represented by social relations. The crimes have no material object, the establishment and proof of the state of danger and the causal relationship is not necessary to be proved by the judicial bodies.

The subjective aspect of the crimes is represented by guilt in the form of direct intention, the purpose being the obtaining by the perpetrator of some material benefits for another or for himself.

Under these circumstances, the state as a passive subject is the subject of crimes because it is the holder of social values protected by incrimination and the secondary passive subject is the child whose adoption is under discussion.

The main active subject is the legal guardian, the entitled guardian or the parent.

Participation is possible only in the form of co-authorship or instigation; without complicity.

As we have shown above, the sanction of crimes is imprisonment from 2 to 7 years with the prohibition of certain rights.

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