

# **T**he child's right to identity in Romania. Citizenship

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## **Abstract**

The Convention on the rights of the child to which Romania acceded by the adoption of law No. 18/1990 constitutes a complex legal document that brings together, in a unitary and indivisible form, the rights of civil, political, economic, social and cultural-educational of the child. According to the article 1 of the Convention: „a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier“. The main rights stipulated in the Convention that children which are citizens of the signatory States benefits from are: the right to life, the right to protection against harmful interference, the right to be protected from abuse and exploitation, as well as the right to participate fully in the life of the family, cultural and social life.

**Key words:** child, citizenship, rights and obligations, the right to identity.

The Convention on the rights of the child was ratified and the Romanian State by adopting law No. 18/1990, being incorporated into the regulatory system already for more than two decades. In literature it has expressed the opinion that it is not necessary to issue an act specifically for the introduction of the Treaty in domestic law, this function being fulfilled by acts of ratification or approval or by signing it. (Popescu & Năstase, 1994: 236).

Along with the expression of agreement to participate in a Convention and its publication in the Official Gazette, it has been

created a positive obligation for State institutions and courts to apply its provisions and thus to ensure its compliance. According to the provisions of the Constitutional Law (art. 20), when we are in the presence of a conflict between provisions of the Convention and domestic law, international regulations have precedence in the matter of human rights, which will be implemented on a priority basis, removing from the scope of the internal provisions contrary to or compensating a legislative vacuum.

The Convention on the rights of the child is structured in 54 articles that are meant to promote the most important rights of the child such as the right to life, the right to protection against harmful interference, the right to be protected from abuse and exploitation, as well as the right to participate fully in family life, cultural and social life, but in the following we will focus upon the right to identity and nationality.

The four fundamental principles on which the Convention is built are non-discrimination, devotion towards the best interest of the child, right to life, survival and development and respect for the views of the child.

Article 1 of the Convention provides a key indicator definition, i.e. the child, through this notion intending „every human being below the age of 18, except in cases where the applicable law of the child establishes the age of majority under the limit“.

### **The Right to Identity**

The right to identity is a primordial right which trains a multitude of legal institutions intended to regularize the status of subject of law of the person and to individuate the person in society, by name, nationality, domicile, marital status.

The right to receive regulatory identity benefits from express regulation in articles 7 and 8 of the Convention on the rights of the child to which Romania adhered.

Article 7 paragraph 1 stipulates in this regard: „ The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents.“ (Convention on the rights of the child, 1989)

All these rights of the child generate the States' obligation to be able to engage to respect the child's right to keep its „identity, including nationality, name and family relations as recognized by law

without unlawful interference." (Convention on the rights of the child, 1989)

The assurance the right to identity is respected in the Romanian legal system is accomplished through public authorities, the principles of law and legal norms governed primarily in field of constitutional, civil, family law, as well as other normative acts, the basis of all being national, nationality, legal capacity, the right to a name and place of residence, marital status.

### **The Citizenship**

It can be easily seen, researching legislation from Romania, that citizenship is one of the essential elements without which an individual cannot acquire the full rights and assume obligations covered by the both fundamental law, the Constitution, as well as primary or secondary legislation. Through this institution, the child acquires effectively the totality of civil, political, social, cultural and economic rights.

Citizenship is defined in article 1 of law No. 21/1991 of Romanian citizenship, amended and completed by law No. 192/1999 „as the bound and membership of a person to the Romanian State. Romanian citizens are equal before the law; only they will be admitted in public civil and military functions "(Law No. 190/1999).

„Citizenship is a complex and multifaceted concept. It contains elements of legal, cultural, political and social rights and imposes obligations on citizens, and a sense of identity and social connections" (Ilchilov, 1998: 20).

Methods of acquisition and loss of citizenship are expressly and specifically provided by law. In accordance with article 4 of law No. 192/1999 amending and completing the law on the citizenship of Roman, Romanian citizenship is achieved by: a) birthday; b) adoption; c) granting demand.

a. Acquisition of citizenship by birth. Any child born on the territory of Romania or abroad acquires Romanian citizenship if both parents or only one of them is a Romanian citizen. The Universal Declaration of human rights provides in article 15 that „everyone has the right to a nationality", while article 3 of the international Covenant on Civil and political rights provides that, „every child has the right to acquire a nationality".

b. Acquisition of nationality through adoption. Law No. 192/1999 stipulates in article 6 paragraph 1, that „Romanian citizenship is

achieved by the child who is stateless or a foreign citizen by adoption, if the adopters are Romanian citizens and the adoptee has not reached the age of 18”.

In accordance with the legal provisions in case of nullity or cancellation of the adoption, the child who has not reached 18 years of age shall be deemed to have never been a Romanian citizen if it resides abroad or if he leaves the country to reside abroad. Also, in the case of adoption, the child that has not reached 18 years of age loses Romanian citizenship from the date of dispatch of the adoption, if it resides abroad, or if he leaves the country to reside abroad.

c. Acquiring citizenship upon request. Article 9 of law No. 21/1991 modified through law No. 190/1999, „Romanian citizenship may be granted, on request, to the person who is stateless or a foreign citizen if a series of strictly stipulated conditions are fulfilled”. In the case of minor children, Romanian citizenship acquisition is possible due to the change of citizenship of parents. Article 10 paragraph 1 of the law No. 192/1999 stipulates the following: „Child born of stateless or foreign citizens parents and who has not reached 18 years of age obtains Romanian citizenship along with his parents”.

Romanian citizenship generates a number of specific rights and obligations stipulated in the Basic Law of the country, as well as in numerous laws, especially the law on citizenship. Proof of citizenship of the child until the age of 14 years shall be made by birth certificate, accompanied by the identity card or passport of any of the parents. Also, proof of citizenship of the child found is made until the age of 14 years with birth certificate. Mentions regarding the granting or loss of citizenship are made, according to the Romanian dispositions article 50 of law No. 115/1996 on acts of civil status, on the act of birth and, if necessary, of the marriage, based on the communication submitted by the Ministry of internal affairs.

Law No. 21/1991 amended and completed by law No. 192/1999, lays down in article 24 the following ways of loss of Romanian citizenship: a) the withdrawal of citizenship; b) waiving citizenship approval; c) other cases stipulated by law.

## **Conclusions**

In conclusion, the numerous obligations assumed by Romania through the signing and ratification of some international conventions in the field of human rights have, in the last period, determined a special attention to the situation of the children.

All these efforts, both at European and national level, are channeled to ensure that the child's superior interest, which has become a principle in any procedure concerning it, is respected.

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