

Law 149 of 28 March 2001

"Amendments to Law 184 of 4 May 1983 on «Provisions regarding the adoption and foster placement of children», and to Book I, Title VIII, of the Civil Code"

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Title I

THE CHILD'S RIGHT
TO HIS OR HER OWN FAMILY

Art. 1.

1. The title of Law 184 of 4 May 1983, hereinafter called "Law 184" shall be replaced by: "The child's right to a family".

2. The heading of Title I of Law 184 shall be replaced by: "General principles".

3. Article 1 of Law 184 shall be replaced by:

"Article 1. – 1. The child has the right to be raised and educated in his or her own family.

2. Poverty of the parents or of the parent with custody should not be a barrier to the child's exercise of the right to his or her own family. To this end, support and assistance actions in the favour of the family shall be provided for.

3. The State, the regions and the local authorities shall, within their own powers, support by appropriate actions, in compliance with their autonomy and within the limit of available financial resources, families at risk, with an eye to preventing abandonment and enabling the child to be brought up within his or her own family. They shall also promote public opinion-forming initiatives on fostering and adoption and on support to family-type communities, and organize professional training and refresher courses for social workers as well as training and preparation meetings for families and persons intending to foster or adopt children. The same authorities may conclude agreements with non-profit institutions or associations operating in the area of care for children and families in order to carry out the activities mentioned in this paragraph.

4. Where the family is unable to provide for the upbringing and education of the child, the institutions provided for by this law shall be employed.

5. The child's right to live, grow up and be educated within a family shall be assured without distinction of sex, ethnicity, age, language or religion and in respect for the child's cultural identity, and in any case without conflicting with fundamental principles of the legal system.»

TITLE II

FOSTER PLACEMENT OF CHILDREN

Art. 2.

1. The following shall be set before Article 2 of Law 184: «Title I-a. Foster placement of children».

2. Article 2 of Law 184 shall be replaced by:

«Art. 2.- *I.* A child temporarily deprived of an appropriate family environment, despite the support and assistance activities provided for under Article 1, shall be placed in a family, preferably one with minor children, or with a single person able to ensure his or her maintenance, upbringing, education and needful emotional relationships.

2. Where fostering pursuant to paragraph 1 is not possible, the child may be placed in a family-type community, or failing that with a public or private welfare institution, preferably located as close as possible to where the family of origin resides. For children under six, such placement may only be with a family-type community.

3. In cases of necessity and urgency, placement may be decided even without applying the actions under Article 1 (2) and (3).

4. Placement in institutions shall by December 2006 be replaced by placement for fostering with a family, or where that is not possible, placement in a family-type community with an organization and interpersonal relationships similar to those of a family.

5. The Regions shall, within their own powers and on the basis of criteria laid down by the Standing Conference on relations between the State, the regions and the autonomous provinces of Trento and Bolzano, define minimum standards of service and welfare to be provided by the family-type communities and the institutions, and periodically monitor compliance with the same».

Art. 3.

1. Article 3 of Law 184 shall be replaced by:

«Art. 3. – *I.* The legal representatives of the family-type communities or public or private welfare institutions shall exercise custodial powers over the child placed with them, in accordance with Chapter I of Title X of Book One of the Italian Civil Code, until a guardian is appointed and in all cases where the exercise of parental authority or guardianship is impeded.

2. In the cases provided for under paragraph 1 the legal representatives shall, within thirty days of receiving the child, propose the appointment of a guardian. They themselves may not be given this charge, nor may those working for the family-type communities or public or private welfare institutions, even if unremunerated.

3. Where the parents resume exercise of parental authority, the family-type community or the public or private welfare institution shall ask the magistrate responsible for guardianship matters (giudice tutelare – hereinafter “magistrate”), if necessary, to set limits or conditions on the exercise of such rights».

Art. 4.

1. Article 4 of Law 184 shall be replaced by:

«Art. 4. – *I.* Foster placement shall be arranged by the local social service, subject to the consent of the parents or of the parent exercising parental authority, or of the guardian. If the child is twelve years old, or younger having regard to his or her capacity of discernment, he or she shall be consulted. The magistrate in the child's place of abode shall make the measure executive by means of a decree.

2. In the absence of consent by the parents exercising parental authority or by the guardian, the juvenile court shall decide. Article 330 ff. of the Civil Code shall apply.

3. The foster-care measure shall explicitly state the reasons it has been taken, together with the timing and conditions for the exercise of the rights assigned to the foster parent and the details of how the parents and other family members can maintain relations with the child. It shall also indicate the local social service with responsibility for the welfare programme, as well as for supervisory duties during the fostering, which shall include providing the magistrate or the juvenile court with updated information throughout the fostering, according to whether the measure was issued in accordance with paragraph 1 or 2. The local social service allotted responsibility for the welfare programme and for supervisory duties during the fostering shall without delaying report to the magistrate or the juvenile court for the place of the child's abode, according to whether the measure was issued under paragraph 1 or 2, any occurrence of particular relevance, and shall be obliged to submit a six-monthly report on the course of the welfare programme, its likely further duration and developments with the difficulties of the family of origin.

4. If the measure is under paragraph 3, there shall also be an indication of the likely duration of the fostering, seen in the light of all the activities aimed at rehabilitating the family of origin. This period may not exceed twenty-four months, extendible by the juvenile court should suspension of fostering be prejudicial to the child.

5. Family placement for fostering shall expire by a measure by the same authority that has provided for it, having assessed the child's interest, once the situation of temporary difficulty of the family of origin has ended, or if continuing the placement would be prejudicial to the child.

6. The magistrate shall after the set period has expired or the circumstances referred to in paragraph 5 have arisen and having consulted the local social service concerned and the child if over twelve, or less having regard to its capacity for discernment, if necessary, ask the competent juvenile court to take further measures in the child's best interests.

7. The provisions of this article shall, where compatible, also apply to cases of children placed in a family-type community or public or private welfare institution».

Art. 5.

1. Article 5 of Law 184 shall be replaced by:

«Art. 5. – *I.* The foster parent (affidatario) shall take the child into his or her own home and provide for his or her maintenance, upbringing, and education, taking into account the wishes of the parents – as long as no decision has been issued in their regard under Articles 330 and 333 of the Civil Code – or of the guardian, and complying with any conditions laid down by the foster-care

authorities. Where compatible, the provisions of Article 316 of the Civil Code shall apply. In every case the foster parent shall exercise the powers associated with parental authority in connection with the ordinary relationships with the educational institution and the health authorities. The foster parent shall be heard in civil proceedings in matters of parental authority, fostering and adoption in relation to the fostered child.

2. The social service shall within its powers, as provided by the judge or else according to the needs of the case, carry out educational or psychological support work and promote relationships with the family of origin and the child's return to it in the most appropriate fashion, taking advantage in particular of the professional skills of other institutions in the area and of the activities of any family associations the foster parents may indicate.

3. The provisions of paragraphs 1 and 2 shall where compatible apply in cases of children living in a family-type community or public or private welfare institution.

4. The State, the regions and the local authorities shall within their own powers and within the limits of the finances available under their respective budgets intervene with support and economic assistance measures in favour of the foster family».

TITLE III

ADOPTION

Chapter I

GENERAL PROVISIONS

Art. 6.

1. Article 6 of Law 184 shall be replaced by:

«Art. 6. – 1. Adoption shall be permissible for spouses who have been married for at least three years. There must not be, nor have existed in the last three years, any form of separation, including *de facto* separation, between the spouses.

2. The spouses must be effectively suited and able to raise, educate and maintain the children that they wish to adopt.

3. The prospective adoptive parents must be at least eighteen and no more than forty-five years older than the child.

4. The requirement for stability of the relationship under paragraph 1 may be considered to be met where the spouses have stably and continuously lived together before marriage for a period of three years, should the juvenile court establish the continuity and stability of their cohabitation having regard to all the circumstances of the specific case.

5. The limits under paragraph 3 may be departed from should the juvenile court establish that failure to adopt would entail serious harm, not otherwise avoidable, for the child.

6. Adoption shall not be debarred where the maximum age limit for the prospective adoptive parents is exceeded by one only of them by not more than ten years, or where they are parents of

natural or adoptive children at least one of which is a minor, or where the adoption concerns a brother or sister of a minor already adopted by them.

7. The same couple shall be allowed more than one adoption, which may be by subsequent acts. The fact of having already adopted a sibling of the adoptee, or of having applied to adopt several siblings, or declared willingness to adopt children in the circumstances indicated in Article 3 (1) of Law 104 of 5 February 1992 on welfare, social integration and rights of handicapped persons shall constitute preferential criteria for the purposes of adoption.

8. In cases of adoption of children over twelve or with handicaps established within the meaning of Article 4 of Law 104 of 5 February 1992, the State, the regions and the local authorities may intervene, within their own powers and within the limits of the finances available on their respective budgets, with specific measures of an economic nature, and where appropriate also through measures to support education and social insertion, until the adoptees reach the age of eighteen».

Art. 7.

1. Article 7 of Law 184 shall be replaced by:

«Art. 7. – 1. Adoption shall be allowed for minors declared to be adoptable pursuant to the following articles.

2. Minors who have reached the age of fourteen may not be adopted unless they personally express their consent. This consent must also be expressed if the minor reaches the age of fourteen during the proceedings. Such consent may in any case be revoked at any time until the adoption is definitive.

3. If the child has reached the age of twelve, he or she shall be heard personally; if younger he or she shall be heard having regard to his or her capacity for discernment».

Chapter II

DECLARATION OF ADOPTABILITY

Art. 8.

1. Article 8 of Law 184 shall be replaced by:

«Art. 8. – 1. Children ascertained to be in a state of abandonment because they lack the moral and material care parents or relatives are bound to provide shall, as long as the lack of care is not due to temporary *force majeure*, be declared *ex officio* to be adoptable by the juvenile court of the district where they reside.

2. The state of abandonment shall be also be deemed to exist – where the conditions referred to in the preceding paragraph obtain – where the children are living in a public or private welfare institution or family-type community or in foster placement.

3. *Force majeure* shall not be deemed to exist where the persons mentioned in paragraph 1 refuse the support measures offered by the local social services and this refusal is found unjustified by the judge.

4. The adoptability proceedings shall from the outset involve the legal advisers of the juvenile and of the parents or other relatives mentioned in Article 10 (2)».

Art. 9.

1. Article 9 of Law 184 shall be replaced by:

«Art. 9. – 1. Anyone may report to the public authorities situations of abandonment of minors. Public officials, officers of a public service and those providing essential public services shall as soon as possible report to the prosecution service of the juvenile court of the child's place of abode on the conditions of any child in the state of abandonment they may take cognisance of in the course of their duties.

2. Every six months the public or private care institutions and family-type communities shall transmit to the prosecution service of the juvenile court of the place where they are established the list of all the children in their care, specifying for each child their parents' place of residence, their relations with their family and their psychological and physical conditions. The public prosecutor of the juvenile court shall, having acquired the necessary information, apply to the court for it to declare the adoptability of those among the children reported on, or placed with family-type communities or public or private care institutions or foster families, who prove to be in states of abandonment, specifying the reasons.

3. The public prosecutor of the juvenile court shall forward the documents to the same court accompanied by an informative report, every six months, and carry out or provide for inspections of the public or private care institutions referred to in paragraph 2, and may carry out special inspections at any time.

4. Anyone who is not a relative within the fourth degree and takes a child to live stably in his or her own home shall where this situation has lasted more than six months report it to the public prosecutor of the juvenile court. Failure to report may entail ineligibility to be allowed children for fostering or adoption or to assume the status of guardian.

5. Within the same period as in paragraph 4, a similar report shall be made by a parent who assigns his or her minor child stably to someone not a relative within the fourth degree for a period of six months or more. Failure to report may entail withdrawal of parental authority for the child pursuant to Article 330 of the Civil Code and initiation of adoptability proceedings».

Art. 10.

1. Article 10 of Law 184 shall be replaced by:

«Art. 10. – 1. The president of the juvenile court or a judge delegated by him or her, shall on receipt of the application mentioned in Article 9 (2) provide for the immediate opening of proceedings regarding the child's state of abandonment, where necessary taking, through the local social services or law enforcement authorities, urgent steps to secure more detailed information on the legal and *de facto* conditions of the child, and the environment where he or she has been living, in order to ascertain whether the state of abandonment exists.

2. On opening of these proceedings the parents, or failing them, relatives within the fourth degree who have meaningful relations with the child, shall be informed, along with an invitation from the president of the juvenile court for them to appoint a defender, and the information that counsel will be appointed *ex officio* should they fail to do so. These persons, assisted by their counsel, may be present at all investigations provided for by the court, may lodge applications, including for enquiries, and see and take copies of documents in the files, on authorization by the judge.

3. The court may at any moment, until preadoptive placement, take any appropriate temporary measure in the interest of the child, including temporary placement with a family or family-type community, suspension of the parents' rights over their child or of the exercise of the functions of a guardian, and appointment of a temporary guardian.

4. In cases of urgent need, the measures referred to in paragraph 3 may be taken by the president of the juvenile court or a judge delegated by him or her.

5. The court shall within 30 days confirm, modify or revoke urgent measures taken pursuant to paragraph 4. The court shall, in chambers, including the public prosecutor, and having heard all interested parties and taken all necessary information, make its decision. If twelve or over, or younger having regard to his or her capacity for discernment, the child shall also be heard. The public prosecutor and the parents shall be informed of measures adopted. The provisions of Article 330 ff .of the Civil Code shall apply».

Art. 11.

1. In Article 11 of Law 184, first paragraph, the words: «who have meaningful relationships with the child» shall be inserted after «relatives within the fourth degree of kin».

Art. 12.

1. In Article 12 of Law 184, fifth paragraph, the words: «in accordance with the second paragraph of Article 10» shall be replaced by: «in accordance with paragraph 3 of Article 10»

Art. 13.

1. Article 14 of Law 184 shall be replaced by:

«Art. 14. – 1. The juvenile court may, before issuing the declaration of adoptability, order suspension of the proceedings where special circumstances emerging from the enquiries suggest that suspension may be in the child's best interest. In such cases the suspension shall be ordered by motivated decree, for a period of not more than one year.

2. Suspension shall be communicated to the competent local social services so that they may adopt the appropriate measures».

Art. 14.

1. Article 15 of Law 184 shall be replaced by:

«Art. 15. – 1. If at the end of the enquiries and checks provided for by the previous articles the state of abandonment referred to in Article 8 proves to exist, the juvenile court shall declare the child adoptable where:

a) the parents and relatives summoned pursuant to Articles 12 and 13 failed to appear, without any justified reason;

b) the hearing of the persons referred to in a) has shown that failure to provide moral and material care and unwillingness to remedy this is persisting;

c) the measures prescribed pursuant to Article 12 have not been complied with, and the parents are responsible.

2. The declaration of the child's state of adoptability shall be ordered by the juvenile court in chambers by judgment, after hearing the public prosecutor and a representative of the public or private care institution or family-type community where the child is replaced or the person with who he or she is fostered. The guardian, where there is one, shall also be heard as shall a child of twelve or over, or younger having regard to his or her capacity for discernment.

3. The judgment shall be notified in full to the public prosecutor, the parents, the relatives indicated in the first paragraph of Article 12 and the guardian or the special guardian if any, accompanied by notification to those persons of their right to file an appeal in the form and within the time limits set out in Article 17».

Art. 15.

1. Article 16 of Law 184 shall be replaced by:

«Art. 16. – 1. The juvenile court shall, where the procedure provided for in the foregoing articles is over and it deems that the requirements for deciding the state of adoptability are not met, declare that there are no grounds to proceed.

2. The judgment shall be notified in full to the public prosecutor, the parents, the relatives indicated in the first paragraph of Article 12 and the guardian or the special guardian if any. The juvenile court shall take the measures appropriate to the child's interest.

3. Articles 330 ff. of the Civil Code shall apply».

Art. 16.

1. Article 17 of Law 184 shall be replaced by:

«Art. 17. – 1. Appeal may be lodged against the judgment by the public prosecutor or the other parties with the Court of Appeal, juvenile section, within thirty days of notification. The court shall, having heard the parties and the public prosecutor and made all other appropriate enquiries, decide by judgment in chambers and arrange for the judgment to be deposited with the clerk of court within fifteen days of being handed down. The judgment shall be conveyed to the public prosecutor and the other parties.

2. The Appeal Court judgment may be appealed against on points of law within thirty days of notification, on the grounds referred to in sub-paragraphs 3, 4 and 5 of the first paragraph of Article 360 of the Code of Civil Procedure. The second paragraph of that article shall also apply.

3. The hearing on the appeal and on the appeal on points of law shall be scheduled within sixty days of their being lodged».

Art. 17.

1. Article 18 of Law 184 shall be replaced by:

«Art. 18. – 1. The definitive declaration of the state of adoptability shall be recorded by the clerk of the juvenile court in the special register kept in the clerk's office. Registration must take place within ten days following notification that the adoptability judgment has become definitive. To this effect, the clerk of the judge to which the case has been appealed shall immediately appropriately notify the clerk of the juvenile court».

Art. 18.

1. Article 21 of Law 184 shall be replaced by:

«Art. 21. – 1. The state of adoptability shall also cease by revocation, in the child's interest, where the conditions set out in Article 8 (1) cease to exist, subsequent to the decree referred to in Article 15 (2).

2. The revocation shall be pronounced by the juvenile court *ex officio* or at the request of the public prosecutor, the parents or the guardian.

3. The court shall decide in chambers, having heard the public prosecutor.

4. Where preadoptive placement is under way, the state of adoptability may not be revoked».

Chapter III

PREADOPTIVE PLACEMENT

Art. 19.

1. Article 22 of Law 184 shall be replaced by:

«Art. 22. – 1. Those wishing to adopt shall apply to a juvenile court, specifying whether they are willing to adopt several siblings, or children meeting the conditions referred to in Article 3 (1) of Law 104 of 5 February 1992 on welfare, social integration and rights of handicapped persons. Several applications, including subsequent applications, may be presented, to more than one juvenile court, as long as in every case all courts previously approached are notified. Courts to whom the application has been submitted may ask the other courts for a copy of the personal and preliminary documentation concerning the spouses; the documents may also be sent *ex officio*. The application shall expire three years after presentation, and may be renewed.

2. Those intending to adopt shall at any time, if requested, be supplied with information as to the state of the proceedings.

3. The juvenile court shall, having first ensured that the requirements referred to in Article 6 have been met, order the appropriate enquiries, referred to in paragraph 4, to be carried out, with the assistance of the social worker services of the individual or associated local authorities, and taking advantage of the professional skills of the local health and hospital bodies, giving precedence in their enquiries to applications for adoption of children over five or with handicaps within the meaning of Article 4 of Law 104 of 5 February 1992.

4. The enquiries, which shall be timely commenced and completed within one hundred and twenty days, shall in particular concern the applicants' capacity to educate the child, personal and economic situation, health and family environment and the reasons why they wish to adopt the child. By motivated decision, the term for completing the enquiries may be extended once, for not more than one hundred and twenty days.

5. The juvenile court shall on the basis of the enquiries made select among couples applying the one best able to meet the child's needs.

6. The juvenile court shall, in chambers and having heard the public prosecutor, the applicants' parents or other forebears if alive, and the child if twelve or over, or younger having regard to its capacity for discernment, and omitting any other procedural formalities, without delay order preadoptive fostering, providing for the details thereof by decree. Children aged fourteen or over shall give express consent to placement with the chosen couple.

7. The juvenile court shall in every case inform the applicants of any relevant facts concerning the child that have emerged during the enquiries. Placement of one only of several siblings all in a state of adoptability may not be ordered save where serious reasons exist. The decree shall be communicated to the public prosecutor, the applicants and the guardian. The preadoptive placement measure shall immediately, and at any rate within ten days, be recorded by the clerk on the entry referred to in Article 18.

8. The juvenile court shall monitor the satisfactory progress of the preadoptive placement, making use also of the magistrate and the local social and advisory services. Where difficulties are ascertained, it shall, if necessary separately, convoke the foster parents and the child, in the presence where appropriate of a psychologist, in order to assess the causes underlying the difficulties. Where necessary, it shall order actions of psychological and social support».

Art. 20.

1. Article 23 of Law 184 shall be replaced by:

«Art. 23. – 1. Preadoptive placement shall be revoked by the juvenile court *ex officio* or on application by the public prosecutor or the guardian or those carrying out the supervisory role referred to in Article 22 (8) where cohabitation difficulties regarded as insuperable are ascertained. The revocation measure shall be adopted by the juvenile court in chambers, by motivated decree. In addition to the public prosecutor and the party applying for revocation, the child if twelve or over, or younger having regard to its capacity for discernment, shall be heard, as shall the foster parents, the guardian and those who may have been involved in monitoring or support activities.

2. The decree shall be notified to the public prosecutor, the person applying for revocation, the foster parents and the guardian. The clerk of court shall record the decree ordering revocation of preadoptive fostering within ten days, on the entry referred to in Article 18.

3. In the event of revocation the juvenile court shall take appropriate provisional measures in the child's interest in accordance with Article 10 (3). Article 330 ff. of the Civil Code shall apply».

Chapter IV

ADOPTION DECLARION

Art. 21.

1. Article 25 of Law 184 shall be replaced by:

«Art. 25. – 1. The juvenile court that pronounced the state of adoptability shall, one year from the placement and having heard the prospective adoptive spouses, the child if twelve or over, or younger having regard to its capacity for discernment, the public prosecutor, the guardian, and those involved in monitoring or support activities, ascertain that all the conditions provided for in this chapter are present, and without other procedural formalities rule on the adoption by judgment in chambers, deciding whether or not to proceed therewith. If the child is fourteen or over he or she must indicate express consent to being adopted by the chosen couple.

2. Where the adoption request has been submitted by spouses with legitimate or legitimised descendants, these shall, if over fourteen, be heard.

3. In the child's best interest, the period referred to in paragraph 1 may be extended by one year, *ex officio* or at the request of the fostering spouses, by motivated order.

4. Should one of the spouses die or become incapacitated during preadoptive placement, the adoption may, in the child's best interest, be authorized at the request of the other spouse on behalf of both, with effect, for the dead spouse, from the date of death.

5. If, during the preadoptive placement, the spouses separate, adoption may be authorized for one or both spouses, in the sole interest of the child, should one or both spouses so request.

6. The decree deciding on the adoption shall be communicated to the public prosecutor, the prospective adoptive spouses and the guardian.

7. In the case of a negative decision, the preadoptive placement shall cease and the juvenile court shall take the appropriate temporary measures in the interest of the child in accordance with Article 10 (3). Articles 330 ff. of the Civil Code shall apply».

Art. 22.

1. Article 26 of Law 184 shall be replaced by:

«Art. 26. – 1. The judgment declaring whether or not to proceed with the adoption may be appealed within thirty days of notification to the juvenile section of the court of Appeal, by the public prosecutor, the prospective adoptive parents or the child's guardian. The Appeal Court shall, having heard the parties and made any enquiries seen fit, hand down judgment. The judgment shall be notified to the parties in full *ex officio*.

2. An appeal on points of law to the Court of Cassation may be lodged against the appeal Court judgment, within thirty days of the judgment, solely on the grounds referred to in sub-paragraph 3 of the first paragraph of Article 360 of the Code of Civil Procedure.

3. The hearing on the appeal or appeal on points of law to the Court of Cassation shall be scheduled within sixty days of their being lodged.

4. The judgment ruling the adoption shall once it has become definitive be recorded forthwith on the registry referred to in Article 18 and notified to the public registry officer, who shall record it on the adoptee's birth certificate. To this end, the clerk of the judge to whom the case has been appealed shall immediately notify the clerk of the juvenile court once the judgment has become definitive.

5. The effects of adoption shall arise from the time the judgment becomes definitive».

Art. 23.

1. In Article 27, second paragraph of Law 184, the words «pursuant to the fifth paragraph of Article 25» shall be replaced by «pursuant to Article 25 (5)»

Art. 24.

1. Article 28 of Law 184 shall be replaced by:

«Art. 28. – 1. The adopted child shall be informed of this status, and the adoptive parents shall so provide in the ways and the times they find most fitting.

2. Any certificate of civil status relating to the adoptee shall bear the new surname only, making no reference to the child's paternity or maternity, nor containing the annotation referred to in Article 26 (4).

3. Registrars of civil status or of births, marriages and deaths or any other public or private agency, authority or public office shall refuse to give any news, information, certificates, extracts or copies from which the adoption relationship is in any way apparent, unless explicitly so authorized by the judicial authority. No authorization is necessary where the request comes from the registrar of civil status in order to verify whether there are any impediments to marriage.

4. Information concerning the identity of the biological parents may be furnished to the adoptive parent as those holding parental authority, on authorization by the juvenile court, only if serious, proven reasons exist. The court shall ascertain that such information has been preceded and accompanied by appropriate preparation of and assistance to the child. The information may also be supplied to the head of a hospital or health institution where the requirements of necessity and urgency are met, and there is grave danger to the child's health.

5. The adoptee may on reaching the age of twenty-five have access to information concerning his or her origin and the identity of the biological parents. He or she may do so also on reaching majority, where serious, proven grounds pertaining to his or her mental or physical health exist. The application shall be submitted to the juvenile court of the place of residence.

6. The juvenile court shall hear whomever it sees fit; it shall gather all information of a social and psychological nature for assessing whether access to the information referred to in paragraph 5 may lead to severe disruption of the applicant's mental or physical equilibrium. Having completed enquiries the juvenile court shall authorize access to the requested information by decree.

7. Access to the information shall not be permitted where the adoptee was not recognized at birth by the natural mother, or where even only one of the biological parents has stated they do not wish to be named, or have given consent to adoption on condition of remaining anonymous.

8. Except as provided in the foregoing paragraphs, authorization is not required in the case of adoptees who have reached majority, where the adoptive parents are dead or cannot be traced».

TITLE IV

ADOPTION IN SPECIAL CASES

Chapter I

ADOPTION IN SPECIAL CASES AND ITS EFFECTS

Art. 25.

1. Article 44 of Law 184 shall be replaced by:

«Art. 44. – *I.* Even in cases where the conditions set out in Article 7 (1) have not been met, children may be adopted:

a) by persons linked to the child by blood ties within the sixth degree or by a pre-existing steady and lasting relationship, where the children are fatherless and motherless;

b) by the spouse, where the child is the child, natural or adoptive, of the other spouse;

c) where the child is in the circumstances indicated in Article 3 (1) of Law 104 of 5 February 1992 and is fatherless and motherless;

deleted

d) where a preadoptive placement proves to be impossible.

2. In the cases indicated in paragraph 1, adoption shall be permitted even if there are legitimate children.

3. In the cases referred to in paragraph 1 (a), (c) and (d), non-married persons, as well as spouses, may adopt. Where the prospective adoptive parent is married and not separated, adoption may be ordered only following request by both spouses.

4. In the cases referred to in paragraph 1 (a) and (d), the prospective adoptive parent must be at least eighteen years older than the child(ren) he or she wishes to adopt ».

Art. 26.

1. Article 45 of Law 184 is to be replaced by:

«Art. 45. – *I.* In adoption procedures in cases provided for by Article 44, the consent of the prospective adoptive parent and the adoptee if fourteen or over shall be required.

2. If the child is twelve or over he or she shall be heard personally; if younger he or she may be heard, having regard to capacity for discernment.

3. In every case, where the child is under fourteen adoption shall be ordered only after his or her legal representative has been heard.

4. Where adoption is to be ordered in the case provided for by Article 44 (1) c), the child's legal representative shall be heard *in lieu* of him or her where he or she cannot be, or cannot give consent within the meaning of this article because of the handicap condition».

Art. 27.

1. Article 47 of Law 184 shall be replaced by:

«Art. 47. – 1. Adoption shall take effect from the date of the judgment deciding it. Until the judgment is handed down, either the adoptive parent or the child may withdraw consent.

2. If one of the spouses dies after giving consent and before the judgment has been handed down, the procedures necessary for adoption may be carried out at the request of the other spouse.

3. If the adoption is authorized, it shall take effect from the time of the adoptive parent's death».

Art. 28.

1. Article 49 of Law 184 shall be replaced by:

«Art. 49. – 1. The adoptive parent shall draw up an inventory of the adopted child's property and send it to the magistrate within thirty days of the date of notification of the adoption judgment. The provisions contained in Section III of Chapter I of Title X of Book One of the Civil Code shall be observed, where applicable.

2. If the adoptive parent fails to draw up the inventory within the set time or draws up a false inventory, the magistrate may deny him or her the right to manage the property, without prejudice to any obligation to pay damages».

Chapter II

FORMS OF ADOPTION IN SPECIAL CASES

Art. 29.

1. Sub-paragraph *a)* of the third paragraph of Article 57 of Law 184 shall be replaced by:

«*a)* the adoptive parents' emotional suitability and capacity to bring up and educate the child, personal and economic circumstances, health and family environment;».

TITLE V

AMENDMENTS TO TITLE VIII OF BOOK ONE OF THE CIVIL CODE

Art. 30.

1. Article 313 of the Civil Code shall be replaced by:

«Art. 313. – (*Provision of the court*) – The court, having heard the public prosecutor and omitting any other procedural formality, shall decide in chambers whether the adoption shall take place or not.

Within thirty days of notification the adoptive parent, the public prosecutor or the adoptee may appeal to the Court of Appeal, which shall decide in chambers, having heard the public prosecutor».

Art. 31.

1. Article 314 of the Civil Code shall be replaced by:

«Art. 314. – (*Publicity*) – The definitive judgment ordering adoption shall be recorded by the clerk of the competent court within ten days of notification thereof, which shall be effective within five days of its having been deposited by the clerk of the judge to which the case has been appealed, on the appropriate registry, and communicated to the registrar of civil status for annotation on the adoptee's birth certificate.

The procedure of the first paragraph shall also be followed for the registration and annotation of the judgment revoking adoption, once it has become final.

The judicial authority may also order publication of the judgment ordering adoption or the revocation judgment in such ways as it sees fit».

TITLE VI

FINAL, PENAL AND TRANSITIONAL PROVISIONS

Art. 32.

1. In Article 35 (4) of Law 184 the words: «may be consulted if appropriate and» shall be replaced by: «shall be consulted».

2. In Article 52, second paragraph, of Law 184 the words: «and, if necessary, also younger» shall be replaced by: «and younger, having regard to capacity for discernment».

3. In Article 79, third paragraph, of Law 184, the words: «when appropriate» shall be replaced by: «having regard to their capacity for discernment».

Art. 33.

1. In Article 43, first paragraph, of Law 184, the words: «set out in the sixth, seventh and eighth paragraphs of Article 9» shall be replaced by «set out in Article 9 (4) and (5)».

Art. 34.

1. Article 70 of Law 184 shall be replaced by:

«Art. 70. – 1. Public officials or persons appointed to carry out a public service who fail to report to the public prosecutor of the juvenile court on the conditions of any child in a state of abandonment they come to know about in the performance of their duties shall be punished pursuant to Article 328 of the Penal Code. Persons carrying out an essential public service shall be punishable by imprisonment of up to one year or by a fine of 500,000 to 2,500,000 lire.

2. Persons representing public or private care institutions who fail to send the public prosecutor of the juvenile court a list every six months of all the children living or cared for in their institution, or who provide incorrect information about the family relationships of the same, shall be punishable by imprisonment of up to one year or by a fine of 500,000 to 5,000,000 lire».

Art. 35.

1. The first paragraph of Article 71 of Law 184 shall be replaced by:

«Anyone who, in violation of the legislation in respect of adoption, places a child permanently with a third party or sends him or her abroad for permanent placement shall be punishable by imprisonment of between one and three years».

2. The sixth paragraph of Article 71 of Law 184 shall be replaced by:

« Anyone who acts as an intermediary in bringing about a placement as mentioned in the first paragraph shall be punishable by imprisonment of up to one year or a fine of 500,000 to 5,000,000 lire»

Art. 36.

1. The first paragraph of Article 73 of Law 184 shall be replaced by:

«Anyone in possession by way of office of any information that may serve to trace a child whose adoption has been ordered who passes this on, or in any way reveals information regarding a child's status of legitimacy through adoption, shall be punished by imprisonment of up to six months or a fine of 200,000 to 2,000,000 lire».

Art. 37.

1. The following shall be added at the end of Article 330 of the Civil Code, second paragraph: «or removal of the parent or cohabitant ill-treating or abusing the child».

2. The following shall be added at the end of Article 333 of the Civil Code, first paragraph: «or removal of the parent or cohabitant ill-treating or abusing the child».

3. The following paragraph shall be added at the end of Article 336 of the Civil Code:

«In the proceedings referred to in the foregoing paragraphs the parents and the child shall be assisted by counsel, at State expense in the cases provided for by law».

Art. 38.

1. Article 80 of Law 184 shall be replaced by:

«Art. 80. – 1. The judge, where appropriate and having regard to the duration of the placement, may provide for any family allowance or social security benefits relating to the child to be paid temporarily to the foster parent.

2. The provisions of Article 12 of the consolidated text on income tax approved by Presidential Decree 917 of 22 December 1986, with subsequent amendments, of Article 6 of Law 903 of 9 December 1977, and of Law 53 of 8 March 2000 shall also apply to the foster parents referred to in paragraph 1.

3. Foster parents shall enjoy all benefits in terms of obligatory or optional abstention from work, sickness leave and daily rest provided for in relation to biological parents.

4. The regional governments shall lay down the conditions and procedures for providing support to families, individuals and family-type communities with which children are placed, so that the placement may be based on willingness and suitability to accept any child regardless of economic circumstances».

Art. 39.

1. After two years from entry into force of this law, and thereafter at three-yearly intervals, the Minister of Justice and the Minister of Social Solidarity, in cooperation with the unified Conference referred to in Article 8 of Legislative Decree 281 of 28 August 1997, shall, within their respective powers, submit to Parliament a report on the state of implementation of this law, in order to verify its effectiveness in relation to the objectives pursued and its meeting the child's interest, with particular regard to application of the provisions of Article 6 (3) and (5) of Law 184 of 4 May 1983, as replaced by Article 6 of the present law.

Art. 40.

1. For the objectives of this law a database, including the contribution of data supplied by the individual regions, on children declared adoptable and on spouses aspiring to national and international adoption, indicating all information able to guarantee the best outcome of proceedings, shall be set up under the Ministry of Justice, within one hundred and eighty days of its date of entry into force. The data shall also concern individuals willing to adopt in relation to the cases referred to in Article 44 of Law 184 of 4 May 1983, as replaced by Article 25 of the present law.

2. The database shall be made available through a linking network to all juvenile courts and shall be periodically updated at three-monthly intervals.

3. The rules for implementing and organizing the database shall be laid down by regulation of the Minister for Justice, in relation also to the taking of the measures necessary to the security and privacy of the data.

4. No new or greater burdens on the State budget may derive from implementation of this article.

Art. 41.

1. This law shall enter into force on the day following its publication in the *Official Gazette*.