FINAL REPORT

LEGAL ANALYSIS

COMPARATIVE STUDY RELATING TO PROCEDURES FOR ADOPTION AMONG THE MEMBER STATES OF THE EUROPEAN UNION, PRACTICAL DIFFICULTIES ENCOUNTERED IN THIS FIELD BY EUROPEAN CITIZENS WITHIN THE CONTEXT OF THE EUROPEAN PILLAR OF JUSTICE AND CIVIL MATTERS AND MEANS OF SOLVING THESE PROBLEMS AND OF PROTECTING CHILDREN’S RIGHTS

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Yves BRULARD, Létitia DUMONT

Tutor scientific direction: Thierry MOREAU

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1. INTRODUCTION

1.1. THANKS

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1.2. **Reminder of the Objectives of the Mission**

This mission falls within the Commission’s tasks envisaged as part of the program "civil justice" in the course of implementation by the European Parliament and the Council within the framework of the general program "Fundamental rights and justice" (2007-2013).

The protection of children’s rights constitutes one of the great priorities of the European Union.

In July 2006, the Commission presented a paper on a “European strategy for children’s rights”. This proposes to establish a coherent and general policy in order to guarantee the effective protection of children’s rights within the framework of Community policy and to support the Member States. This strategy will be implemented in collaboration with the Member States, international organizations and civilian society. For this purpose, the European forum of children’s rights was launched on June 4, 2007 to serve as a place for work and the promotion of good practices.

One right of children is that to be brought up in a home environment, which brings adoption into question. If the Union wants thus to protect and promote children’s rights, it must take more account of the issue of adoption. There is however currently no common policy on this matter.

Greater collaboration between the Union’s Member States over the matter of adoption could be regarded as an inevitable result of freedom of movement of their citizens and the progressive emergence of a European legal culture founded on the diversity of their legal systems, the promotion of civil rights and on unity arising through European law.

After the last two enlargements of the European Union which took place on the 1st May 2004 and the 1st January 2007, the situation in Europe radically changed as regards adoption. The European Union, traditionally composed of countries “of reception” of adoptive children, is today made up simultaneously of countries which “accommodate” adoptive children and countries "of origin".

The object of this study is thus twofold:

- To provide a comparative analysis of the situation in the 27 Member States concerning the legislation, the organization, the procedures and the practices relating to international adoption and, in particular, concerning adoption between Member States of the European Union;

- To identify practical difficulties seen from problems encountered in this field by citizens, in particular, those which prevent or disrupt the exercise of parental responsibilities, and to indicate possible solutions to these problems, including the establishment of a possible European procedure for adoption in the Member States.

1.3. **Reminder of Methodology**

An expert in each of the 27 countries studied their national law on adoption in particular and international adoption in general.

Each expert presented a precise report of the internal laws in their state.
Each national report contains a summary of the substantive legislation as well as procedures and administrative machinery in the Member State concerned.

These reports describe not only the legal and procedural mechanisms, but also the usages and the practices followed in each studied state.

The experts described in particular the precise circumstances in which international adoption is possible, and the measures implemented to prevent illegal profiteering.

The criteria for the adoption of children and for the selection of applicants were studied with precision as well as the applicable time limits.

The concept of consent is described in detail as well as the higher concept of the interest of the child.

The differences between national and international adoption are put forward in each national report.

The experts have also evaluated the extent to which the central authorities took all suitable measures either directly, or with the assistance of the public authority or organizations duly approved in their state:

- To gather, store, exchange information relating to the situation of the child and future adoptive parents to the extent necessary to make the adoption work;

- To facilitate, follow and activate the procedure for the adoption;

- To promote in their state, the setting up of services and councils for adoption and its follow-up;

- To exchange general reports on the ‘trial and error’ provisions relating to international adoption;

- To comply as far as permitted with the law of the various states, or provide accurate information on particular adoption cases as formulated by other central authorities or public authorities

Our experts, if necessary, have stated if there are any post-adoption procedures, which means a follow-up report requested by the country of origin of a child adopted by foreigners, especially in the case of adoption between the Member States.

Our experts have also described the legal provisions under private international law applicable to these adoptions and the resulting duties under national law.

Each expert has included in his report his study about the compatibility of their national legislation with the treaties to which their European Union state is signatory.

Each expert has introduced into his national report, the public data collected in his country, as well as on a European or world wide level.

Each national expert has provided to the chief of mission a list of experts checked by the chief of mission in order to authenticate the quality of the interviewed people and also the aspect of diversity of the services for adoption, of the judges, lawyers, the welfare officers, or associations of adopting parents, or other associations concerned with the right of the family and protection of childhood, of the administration of the Member States responsible for the procedure of adoption, people who can be identified
as having encountered difficulties in this field, specialized centres, etc… as well as representatives from political life.

The final report contains a statistical study as well as the conclusions and recommendations to be drawn from this empirical study.

This empirical study is based on the questionnaire approved by the European Commission.

2. THE INTERMEDIATE REPORT

The intermediate report had the aim of presenting the various national reports on the legislative study. The intermediate report has been approved by the European Commission.

It also had the aim of presenting the status of the experts contributing to the empirical study.
2. THE 27 EUROPEAN LEGAL SYSTEMS

2.1. AUSTRIA

According to Austrian law an adoption is a contract between the child being adopted (if minor, represented by his/her parents, his/her mother or by a national authority), which copies the blood relationship between parents and child. In general just one person alone or married couples together (thus heterosexual couples, since marriage is not possible between persons of the same sex according to Austrian law) may adopt a child. Given that, apart from its legal construction, the common case is the adoption by a couple, in the following we refer to the adopting parents and point out differences between the different types of adoption.

A. LEGAL ANALYSIS

1. Description and analysis of the law on adoptions of children

Different stages of the adoption process.

If the biological mother (or the parents) of a child decide to declare their child available for adoption, they have to apply to the Youth Welfare Service which is the responsible public authority to procure adopting parents for the child. The biological parents have also to decide upon the question, whether their identity should be released to the child. If the child is a foundling, the Youth Welfare Service is entitled to represent and care for it. Eight weeks after birth, at the earliest, the adoption proceedings are commenced.

Prospective adopting parents have to register with the Youth Welfare Service, which chooses persons appropriate to become adopting parents from the applicants.

Non-obligatory courses on child care and legal questions in connection with the adoption process follow. Thereafter, the aptitude of the applicants is closely assessed by the Youth Welfare Service. If the competent authority decides that the presumptive adopting parents are suited to adopt a child, they may dispense with a tutorial for adopting parents.

After this the contact between the child being adopted and parents is arranged and the person being adopted starts to live with his/her new parents for 6 to 12 months. During this time the prospective adopting parents have the tutelage of the child being adopted, but are not adopting parents yet.

After this time a written agreement between the adoption parents and the person being adopted who is represented by his/her parents/mother or federal authorities if he/she is under age is signed.

This contract has to be approved by court to thereupon become binding.

a) Objects of judicial decisions in the course of the adoption process

As stated above, the adoption agreement must be approved by the court to be legally effective. For approval a relationship between the adopting parents and child which emotionally corresponds to the relationship between biological parents and their child is required, if the child is under 18 years old. This relationship has to be proved by the applicant. The adopting parents have explicitly to state their agreement to the adoption. Where the person being adopted is of full age, the adoption has to be justified by a reasoned argument.
The ruling of the court has to contain the statement that the adoption is accepted and the relationship to the biological parents is extinguished. Other necessary contents are the name of the child being adopted and that of the adoptive parent, day and place of birth, citizenship, religion and an indication referring to the respective official registries of births, deaths and marriages. Finally, there has to be stated the day of the legal effectiveness of the adoption.

The purpose of these binding legal requirements are the well-being of the child and the prevention of abusive quasi-adoptions, which, are just made to bypass binding legal provisions in connection with family and/or succession law.

What are the possible recourses and at which steps do they occur?

The suitability of the prospective adopting parents is examined by the Youth Welfare Service as well as by the court, which finally approves the adoption agreement. Referring to the adoption of minors, the Youth Welfare Service has legal standing and the right to intervene against the adoption order. The first right to reject potential adopting parents belongs to the Youth Welfare Service where they examine parents’ aptitude to adopt, the second is the right and duty of the court to refuse the approval of the adoption deed if anything conflicts with a positive decision.

2. INTERNATIONAL ADOPTION PROCEEDINGS (EU parents – non EU children or EU children and non EU adopting parents)

In principle, the legal provisions are the same as stated above in connection with an Austrian child. In particular, there is a distinction between countries being signatory States of The Hague Adoption Convention and those which are not. In case of non signatory States the adoption proceedings are conducted in their home country. In Austria no recognition of the adoption is required.

Which are these different stages?

Additionally to the required steps referred to the above, detailed reports on the child being adopted and the adopting parents are filed.

In certain cases attending classes about the State where the child is from is obligatory in order to become familiar with cultural specifics of this country.

The local authorities then interview the potential adopting parents in order to evaluate if the child being adopted will have a good home there. After this evaluation process an application for the adoption of a foreign child has to be filed with the competent regional government, which chooses a potential child for adoption. After that there are two possibilities.

The first is that the adoption is finalized in the home country of the child being adopted; the other one is that the home country of the child being adopted gives approval for the adopting parents to get the tutelage of the child for the time being until the adoption is finalized. It must be pointed out that The Hague Adoption Convention prohibits contact between the presumptive adopting parents and the persons who have the custody of the child until they have finally agreed on the adoption. After the adoption is legally effective the local authorities still supervise the relationship between adopting parents and child and file so-called “post-placement reports”, in order to help the parents in case of problems with the integration of the child being adopted into their family.
The applicable law is determined according to the Austrian International Private Law Act. According to this regulation the personal statute of the adopting parents and the child being adopted is decisive. If the child is under age, the personal statute is only relevant for the consent of the child or a relative to the adoption. The legal effects of the adoption are determined by the law according to the personal statute of the adopting parents.

If a foreign person of full age is adopted by an Austrian citizen, additionally the personal statute of the subject of adoption is applicable, or the law of the home country of the person being adopted is applicable. Therefore, an adoption is not possible, if the person has reached their majority and adoption is not possible according to the legal provisions of the home country of the person concerned.

Indicate at which steps juridical decisions intervene and what is (are) their object(s)

The main proceedings between Austria and the home country of the child are conducted by the Youth Welfare Service. The court is concerned with the approval of the adoption deed and, therefore, it has to check, whether the foregoing proceedings have been legally conducted.

3. ORGANS AND SERVICES THAT PARTAKE IN THE ADOPTION PROCESS

The evaluation of prospective adoption parents and their preparation for the act of adopting is warranted by the Youth Welfare Service, which is a federal authority of the Republic of Austria. Also evaluation of the adopting parents, their lifestyle and their aptitude to adopt a child is carried out by this authority. The approval of the adoption deed is done by an impartial court. The adoption deed itself is usually drafted by an attorney at law or a notary public, sometimes by the Youth Welfare Service.

a) At which stage of the procedures do they intervene?

The preparation as well as the consultation of adopting parents is provided by the Youth Welfare Service from the very start of the proceeding. The Youth Welfare also acts as adoption agency. Privately remunerated placement of persons to be adopted is an offence that could lead to criminal prosecution!

After the preparation of the adoption deed the court gives its approval if all legal steps required have been adhered to and nothing else is outstanding for the approval.

b) Mission of these organs

The Youth Welfare Service and the court have to provide for the well-being and the best possible custody of the child. They have to act in his/her interests. The person who drafts the adoption deed is acting on behalf of both – the adopter(s) and the subject of adoption – parties. The potential adopting parents may be advised by an attorney at law, but this is not obligatory.

c) The composition of these organs and services

The Youth Welfare Service engages various experts. Social workers, lawyers, psychologists, pediatricians and other professions are represented there. The decision on an adoption is made in accordance with an internal procedure. The authorities may also consult external experts to get an independent assessment of the whole situation.

The major aim is always to warrant for the well being of the child and to protect his/her interests in the best possible way.
Eventually, a single judge reviews the written arguments of the public authorities and evaluates the whole situation by immediate hearings of the concerned persons. The court is not bound by a decision of a public authority, but decides upon the approval in its own discretion.

d) Are social interveners involved?

The responsible authorities have a large number of in-house experts at their disposal. Only if needed, are external experts consulted. Also the court has the opportunity of assigning independent court experts on a special topic like e.g. psychology to evaluate the situation.

4. Post adoption follow-ups

In special cases post placement reports are required by the home country of the subject of adoption (e.g. India, Russia, Macedonia and Thailand). These reports shall inform the home country about the familiarization and the development of the child.

In case of a national adoption, after the adoption has been approved by court, no post adoption follow-ups are made by the Youth Welfare Service or other authorities. Since the adoption copies the blood relationship between parents and child, the parties are also treated in the same way as biological relatives, who are also not controlled (unless there is a special reason to supervise them).

5. Conditions for adoption

The Youth Welfare Service evaluates if the personal and family environment provides appropriate reasons to adopt and it approves the aptitude to adopt as well as the development of a potential adopted child, in order not to overstrain the future adopting parents. Also the financial and living situation of the adopting parents and their corporal and mental health are evaluated. It is also checked whether the adopting parents are without criminal record.

The Austrian legal system – regarding the conditions for adoption - does not distinguish between a national and an international adoption. The report of the Youth Welfare is forwarded by the respective regional governments to the country from where the child being adopted comes according to the application of the adopting parents.

The adoptive father has to be at least 30 years old and the adoptive mother at least 28 years old, coupled with a minimum age difference between person being adopted and the respective adopting parents of 18 years.

Principally, just one person has capacity to adopt. Adoption by more than one person is possible, if the adopting parents are married, which implies that they are of different sex. Principally married couples only may adopt a child jointly. In certain cases exceptions are made. Exceptions are made if the subject of adoption is a biological child of one of the parents and if a relationship between the adopting parent and child, similar to a biological relationship, exists. Also the age difference may be waived if a relationship similar to a biological one exists between subject of adoption and adopting parents, if the child being adopted is the biological child of one of the parents or if the child being adopted is related to one of the adopting parents.
People who have taken a vow of chastity by religious means or who administer the assets of the subject of adoption due to an official decree do not have legal capacity to adopt a child.

6. Conditions for being adopted

The court approves the adoption deed in case of a minor being adopted if the well-being of the child is enhanced by adoption and a relationship similar to a biological one already exists or shall be promoted between adopting parents and child being adopted and his/her mother/parents explicitly agree to the adoption.

Where the person being adopted is of full age the deed may be approved only if the applicants prove that a close – similar to a biological – relationship between parents and child already exists. This is especially the case, if the subject of adoption and the adopting parent have lived together for a minimum of five years or have supported each other in a similar way like parents and child would undergo.

7. Which process within the adoption procedure exists to hear the child?

Prior to the approval of the adoption it is mandatory to hear the child being adopted.

The hearing of the minor is legally required from the age of five years old. Also younger persons may be interrogated, if this is factually possible. Until the age of ten the Youth Welfare Service shall interrogate the child by in-house or external experts, if this seems to be necessary with regard to the child’s development and health status or if otherwise a serious and unaffected statement cannot be expected from the minor. In certain cases the court has to dispense with a hearing, if an interrogation would harm the well-being of the minor or if – with regard to the cognitive abilities of the minor – a reasonable statement may not be expected.

Effective practices: The courts in charge of adoption cases specialise in these issues. Since it is mandatory to hear the Youth Welfare Service too, an objective and uninfluenced view on the child’s will is received. The child is usually heard starting from an age of 4/5 years old onwards.

8. Who must give consent to the adoption?

The person being adopted must consent to the adoption, if he is over 18 years old. If he/she is under age, its legal representative has to consent on his/her behalf.

If legal parents (holders of parental authority) exist, they have to give their consent. The biological parents, if they are the holders of parental authority.

In case of adoption of a grown up person his/her spouse has to consent.

9. At which moment after childbirth is the mother authorized to give her consent to adoption?

The mother may decide to declare her child to be available for adoption directly after childbirth. After six to eight weeks the adoption proceedings are initiated, if she decides to make this step. Thus she has, in any case, a period of time where she may reconsider her decision.

There is also the possibility of giving birth anonymously in a hospital, of leaving a child in a hospital anonymously and of giving away a child in a so-called “baby-nest”, which is a facility, where a mother can give her child away anonymously. In all these cases
the child is treated as a foundling, whereas the mother may decide to revoke her
decision until the adoption is legally effective.

10. Is it possible for a parent who must consent to the adoption to sign a blank
consent?

Prior to an adoption deed and before knowing the prospective adopting parents, the
biological mother may agree to the adoption.
2.2. **Belgium**

**A. The Framework of Legal Adoption in Belgium and Terminological Observations**

1. **Legal Framework of Adoption**

Adoption under Belgian Law might look complex compared to the multitude of enactments passed by the European Community. Adoption under Belgian Law can appear complex having regard to its broad legal framework and the multiplicity of the applicable texts, domestic and international. In order to gain a thorough understanding of the principles of this matter under Belgian Law, it is necessary to summarise the applicable texts:

a) **The Hague Convention of May 29, 1993** on protection of children and international co-operation, the goal of which is to implement a true ethic of international adoption in order to put an end to abuses, this to be achieved by the implementation of guarantees aimed at ensuring respect for the higher interest of the child and the basic rights accorded to him/her by international instruments and in particular by the United Nations Convention on the Rights of the Child of November 20, 1989.

The Hague Convention expresses observance of a principle of double subsidiary meaning that the adoption should remain subsidiary to the requirements of maintenance of the child or the return of the child in its family of origin, if necessary with the support of external assistance (financial, medical, social, psychological...).

This convention was signed by Belgium on January 27, 1999 and it was approved subsequently by the Parliaments of the federate entities.

b) **Code of Private International law (PIR) of July 16, 2004**: within the context of this report, the provisions of Belgian law will be examined independently from the rules of the (PIR) applicable to the matter. Some reference still needs to be made to the rules of the PIR, although this is not the purpose of this report.

c) **The Federal Law: Law of April 24, 2003**: in introducing reforms to the law of adoption, this modified title VIII of the Civil Code by replacing articles 343 to 370 with new provisions resulting from the reform. In addition it reformed the whole of the procedure for internal and international adoption, by introducing into the Code of Civil Procedure new articles 1231.1 to 1231.56. Finally, it made other minor legislative amendments to the law on protection of youth of April 8, 1965, for example, to the penal Code.

d) **The legislations of the linguistics Belgian Communities**: implementation of the guarantees required by the Hague Convention in order to ensure respect for the interest and the basic rights of the child, means in Belgium, the organization of federal and Communities mechanisms. Consequently, each Community regards itself as having been given a certain number of prerogatives in the process of adoption, which is a matter regulated by decrees.

e) Finally, on December 12, 2005 a co-operation agreement relating to the implementation of the law of 24 April 2003 introduced reforms to the law of adoption to ensure harmonious arrangements regarding the competence of each of the Communities in relation to the Federal State; to clarify certain procedural matters

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2 On this subject see developments with question III, point 2.
relating to the implementation of the law of April 24, 2003, in the best interests of the child; and to ensure dialogue between different powers.

2. Terminological remarks

It appears useful to distinguish between:

a) Internal and international adoption

Under the new Belgian Law, there are two chapters entitled “national law” and “international law”, and not “internal adoption” or “international adoption”.

- Provisions of internal right are those which, subject to provisions of private international law, apply to the adoption of a minor or a person of full age usually residing in Belgium by a person or a couple also usually residing in Belgium.

- International law applies to “international adoptions” according to article 360-2 of the Civil Code, namely, to those where the child:
  
  - was moved from its State of origin to Belgium, either after its adoption in that State by somebody or some persons usually residing in Belgium, or for an adoption in Belgium or in that State;
  
  - usually resides in Belgium and he/she was moved to a foreign State, either after his/her adoption in Belgium by someone or some persons usually residing in that foreign State, in contemplation of an adoption in Belgium or in the foreign State;
  
  - resides in Belgium without a permit to be there or leave to remain there for more than three months, to be adopted there by someone or some persons who usually reside there.

This is, therefore, a wider definition than is contained in The Hague Convention, which regards as international adoptions only those involving the movement of a child from one country to another.

The Code of Civil Procedure and the legislation of the Communities refer to article 360-2 of the Civil Code utilising the same precise definition of international adoption but using the terms “internal adoption” and “international adoption”, and not “national law” or “international law”.

The legal doctrine reveals the existence of some ambiguity. In reality, the Code of Civil Procedure and EC legislation qualify internal adoption as being “that not implying the international movement of a child”, whereas this is not the meaning that the above definitions convey.

Nevertheless, within the context of this study, we will be use the terms “internal adoption” and “international adoption”, with the meanings given to them by the broadest definitions provided for by the Civil Code.

b) Plenary and simple adoption

There are two kinds of adoption contemplated by Belgian Law:

plenary adoption, which is reserved only for minors and integrates the child completely within the family of the applicants for adoption. This adoption
extinguishes all bonds with the family of origin. This form of adoption is irrevocable.

Simple adoption, which concerns either minors or persons of full age and creates family ties only between the subject of adoption and the applicants but not between the subject of adoption and the family of the applicants. On the other hand, it creates such bonds between the applicants and the descendants of the adoption subject. It is revocable only on the most serious grounds.

The effects of the two kinds of adoption also differ but they are not examined in this report.

B. PROCEDURE

1. Judicial proceedings for adoption

Adoption constitutes, on one hand, a parent-child bond or bond of filiation, which is not a matter of contract, and on the other hand, a form of protection for the child, which does not come within the State’s responsibility. This observation leads to a fundamental point, namely that adoption is the result of either a court order or of a contract approved by the Court. The different stages in the procedure leading to an adoption by order of the Court are as follows:

a) Preparation for adoption

Regarding applicants for adoption: Under articles 346-2, subparagraph 1, and 361.1, subparagraph 2 of the Civil Code, any person intending to adopt a child, meaning a person younger than 18 years old, must firstly attend a course organized by expert professionals. This preparation includes in particular instructions on the steps in the adoption proceedings, the legal effects and other consequences of the adoption as well as the opportunities for and the usefulness of post-adoption follow-up.

Three types of training course are organized, dependent upon the kind of adoption or the experience of the applicants:

- The basic training course, which is longest and most complex;
- The training course for a second adoption;
- The training course for an intra-family adoption.

According to the course, the candidates receive a certificate of preparation from the Community’s central Authority, after which the proceedings may be continued with.

In the context of an internal adoption, the candidates then contact an approved organization in order to arrange the ‘Acquaintance’.

With the original family and the child: the appointed organizations for adoption are entrusted with the task of preparing the child’s original family for the adoption simultaneously with the applicants’ training course. In the French Community, examples of their functions are the following:

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8 See also question III, point 3.
- Receiving enquiries made during pregnancy: information for the original parents concerning adoption and other opportunities for assistance, setting up of medical, psychological and administrative follow-up, apart from the political alliance organization;

- Assistance for the mother in finalizing her plans;

- Written mandate from the original family to the organization to authorize the placement of the child for adoption, and to empower the organization to take the steps relating to the adoption. In such a case, the organization takes charge of the child from its birth, supports the original family during the procedure, and makes it available to meet their requests for assistance requests.

The organization also plays a major part in preparing the child for his/her adoption. Thus, within a two months’ time limit before the agreement of the parents of origin, the child receives regular visits from the welfare officer and from the organization, which observes the child, summaries his/her history, and deals with the adoption plan and introduction to the adopting parents. These regular visits make possible the drafting of a psycho-medical and social study of the child, highlighting his/her specific needs in relation to the adoption under consideration. 

b) The ‘Acquaintance’

The Acquaintance is the process leading to the proposal of a named child for a family wishing to adopt and presenting the aptitudes that would meet the needs and the characteristics of the child.

It is the role of the adoption organisation to find the most suitable family for each child in need of adoption. Indeed, article 7 of the law introduces a new article 391.5 into the penal Code, which punishes any person who intervenes in the adoption as an intermediary without being a member of an approved adoption organization.

The effect of this article is that any internal adoption must be set up by an adoption organization, except cases of intra-family adoption or of adoptions between families. The ‘Acquaintance’ process is the responsibility of the Communities: in the French Community, the ‘Acquaintance’ process is described in articles 32 and 33 of the decree.

c) The commencement of the application.

Once a child is entrusted by an organization, the applicants can bring a one-sided application before the Court of First Instance if the adoption subject is a person of full age and before the Youth Court if he/she is a minor.

Under national law on adoption of a minor, the legal procedure is commenced upon the child being entrusted to applicants in possession of the necessary certificate of preparation, which is not the case for an international adoption, where the consent is effected after preparation and the finding on the aptitude of the applicants.

Evaluation of the aptitude of the applicants then takes place during the proceedings for the pronouncement of the adoption order.

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10 See developments in question III.
11 See developments in question 2.
It is necessary to specify that the procedure for observation of the aptitude for being adopted is not applicable to the adoption of a person of full age. Article 1231 of the Code of Legal Procedure specifies, however, that the Court of First Instance can, if considers it useful, order a social investigation enquiry into the adoption plan. The competent Court is that of the place of residence or of usual residence of the applicants or, failing this, of the subject of adoption\textsuperscript{12}.

2. Special considerations in choosing the form of adoption of a minor

Simple adoption is a different form but not an inferior form of constitution of a bond of filiation\textsuperscript{13}; the choice between simple adoption and plenary adoption has to be justified. Consequently, any necessary consent to the adoption of a child must specify if it is given for a simple or a plenary adoption\textsuperscript{14}.

The adoption application must also justify the choice; the Court has to satisfy itself that the choice was made with full knowledge of the facts\textsuperscript{15}.

Lastly, any amendment to the application by the applicants in the course of the proceedings (at a directions hearing or otherwise) must be based on serious reasons, be in conformity with the interest of the child and with respect for his/her basic rights and must be supported by all those who have consented to the adoption\textsuperscript{16}.

a) The Public Ministry interview.

Within eight days from the lodging of the adoption application, the file is transmitted to the Public Prosecutor who collects all useful information on the adoption plan. According to article 1231.5 of the Code of Civil Procedure, the Public Ministry will have to collect the following opinions:

- the mother’s and the father’s opinion of the subject of adoption, if necessary of his/her guardian, of his/her guardianship Judge or of the appointed Justice of the Peace;
- the designated representative’s opinion pursuant to article 348-9 of the Civil Code, when the biological relative does not want the applicants to adopt or does not want to take part in the proceedings;
- the opinion of descendants of full age of the applicants and of their parents (but not of the applicants) and of minor descendants of the applicants;
- The opinion of any person who cared for the adoption subject to provide for his/her maintenance and education in place of the parents;
- the opinion of any person whose consent is required, and who has been...

By contrast any provision for the obligatory opinion of the grandparents of origin was omitted. In fact, the obtaining of this opinion was criticized for a long time for particular reasons such as the example of an unrelated child whose original mother had concealed her pregnancy for fear of exclusion or violence.

\textsuperscript{12} Art 628 and 1231.3 of the Code of Civil Procedure.
\textsuperscript{13} NR. GALLUS, " The new law on adoption, in right of the families ", 2007, volume 92, page 142.
\textsuperscript{14} Article 348-8 of the Civil Code.
\textsuperscript{15} Article 1231.3 and 1231.13 of the Code of Civil Procedure.
\textsuperscript{16} Article 1231.14 of the Code of Civil Procedure.
The new Law stresses respect for the prior responsibility of the father and mother in the decision over adoption of their child, in order to protect them from any pressure, including pressure from their own parents.\(^ {17}\)

The Public Ministry’s investigation report is presented within two months from the lodging of the proceedings.

b) Social enquiry

Despite the assumption that there is an inter-family adoption, the social enquiry ordered by the Youth Court pursuant to articles 1231.6, 1231.29 and 1231.35 of the Code of Civil Procedure is conducted by the services indicated by the Communities. In the French Community, the central Authority is delegated to carry out the social enquiry, in order to become satisfied about the applicant’s aptitude for adopting a child.\(^ {18}\) During the investigation, the adoption organization that carried out psychological interviews is consulted.

Three types of enquiry are contemplated:

- A social investigation of the applicants’ aptitude to adopt.\(^ {19}\)
- A psycho-medical and social study of the child in the case of an internal adoption.\(^ {20}\)
- The third type of investigation would be invoked in the context of international adoption: a social enquiry into the adoptability of a child in case of international adoption of a child residing in Belgium by applicants residing abroad.\(^ {21}\)

c) Hearings

After the Public Prosecutor’s report and social enquiry submission, the court carries out various hearings in camera and summons:

- The applicants;
- Any person whose consent is necessary or his/her representative designated in accordance with article 348-9 of the Civil Code.
- The subject of adoption younger than 12 years old and if ready to express his/her opinion.
- Any person whose opinion collected by the Public Prosecutor is unfavourable.
- Any person whom the Court considers it useful to be heard; On this basis the grandparents of origin could be eventually heard if the Youth Court deems it useful, for example because of the emotional ties developed with the child. These grandparents could not, however, intervene in the case, except as third-parties and except on the hypothesis that they cared for the child to assume responsibility for his/her maintenance and education in place of the parents.\(^ {22}\)

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18 Article 1231.6 and 1231.7 of the Code of Civil Procedure.
19 Article 1231.6 and 1231.29 of the Code of Civil Procedure.
20 This study is not laid down by the law but by the right of the French Community to have information making it possible to conclude the political alliance. They are primarily medico-psycho-social elements making it possible to appreciate if the child is psychologically acceptable, i.e. able to re-establish bonds of filiation with a new family. This information on the child and his needs makes it possible to determine the family in a position to adopt it.
21 Article 1231.35 of the Code of Civil Procedure.
22 Article 1231.9 to 1231.12 of the Code of Civil Procedure.
23 Article 1231.21 of the Code of Civil Procedure.
24 Article 1231.10 and 1231.12 of the Code of Civil Procedure.
A report of appearance is drawn up, except regarding the child who, whatever his/her age, is always heard alone and for whom there is a hearing report instead of an official transcript\textsuperscript{25}.

The memorandum explains this difference by stressing that a child can use expressions, which, if they were literally rewritten in an official transcript, or if read without any spirit of criticism by his/her parents or the applicants, could be misinterpreted against him/her. Moreover, the evidence may be expressed extremely eloquently but in language unsuitable for transcription into an official report\textsuperscript{26}.

Any person whose opinion must be taken by the Public Prosecutor, such as any person whose consent is necessary, can state by simple act their wish to intervene\textsuperscript{27}.

d) Pronounced adoption and legal recourse.

Save where it is established that the child has been brought up for more than 6 months by the applicants, the court pronounces, as soon as possible within the period of six months from the filing of the application\textsuperscript{28}.

This extension of the time limit, which was previously of three months, must be used to guarantee the professionalism of the enquiries and to allow an evaluation of the success of the integration of the child in the family of the adoption applicants\textsuperscript{29}. The judgment is then notified by legal document to the applicants, to any person whose agreement is required and to the Public Prosecutor\textsuperscript{30}.

Recourse to the High Court by way of appeal is open to the Public Prosecutor, to single applicants, to applicants acting jointly, to the adoption subject and to any intervening party. Adoption subjects younger than 12 years old, older minors or those suffering from incapacity are represented by one of the people who must consent to their adoption\textsuperscript{31}.

The appeal request must be deposited at the clerk's office of the Court of Appeal within a month of the notification of the judgment. In accordance with article 1231.18 of the Code of Civil Procedure, any decision regarding adoption cannot be implemented whilst it is under appeal to the High Court. If the decision concerns several persons being adopted, an appeal or an appeal to the Court of Cassation in the High Court brought by one of them takes effect only in relation to that one.

e) Note:

For the adoptions arranged by approved organizations – that means all except the intra-family ones in the wider sense - the consent will almost always have been given prior to the application, by deed signed before a Notary or Justice of the Peace, as provided for in article 348-8 al.1\textsuperscript{st} and 2\textsuperscript{nd} of the Civil Code.

In the most cases, the original parents will similarly have indicated in the deed, as is allowed by the law that they want to remain in the ignorance of

\textsuperscript{25} Article 1231.11 of the Code of Civil Procedure; to see developments in question 8.
\textsuperscript{26} Doc. Parl., CH., n°50-1366/001, p.83; N.GALLUS, « The new law on adoption, in right of the families », 2007, volume 92, p. 144.
\textsuperscript{27} Article 1231.10 and 1231.12 of the Code of Civil Procedure.
\textsuperscript{28} Article 1231.13 of the Code of Civil Procedure.
\textsuperscript{30} Article 1231.15 of the Code of Civil Procedure.
\textsuperscript{31} Article 1231.16 and 1231.17 of the Code of Civil Procedure.
the identity of the applicants, and will appoint a member of the approved organization to represent them in the application, according to article 348-9 of the Civil Code. Indeed, consent is, generally, given earlier than two months. The child is often entrusted to the applicants as from the act of consent.\footnote{See question IX, D.}

f) Administrative formalities

Presently it is the clerk, and not any longer the Public Prosecutor, who transmits the adoption decision to the Civil Registrar for the usual place of residence in Belgium of the applicants or of one of them and, failing this, for the usual place residence in Belgium of the person being adopted (normally, the qualified civil registrar is that of Brussels), and thereby enabling the transcription in the margin of acts of marital status relating to the subject of adoption and his/her descendants.\footnote{Article 1231.19 of the Code of Civil Procedure; if the birth certificate was drawn up abroad, it is also transcribed in the registers of marital status in accordance with Article 368-1, 1° of the Civil Code.}

The Civil registrar will also inform the federal central Authority, which will advise the Community central Authorities about any transcription and any matter relating to an adoption decision.

C. BELGIAN INTERNATIONAL ADOPTIONS INVOLVING THE MOVEMENT OF A CHILD FROM ONE TO ANOTHER COUNTRY

This concerns the hypothetical case of adoption of a child that is of people younger than 18 years old.

1. Adoption by applicants resident in Belgium of a child residing abroad.

a) Preparation for the adoption:

\textit{In relation to the applicants:} Before any other step, and as for internal adoption, the applicants must attend a preliminary course to obtain a certificate declaring their qualification and aptitude to ensure their suitability for an international adoption.\footnote{Article 361.1 of the Civil Code and 1321.28 of the Code of Civil Procedure.} They must, thus, apply to the expert department of the central Authority for their usual place of residence. At the end of the course, the applicants receive a certificate of readiness.

After their receipt of this certificate, they can make application to the Youth Court for a process of inquiry to evaluate their aptitude, in order to obtain a judgment of aptitude, which precedes the ‘Acquaintance’.

\textit{In relation to the child’s original family:} As with internal adoption, the adoption organization has the role of making sure that the original parents, if their consent to the adoption is required, are instructed as to the legal and psychological consequences of the adoption of their child that is under consideration.

Within the context of international adoption, this work can be carried out abroad only by the collaborators with the organization. However, in the practice, this work can seldom be carried out, as the children being adopted are generally children abandoned in places where the necessary consent to the adoption is given by the qualified authority in the country of origin.
The organization must also make sure that the child has been prepared for their adoption. This is also a role given to the collaborator on the ground.

In many countries of origin, this preparatory work is carried out properly, but there are unfortunately exceptions. In the most of countries where most of the children who are to be the subject of an international adoption come from (for reasons of lack of economic and human resources or for cultural reasons...), nobody speaks to the children about their marital status, their history, and their abandonment.

The psychological work essential to create a bond with the family adopting the child is, thus, done with the applicants; there follows an explanation of the importance of the training required to be given to the applicant parents and of the post-adoption follow-up\textsuperscript{35}.

b) Judgment of aptitude of the applicants.

The Youth Courts will evaluate the aptitude of the applicants in an international adoption differently from an internal adoption.

As it was said above, in the context of an internal adoption, that this evaluation comes after the ‘Acquaintance’ period, during the proceedings for pronouncement of the adoption, whereas in the context of an international adoption, the evaluation comes before that. Articles 1231.27 to 1231.33 of the Code of Civil Procedure describe the different phases in the process of analysis of the behaviour of the applicants.

c) Lodging the application in the Youth Court for the applicants’ place of residence.

Social enquiry, delegated to the Community central Authority, and the Youth Court report presented at the clerk's office within two months after it was ordered, and transmitted to the Public Prosecutor.

Convocation of the applicants, to take note of the social enquiry report.

Appearance of the applicants before the Youth Court within one month after the expiry of the period of consultation on the social enquiry report.

Judgment of aptitude, with reasons, pronounced by the Youth Court. This judgment specifies the number of children to be adopted and includes possible provisos relating to the characteristics of the children. It can be used only for one adoption procedure, and is valid for three years.

Notification of judgment to the applicants.

2. Report of the Public Prosecutor

If the judgment finds in favour of the applicants in regard to their aptitude, then within two months from the pronouncement of the judgment the Public Prosecutor prepares a report for the central Authority of the country of origin, in order to give it sufficient information to enable it to reach a decision in regard to each child needed for international adoption, concerning the adopting parents offering the children the most adequate environment and the best chances of good integration (information about identity, legal capacity, the personal situation, the family and medical history, the social background, the reasons motivating the applicants and the children whom they would be able to have in charge).

This report is based, in particular, on the contents of the social enquiry report, which has to deal with the political alliance, and it is thus essential that it should clarify any possible limitations in the aptitude of the applicants. The report is presented to the clerk's office, which within three days informs the applicants and sends them a copy of it, as well as a copy of the judgment of aptitude, that was also sent to the federal central Authority.

a) The Acquaintance period

The legislature and academic opinion are unanimously of the view that the ‘Acquaintance’ period always favours “children’s rights” and not “the right of the child”. The Articles 361.3 and 361.4 of the Civil Code contemplate reinforced provisions for protection. They anticipate that any international adoption must be set up by the expert Community central Authority itself or delegated to an approved adoption organization such as those licensed under The Hague Convention to fight against practices that do not respect the interests of the child, one of the worst of which is trafficking in children. It is the central Community Authority, which has the sole responsibility for sending the applicants’ file to the central Authority of the country of origin, for receiving from that country a proposal of a child and for transmitting the agreement of the adopting parents.

The particular circumstances of international adoption imply a requirement of specific guarantees for the protection of the original parents, who are generally vulnerable by reason of their personal standing. To ensure that their final consent is in reality freely given, the movement of the child to Belgium can take place only if the Community central Authority receives from the Authority in the State of origin a report about the adoptability of the child and the necessary consent with a certificate given to the original parents confirming that their consent was given of their own free will, without any payment or counterpayment and proving continuity after the birth of the child. These requirements are stated very precisely in the Civil Code and the Community decrees.

For the French Community, the process of ‘Acquaintance’ by an approved organization is described in articles 34 to 37 of the decree. The procedure of acquaintance by the Community central Authority, when the request relates to a country with which no organization of adoption is authorized to collaborate, is scattered into articles 39 to 45 of the decree.

b) Pronouncement of Adoption and judicial recourse.

The ‘Acquaintance’ period is followed by the decision on adoption. Generally, this decision is made in the country of origin of the child according to the law and procedures of that State. Once the decision is taken, the applicants start the procedure for recognition by the federal central Authority.

In certain countries (Thailand for example), a decision for pre-adoption placement is made and the child is moved to the applicants’ home country; then, the judgment is given and the decision is taken in the country of origin, following receipt by the Authority in the country of origin of reports prepared by the approved organization s

38 Article 361.3, 2° and 261.4 of the Civil Code.
intermediary\textsuperscript{39}. Less frequently, a Belgian Judge gives judgment in an international adoption:

- Because the law in the country of origin so provides (in the case of India and the Philippines, for example);
- Because Belgian law so provides (in particular on the adoption of a child the law of whose country of origin law does not have any provisions for adoption);
- When the child is already in Belgium.

Judicial recourse by way of appeal is identical to that elucidated in relation to internal adoption.

c) Recognition and recording:

Since the entry into force of the Belgian law of April 24, 2003, any foreign judgment or decision regarding adoption must obtain recognition by the federal central Authority in order to have full legal effect in Belgium (see below, section II). When a Belgian judge gives a judgment in adoption, it is not necessary, of course, to seek its recognition by the federal central Authority.

Any decision of recognition is recorded. The adoption then becomes legally effective for any Belgian authority or jurisdiction, on simple presentation of the certificate recording the recognition. After that, all administrative formalities can be started.

3. Adoption of a child residing in Belgium by applicants residing abroad

This is a wholly exceptional situation because of the social and economic conditions prevailing in Belgium, which is not usually the country of origin of a child the subject of adoption.

In fact, there are in general sufficient numbers of applicants resident in Belgium likely for adoption of children resident in the Belgian territory. As international adoption is subsidiary to internal adoption (according to the general principles of the The Hague Convention), the interest of the child will be almost always be served by adoption in Belgium.

Let us suppose that some hypothetical cases will arise relating to cases of intra-family adoption or of adoption by some relatives residing abroad or of adoptions of children with special needs.

In summary, the procedure is as follows:

- It begins with the opening of a file on the child: when the foreign central Authority contacts it, the federal central Authority transmits the file to the competent Community central Authority, which will gather information concerning the child\textsuperscript{40};
- At the request of the federal central Authority, the Public Prosecutor applies to the Youth Court in accordance with article 1231.34 of the Code of Civil Procedure and an ad hoc guardian appointed by the Court represents the child;

\textsuperscript{40} Article 362.1 of the Civil Code and 1231.34 of the Code of Civil Procedure.
- The court gives an interim judgment ordering a social enquiry;41
- Within three days from the submission of the social enquiry report, the child’s legal representative is judicially briefed to take note of the report and to appear in person before the Court;
- The court comes to a conclusion about the suitability for international adoption of the child by checking whether the conditions of article 362.2 of the Civil Code are met.

These conditions relate primarily to respect for the interest of the child and his/her rights, to the principle of subsidiary of international adoption, to the unconditional and free character of the consent required, and to the adequacy of information given by the child in accordance with his/her wishes. Finally, a check is also made to ensure there is no economic arrangement.

In addition, article 362.4 of the Civil Code concerns protective provisions relating to the movement of a child, and, in particular, provisions for investigation of the applicants’ aptitude to adopt and authorization for the child to remain in the country of reception for the long term42.

a) Particular cases in which the law of the child’s country of origin neither provides for adoption, nor for movement (of the child) for the purpose of adoption.

Before the law of April 24, 2003, many people residing in Belgium obtained a judgment kefala in Morocco entrusting a Moroccan child to them. With the help of various documents required by the Foreign Office, they returned to Belgium with the child, and sought to ratify the act of adoption in Belgium before a Justice of Peace or by deed of a notary and then set in motion the process of official approval (homologation) of the act of adoption.

This procedure was abolished on September 1st, 2005, leaving a number of unresolved legal cases since these children entrusted by kefala and having left the orphanage in Morocco could not possibly be adopted in Belgium yet could not remain there legally. To regularize this situation and in future to permit the adoption in Belgium of children entrusted in kefala, a new article 361.5 was introduced into the Civil Code by articles 2 and 3 of the law of December 6, 2005.

This makes it possible to derogate from certain provisions of articles 361.3 and 361.4 and to move the child of a kefala from its country of origin to Belgium subject to compliance with the following conditions:

The applicants must meet the requirements of Belgian law and must therefore have completed their preparation and obtained a judgment of aptitude;
The child to be adopted must either be orphan, or have been the subject of a judgment of abandonment and have been put under the supervision of a public authority.
- No preliminary contact can take place directly between the applicants and the people who have guardianship of the child entrusted by kefala before his/her adoption. Thus, it is either an approved adoption organization or the Community central authority, which will be the intermediary with the foreign authority for the proposal of a child to the.
- After acceptance of the proposal of child by the applicants, the competent Community central authority and the competent authority of State of origin give their agreement after the ‘Acquaintance’ period.

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41 Article 1231.35 of the Code of Civil Procedure.
Once these conditions are fulfilled, the applicants travel to Morocco to get to know the child and to finalize the procedure of kefala, i.e. to obtain a judgment of kefala and the authorization of the Moroccan judge to move the child abroad. After their return to Belgium (the entry of the child into Belgium being possible since he/she then has a Moroccan passport and a visa delivered by the Belgian consulate), the procedure for pronouncement of the adoption can be proceeded with before the competent Youth Court.

The same law of December 6, 2005 envisaged transitional provisions for children entrusted in kefala either before the September 1st, 2005, or between September 1st, 2005 and December 25th, 2005, the date of coming into force of the new Article 361.543.

4. Recognition in Belgium of a foreign adoption

a) Recognition of foreign judgments and foreign public acts establishing an adoption.

The reform of adoption has brought important changes to the applicable duty, since any foreign judgment on adoption must, from now on, be recognized by the federal central Authority to take effect in Belgium both in relation to adoptions involving an international movement of the child and to the internal adoption of foreign children. Once recognition is in place, then the federal central Authority sends out a certificate recording the recognition44.

In the case of an adoption governed by the The Hague Convention, meaning an adoption taking place in a foreign State bound by the Convention, Articles 364-1 to 364-3 of the Civil Code define the conditions for recognition. In this way, the recognition is completed. The refusal of recognition can occur only if the adoption - taking into account the interest of the child and its fundamental rights - is obviously contrary to public policy. Nevertheless, there is no regulation concerning fundamental rights45.

For foreign adoptions not governed by the The Hague Convention, the provisions are stricter and Article 365-1 of the Civil Code defines the conditions for recognition46: conclusion of the adoption according to the rules of procedure of the foreign State, the decision to become res judicata in that State and compliance with Articles 361.1 to 361.4 when there is international movement (evaluation of the applicants’ aptitude to adopt, evaluation of the child’s adoptability, the ‘Acquaintance’ process).

Recognition can, in this case, be refused for various reasons stated in article 365-2 of the Civil Code, that is to say:

Fraud according to the law or during the proceedings, unless an exceptional case of respect for the rights of the child arises;
Violation of public policy taking into account the higher interest of the child and respect for his/her rights;
Violation of Articles 362.2 to 362.4 (relating to the political alliance);
Deviation from the legal provisions on nationality or the rules for access to the territory or permit to stay.

Lastly, the procedure to be followed is defined in articles 365-3 to 365-7 of the Civil Code, which are considered to be outside the scope of this report.

b) Recognition of foreign decisions, which revoke, revise or dismiss a foreign adoption:

44 Article 367-2 of the Civil Code.
46 See also article 72 of the Code of DIP.
This matter is governed by article 72 of the Code of private international law and by articles 366-1 to 366-3 of the Civil Code. Concerning the revocation or the revision of an adoption, recognition supposes that:

- The decision was made by the authority, which, under the law of the foreign State, had power to do so,
- It was made in the form and according to the procedure envisaged in that State.
- It can be regarded as res judicata in that State.

The recognition will, however, be refused if:

- The applicants knowingly committed fraud during the proceedings save in an exceptional case for reasons related to respect for the rights of the child.
- The decision is obviously contrary to public policy.

Concerning cancellation, article 366-3 of the Civil Code contains a particular rule specifying that a foreign decision cancelling an adoption can never take effect in Belgium.  

5. Role of the federal central authority regarding recognition and judicial recourse.

Recognition of foreign decisions and the recording of a recognized foreign decision come under the exclusive responsibility of the federal central Authority, and are:

- For the adoption of persons of full age and minors;
- For adoptions within The Hague Convention as well as for other adoptions.
- For decisions establishing an adoption as well as for those which relate to its conversion, its revocation or its revision.

The decision of the federal central Authority must be supporting by reasoning and indicate expressly, when recognition is granted, whether it relates to a simple adoption or a plenary adoption. Concerning recourse by appeal against a decision for recognition (at the request of the Public Prosecutor and of any other interested person), or refusal of recognition, the Court of First Instance in Brussels has exclusive jurisdiction.

The time limit for recourse is:

- One year from the decision for refusal of recognition or the date of registration in the event of recognition being granted for the Public Prosecutor and any interested person.
- 60 days from the service on or from the notification of the decision for refusal of recognition to the applicant.

Article 367-3 of the Civil Code, prescribes the rules of the procedure on appeal.

D. FEDERAL CENTRAL AUTHORITY

The functioning of the The Hague Convention rests on international co-operation between authorities and jurisdictions of the contracting States, with the intervention of the central authorities charged with the obligations imposed by convention. When the contracting State is a federal State, several central authorities can be made known,

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48 Article 72 Codes DIP and article 367-1 of the Civil Code.
provided that one of them is charged to centralize the reception and the transmission of communications. Pursuant to these provisions of article 6 of the Convention, Belgium named a federal central Authority and three Community central Authorities; a fourth Authority (central Authority of the Common Community Commission) is named pursuant to the cooperation agreement of December 12th, 2005. The office for international adoption of the SPF Justice was named as federal central authority49. Its tasks are defined in articles 7 to 9 of the The Hague Convention and include primarily:

- International co-operation for the protection of children;
- The exchange of information on international adoptions;
- Removal of obstacles to the application of the Convention;
- The fight against practices with contravening the Convention and the prevention of attempts to profiteer from an adoption;
- The provision and exchange of information on the circumstances of the child and the applicants, the up-dating of personal files relating to adoption, the setting up of services of councils for adoption, the sharing of experiences as regards international adoption and the response to appropriate requests for information in particular cases of adoption. These last mentioned tasks may be delegated to public authorities or dedicated organizations.

On this basis, the tasks of the federal central Authority in Belgium can be classified into 5 categories50.

1. **Information, which comprises 2 points:**

   - The transmission of information to the foreign central Authorities on the Belgian legislative development, the statistics, the personal files…
   - The reception from and transmission to the Community central Authorities of information relating to the files managed by them: transmission of the judgments of aptitude and the judgments of adoptability of a child, transmission of the reports of the central Authorities of the foreign States on the candidates intending to adopt a child residing in Belgium, transmission of the copy of the transcript by the Registrar of a decision establishing an adoption in Belgium.

2. **Coordination:**

   - At national level, this concerns the organization of regular meetings with the Community central Authorities, the SPF Foreign Affairs, the Foreign Office, the magistrates and the Public Prosecutor.
   - At international level, it concerns ensuring the coordination of the Belgian reports with international organizations.

3. **Recognition:**

   The federal central Authority only has, competence (in case of legal action) to recognize adoptions, which are not subject to the The Hague Convention, concerning adoption of persons of full age or minors and being internal or international adoption.

   As specified under question II, the decision to recognize establishes the name of the child being adopted and determines whether the foreign adoption is equivalent to a

simple adoption or a plenary adoption, assimilation achieved according to criteria such as irrevocability, whether there is a total break with the family of origin, whether there is assimilation of a child resulting from adoption\textsuperscript{51}.

4. Certification:

As soon as the Belgian decision pronouncing an adoption is transcribed in the public registers of marital status, the federal central authority delivers, at the request of any interested party, a certificate of compliance with the The Hague Convention\textsuperscript{52}, which implies, as specified under question II, full recognition of the Belgian decision regarding adoption in the contracting States.

5. Recording:

The federal central Authority also holds the central registers of adoption in which are recorded all the decisions of recognition. It delivers to the applicant a certificate of recording which remains valid for any Belgian authority (except for any Court of First Instance seized of the proceedings for recognition)\textsuperscript{53}. In addition, a foreign decision for adoption can be transcribed in the Public Registers only if it is recorded beforehand\textsuperscript{54}.

E. COMMUNITY CENTRAL AUTHORITIES

Whether or not, on one hand, it is for the federal legislator to define adoptability, the aptitude to be adopted, the required agreements, the procedure, the conditions for the adoption and its effects, it is, on the other hand, for the Communities to ensure the training of the applicants, the monitoring and the control of the intermediaries and, more generally, assistance to all the concerned families\textsuperscript{55}.

More precisely, the legal tasks of the Communities, subject to the intervention of the Community central Authority, are as follows\textsuperscript{56}:

- Approval, setting up, coordination, control and evaluation of the intermediaries for the adoption (approved organizations, see point 3).
- Information concerning and preparation of the applicants;
- Results of the social enquiries ordered by the Youth Court;
- Support and preparation of the individual applications for international adoption in collaboration with the proper authorities of the country of origin of the children, this task including in particular responsibility for the political alliance;
- Co-operation with any authority Belgian or foreign, federal, Community and international;
- Conservation of the data containing information about the child’s origin; the parents’ identity, the medical history of the child and his family.

These files have to be accessible to the person being adopted. However, the file of a child kept in Belgium may not contain information relating to the biological parents. Indeed, according to article 16 of the The Hague Convention, the central Authority of the original State must transmit to the central Authority of the state of reception its report on the child taking care not to reveal the identity of the father and the mother if,

\textsuperscript{53} Article 367-2 of the Civil Code.
\textsuperscript{54} Article 368.1 subparagraph 1 2° of the Civil Code.
\textsuperscript{55} E. VIEUJEAN, “Adoption”, Right of the people, notarial Chronicles, vol.42, Larcier, October 2005, p.64.
in the State of origin, this identity cannot be revealed. The child will have to apply to the
Authority of the State of origin, which will give access to information only if the law of
that State allows it on the day of the request.

Each Community, thus, has its own legal framework:

- For the French Community, the decree of March 31, 2004 modified on July
  1, 200557.
- For the Flemish Community, it is the decree of July 15, 2005 relating to
  international adoption of children, which applies58 (Flemish Community
central Authority = Dienst voor Kind in Gezin).
- For the German-speaking Community, it is the decree of December 21,
  2005 relating to the adoption, which applies59.

Having regard to the limited number of adoptions, the government of the German-
speaking community decided not to approve or create a proper service for adoption,
but to utilise the services of the two other Communities, which then work as
intermediaries for the adoption of candidates originating from the German-speaking
Community.

For this purpose, a cooperation agreement was signed with the French Community: the
Agreement of April 27, 2001, modified by the Agreement of June 16, 200460.

For the Area of Brussels-Capital, a decree of May 4, 2006 has unified the Community
central Authority and the common Community Commission61.

The Council of State specified that the common Community Commission was not found
to fulfill all the obligations falling on the Communities in the matter, when the people
residing in the area of Brussels-Capital can choose to apply either to the French
Community concerned service, or to the Flemish Community concerned service.

The common Community Commission also was not found to approve the services of
both communities on adoption62.

By reason of its limited financial means and of the fact that it remained at the level of
an experiment in the matter, the common Community Commission decided to limit its
intervention to the fields in which it has a constitutional obligation to intervene.

This is consigned to the co-operation agreement of December 12, 2005, concluded
between the federal State, the French Community, the Flemish Community, the
German-speaking Community and the common Community Commission, which relates
to the implementation of the law of April 24, 2003 reforming adoption63.

F. APPROVED ORGANIZATIONS

As specified above, the adoption organizations approved by the Community are multi-
disciplinary services intervening as intermediaries to draft adoption plans. In the French
Community, articles 13 to 20 of the decree prescribe the conditions for approval and

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60 M.B., October 26, 2005.
63 See preamble, point 1
subsidising of these organizations, as well as the methods of initiation of collaboration abroad\textsuperscript{64}.

1. Approved organizations for internal adoption (decree, articles 30, 31, 32 and 48bis).

The statement of the mission shows that, within the French Community, preparation for the adoption goes well beyond the simple training of the applicants to obtain the certificate, which attests their qualities\textsuperscript{65}. The preparatory work involves the child’s original family, which remains at the centre of the adoption process, as described in question I, point 1.

Consequently, the organization will have:

To inform the parents of origin of the alternatives to the adoption, the legal and psychological effects of what are implied in the task of child reception, listening and advising to make sure that their decision is taken responsibly.

to conduct a psycho-medical and social study of the child, to seek the most appropriate applicants to meet the needs of the child, to prepare the child for the adoption and to ensure its preparation until it becomes adopted.

The organization has the task of providing information, psychological assistance or research into the origins of the child;

To make sure of the consent of the original parents and eventually their designated representative in the proceedings\textsuperscript{66};

To prepare the applicants for the reception of the child, and to advise them on the proceedings;

To ensure post-adoption follow-up\textsuperscript{67}.

2. Approved organizations for international adoption (articles 34 to 37 of the decree)

Their principal function is as an intermediary, giving assurances to the child, the country of origin and the applicants:

- With respect to the child and the country of origin, it acts to give an assurance that the child will be entrusted to those adopting parents best meeting its needs when he/she is considered ready to be adopted;

- From the point of view of the applicants, it is a matter of an assurance that the child is free to be adopted, that the agreement of the original parents was given freely and with no conditions and, moreover, that the child is ready for his/her adoption.

The preparatory work concerning the family of origin and the child is carried out with the assistance of collaborators with the approved organization working in the foreign country.


\textsuperscript{66} Article 348-9 of the Civil Code.

\textsuperscript{67} See question 4.
Particular difficulty often arises in some countries of origin due to lack of resources, as it was specified under question II. Further, the approved organizations for international adoption have other missions, which can be summarized as follows:

- To advise the applicants about opening of the file to be sent to the foreign country;
- To send the file of the applicants abroad;
- To send to the foreign central Authority the agreement of the applicants to the proposal of the child for adoption, the agreement of the Community central Authority;
- To help the applicants for with moving abroad, the follow-up of the procedure on the spot and the procedure for recognition by the federal central Authority;
- To carry out the post-adoption follow-up required by the country of origin;

when the setting up of the adoption is perused by an approved organization, this must, within 3 months after the arrival in Belgium of the child, go to the applicants and remain at the disposal of the applicants and of the child being adopted to provide assistance with any intervention or difficulty of integration the child might require;

When the Community central Authority sets up the adoption, the convention specifies the obligations of the parties as regards follow-up with the child.

3. Supervision of Organizations

Adoption organizations are approved by the French Community, according to the provisions of articles 13 and 14 of the decree. Like any ASBL approved by the Community, the organization is controlled by the Community central Authority, which serves as an inspectorate. If the organization does not meet the conditions for approval, the Community central Authority or the relevant Minister can start proceedings to withdraw the approval.

a) The Youth Court in the context of adoption of a minor and the Court of First Instance within the context of adoption of a person of full age, the Court of Appeal or the Court of Cassation in the case of a contested appeal.

The courts of the place of residence of the applicants, or failing these, of the place of residence of the person being the being subject of adoption are stated as described to questions I and II.

Within the context of proceedings for an internal adoption, it is the court, which orders the social survey (for the adoption of a minor), carried out by the services indicated by the Communities. It conducts hearings and pronounces the adoption. It, thus, has the “final” decision-making power.

Within the context of a proceedings for international adoption, the court is initially entitled to pronounce a judgment of aptitude of the applicants, after making of an

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69 Decree, Article 37 § 3 10° and article 46. See also question 4.
70 Decree, Article 43.
71 To see points 3, 5 to 7 question I.
application for adoption (for the adoption of a minor as well). It is after the report of the Public Prosecutor and according to what is stated to the political alliance that it pronounces the adoption.\footnote{To see points 2 and 5 question II.}

**G. THE PUBLIC PROSECUTOR**

Within the context of an internal adoption, the Public Prosecutor, receiving the file within eight days of the lodging of the proceedings for adoption, has the role of collecting all the useful information and opinions on the adoption plan, in accordance with article 1231.5 of the Code of Civil Procedure\footnote{See point 4 question I.} and to transmit his report within two months of the filing of the proceedings.

Recourse by way of appeal against a judgment for adoption is also open to him/her, in accordance to article 1231.16 of the Code of Civil Procedure\footnote{See point 7 question I.}.

Within the context of an international adoption, he/she has the role of submitting a report within two months of the pronouncement of the judgment of aptitude for adoption, intended for the competent central Authority of the country of origin of the child. This report will be compatible with the political alliance\footnote{See point 3 question II.}. As in the case of internal adoption, the same recourse by way of appeal is open to him/her.

**H. THE CENTRAL AUTHORITIES**

The approved organizations for adoption and the courts of the countries of origin of the children within the context of an international adoption.

They intervene in collaboration with the Belgian federal central Authority and the Community central Authorities in all the proceedings for international adoption, as described in questions II and III, items 2 and 3, primarily for all of the preparatory work that precedes adoption.

It is to be recalled that very often, the decision on the adoption takes place in the child’s country of origin according to the law and the procedure of that State. This judgment has then to be recognized by the Belgian Federal central Authority.

**I. POST-ADOPTION TASKS**

Each Community considers setting up post-adoption follow-up by its own enactments. However, in the German-speaking Community if, during the ‘Acquaintance’ process, the applicants utilize the adoption service of another Community\footnote{See question III, point 2.}, the central Authority for adoption for the German-speaking Community will apply to the expert department of this Community to ensure post-adoption follow-up.

Otherwise, the central Authority of the German-speaking Community, which acted during the ‘Acquaintance’ period, will also take care of the post-adoption follow-up\footnote{B.BERTRAND, C.FAURE and G.MANZ, “New Community legislation for adoption”, R.T.D.F., 2006, p. 213 and 215.}.

In the French Community: within the context of internal adoption, it is the same organization, which will ensure that if the child remains in the residence of the
applicants before the delivery of the judgment for adoption and the follow-up with the applicants78:

- By paying at least one visit to their residence within the first three months of the arrival of the person being adopted.
- By carrying out a half-yearly meeting in their residence at the location of the organization.
- Eventually carrying out, with the support of a multi-disciplinary team, any other intervention intended to support the integration of the child in the adopting family79.

It should be known that the organization remains at the disposal of the applicants for any help and advice80.

Within the context of international adoption, except where the central Authority sets up the adoption (in which case, there is an enactment which specifies the obligations of the parties concerning the follow-up), it is the organization which is both qualified and ensures the follow-up of the adopted children and the applicants:

- By carrying out the post-adoption follow-ups required by the authorities of the country of origin.
- By paying, at least, one visit to the residence of the applicants within three months of the arrival of the child/children in Belgium.
- By carrying out, with the support of a multi-disciplinary team, any other intervention intended to support the integration of the child into the family81.

Once more, the organization remains at the disposal of the applicants and the person being adopted for any help and advice82.

In the Flemish Community, according to article 21 of the decree, the Flemish government approved a non-profit-making organization as a point of support for the post adoption follow-up. A representative of the adoption services and a representative of the centre of preparation sit on the board. Furthermore, meeting groups and social enquiry services for international adoption have been established.

To obtain this approval, the ASBL must carry out the following tasks of post-adoption follow-up83:

- The setting-up of a network of services and existing projects charged with the task of post-adoption follow-up, including adoption services, centres of preparation, services for preventive and specialized assistance, associations of applicants and of persons the subject of adoption.
- To work out, in collaboration with the services and projects noted above, a global view of this follow-up.
- To promote expertise regarding adoption on the level of the existing offer.
- To support the professionalism of the post-adoption follow-up.

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78 Decree, article 46 §1er.
79 Decree, article 33 §3, 6°.
80 Decree, article 33 §3, 7°.
81 Decree, article 37 §3, 10°.
82 Decree, article 37 §3, 11°.
83 Decree, article 21.
To serve as a point of information and advice for persons being adopted, applicants and parents of origin.
- To serve as a centre of expertise.
- To set up an information and recourse centre.
- To implement of their own motion or at the request of the Flemish central Authority or of the Flemish Government specific follow-up plans.
- To set up the meeting associations regarding adoption.

J. DIFFERENCES BETWEEN A EUROPEAN ADOPTION AND AN INTERNATIONAL ONE

There is no difference between a European and a non-European adoption; the only difference arising under Belgian Law is between an internal adoption (the applicants and the subject of adoption residing in Belgium) and international (any adoption involving a foreign element)84.

K. WHO CAN ADOPT?

The two types of adoptions will be considered in context. The only difference is in the Court seized of the matter, as already raised by questions I and II. The conditions for capacity to adopt are as follows:

1. Condition relating to the marital status of the applicants for adoption

The applicants for adoption are defined by the article 343§1 of the Civil Code. He/she/they can be:
- An individual;
- A married couple;
- Cohabitation, two people having made a declaration of legal cohabitation or two people living together in a stable relationship for at least 3 years at the time of the commencement of the proceedings for adoption, in so far as they are not linked by a family bond involving a prohibition of marriage from which they cannot be exempted by the King. When a single person adopts and he/she is married or in cohabitation, the agreement of the partner will be required85.

When the adoption is by a couple, any confidentiality attached to the marriage disappears, as provided for by the enforced disregard of any monopoly reserved to heterosexual couples provided for by the Law of May 18th, 200686.

The idea is to ensure the integration of the child into a family, which will ensure his/her protection, and indeed, whatever kind of legal cohabitation has been chosen by the applicants87.

Furthermore, the age conditions which must be satisfied at the time of the proceedings to adopt are identical to those under the old law: the applicants must be at least 25 years old and at least 15 years older than the subject of adoption. If the subject of adoption is a child of the spouse or cohabitee of the applicant for adoption, it is necessary for the applicant for adoption to be were 18 years old and 10 years older than the subject of adoption88.

84 See questions I and II + preamble.
85 Article 348-2 of the Civil Code.
87 See Y.H. LELEU, “Right of the people and the family” S, conference Faculty of Law of ULG, Brussels, LARCER, 2005, page 537.
88 Article 345 of the Civil Code.
2. Preparation for the adoption

Before any step is taken towards the adoption and any evaluation made of the aptitude to be adopted, the applicants are obliged to attend preparation courses organized by the skilled Community, and indeed, this is in order to receive the necessary information about the procedure, the effects of the adoption and the usefulness of the post adoption follow-up89.

3. Provisions on aptitude to be adopted

Pursuant to article 346-1 of the Civil Code and article 1231.6 of the Code of Civil Procedure, applicants for the adoption of a child, meaning a person less than 18 years old, must be qualified as ready to adopt, that means having the necessary socio-psychological necessary qualities to enable them to accomplish this task (application of article 5 of the The Hague Convention).

Assessment of this aptitude by the Youth Court proceeds on the basis of the social enquiry to cast light on the personal, family, medical history and motivations. The competent authorities of the Communities are consulted during this enquiry.

The procedure for assessment of the aptitude to be adopted relates to the adoption of a child.

However, it does not apply to simple adoption of a person of full age, article 1231.6 of the Code of legal procedure specifies, however, that the Court of First Instance can, if it considers it useful, order a social enquiry into the adoption plan.

Nevertheless, when the adoption of a child is an intra-family adoption (an adoption of a child related up to the 3rd degree with the applicants) and his or her spouse or cohabitee maintains with the child to be adopted a social and emotional bond from day to day, the preparation of and provision for the aptitude are necessary, but the social enquiry is not compulsory90.

Disregard of the compulsory character of the social enquiry in the case of an intra-family adoption is criticized for not being necessarily in conformity with the interests of the child. It could, indeed, be used to break the bond of the child with one of his/her parents after losing their link with the parents of origin or to break the bonds with a branch of the family of origin after the death of one of the biological parents91.

The Court provides under national law for the aptitude of the moment of the filing of the proceedings for adoption, after the ‘Acquaintance’ process and the reception of the child by the adopting family.

As already set out in questions I and II, the situation is completely different in case of an international adoption where the provisions take effect before any other step and, thus, before the ‘Acquaintance’ process and the movement of the child to Belgium.

This preliminary application of these provisions enables the intermediaries in an approved adoption to liaise with the political alliance and facilitates the choice of a family to adopt a child that best meets his or her interests. Moreover the prohibition of any contact between the applicants for adoption and the family of origin before the assessment of aptitude makes it possible to put an end to the practice of the “choice of

89 Article 346-2 of the Civil Code; to also see developments in questions 1 and 2.
90 Article 346-2 of the Civil Code.
the child" from institutions or of the applicants putting pressure on underprivileged families of origin.

In national law, there is no preliminary application of these provisions, with the risk of failure of the reception of the child and, thus, the risk of discrimination in this part of the child's protection.92

This disparity between the systems is actually criticized for the reason that in accordance with good practices tried and tested internationally and confirmed by articles 17, 19 and 29 of the The Hague Convention, only the provisions (providing for the aptitude of the applicants as well as the adoptability of the child) applied before the political liaison and the entry of the child into the family adopting it are really effective in presenting the judge with an accomplished fact.

Under the current state of the law, it falls to the Communities and their approved organizations, when requested, to carry out a preliminary assessment of the aptitude of the applicants before entrusting a child to them.

The Court assesses the aptitude based on a social enquiry, which it orders.

The Civil Code contemplates, however, only one social enquiry and not, in accordance with article 15 of the The Hague Convention and with good international practices, a psycho-medical and social enquiry.

Yet, according to article 1231.6 of the Code of Civil Procedure the authorities prescribed indicated by the expert Communities are consulted during the social enquiry. The Legal opinion is to the effect that co-operation with the Communities proves to be essential in trying to fill the gap93.

4. Specific aspects of the intra-family adoptions

Intra-family adoptions include adoptions of a child of a spouse or of a cohabitee or adoptions by other members of the family (i.e. grandparents, brothers, sisters, uncles, aunts...).

Statistics show that they consist mainly of adoptions by the husband or by the cohabitee of the mother of the child while becoming separated or divorced from the father. In order to adopt a child in the context of an intra-family adoption, it is necessary to attend the training course provided by the expert Community and be accepted by the Youth Court as qualified and suited to adopt. However a social enquiry is not obligatory in the case of adoption of a child related up to the 3rd degree with the applicant for adoption, his/her spouse or his/her cohabitee, or of a child who already shares everyday life with the applicant for adoption or with whom there is maintained a social and emotional bond94.

If applied, this last mentioned exemption will have to be interpreted in a restrictive way, to avoid a diversion from the principle. According to certain authors, even the possibility of exemption of the case from the social enquiry in an intra-family adoption can be criticized.

94 Article 346.2 of the Civil Code.
Indeed, it is not necessarily easier to examine the interest of the child in this type of adoption and the Courts will prefer of their own motion to require a social enquiry.95

**L. CONDITIONS FOR ADOPTION**

Adoption pronounced in Belgium must, above all, be based on proper grounds, whether the adoption subject is a minor or a person of full age. This condition was already necessary under the previous Law notwithstanding cases where the autonomy of the will prevailed.

The adoption then was often used for objectives other than the protection of the adoption subject: reasons of inheritance, change of name, concealment of an illegitimate birth, detraction from the rights attached to parental authority of a relative after separation96.

In addition, if the adoption is of a minor, only his/her higher interests should be taken into consideration in respect of the basic rights recognized in international law, rights which are integrated into domestic Belgian legislation97.

In this connection, it is not necessary to draw any distinction between internal and international adoption either. It is only necessary to draw attention to the rules concerning conflicts of laws in relation to private International Law applicable to concrete cases. To be adopted, it is necessary to meet the conditions of consent and those, which concern the legal absence of bonds of filiation established with respect to the applicants for adoption:

a) **Consent**

Any person who is at least 12 years old on the day the judgment for adoption is given must have agreed to his/her adoption98 with the possible consequential modification of his/her first name99 and with the choice of his/her name after simple adoption100.

This agreement of the person being adopted carries with it a right of veto, without legal recourse in the event of refusal101. This requirement of agreement has an exception where the civil rights of the person being adopted are declared to be suspended or when the court considers on the basis of clear findings established by an official report that he/she has a partial/permanent disability102.

When the child is married or he/she is cohabiting at the time of the hearing before the Court called to rule on the application for adoption, the agreement of the spouse or of the cohabitee is also required, except where it is not possible for them to express their wishes, because their whereabouts are unknown or they are declared absent103. This condition will be examined in the context of question VIII.

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97 Article 344 of the Civil Code.
98 Article 348-1 of the Civil Code.
99 Article 349-2 of the Civil Code.
100 Article 353-5 of the Civil Code.
101 See Y.H. LELEU, “Right of the people and the families”, conference Faculty of Law of ULG, Brussels, LARCIER, 2005, page 548 and following.
102 Article 348-1 of the Civil Code.
103 Article 348-2 of the Civil Code.
b) Absence of bonds of filiation judicially established regarding the applicants for adoption:

It is not possible for anyone to be adopted by their biological mother or father since the juridical bond of filiation has been established. Before the reform of the filiation’s law by the Law of March 31st, 1987, such adoptions were frequently obtained by unmarried mothers to regularize an illegitimate birth and to try to limit any unfavorable consequence for the child.

The law of March 31st, 1987, established in theory equality of filiations, and this kind of adoption was no longer of interest in improving the status of the child. However, there was a risk that it might still be used to expel the other biological relative. The old article 362 of the Civil Code had the effect of making the effects of the adoption prevail over the bonds of filiation established subsequently. This means that the father who establishes his paternity after adoption of the child by its mother had lost his right of parental authority, of maintenance and right of inheritance.

By decision on May 20th, 1998, the old Court of arbitration considered this situation to be discriminatory since it deprived the child of the benefits of a double bond of filiation. This jurisprudence is integrated into the new Law, which prohibits the adoption by a person of his/her own child and which provides that such an adoption carried out before the entry into force of the Law of March 31st, 1987 is to be treated as not having taken place. Logically, the establishment of the bonds of filiation by the adoption subject puts an end to the adoption, and all the legal effects of bonds of filiation will be ended. Otherwise, where after the adoption, the child's bonds of filiation of the person adopted are formed towards a third party, the adoption remains:

- If it is a simple adoption, bonds of filiation have effects, which are not inconsistent with those of the adoption. This means in particular that nothing will be changed in regard to parental authority.

- If the adoption is plenary, the bond of filiation only has the effect of preventing marriage.

M. THE HEARING OF THE PERSON BEING ADOPTED

After the deposit of the report of the Public Prosecutor and of the social enquiry, that the Court proceeds to the hearing of the person subject to adoption, among various other hearings in the council chamber (see questions I and II).

Indeed, the adoption subject being more than 12 years old must agree to his/her adoption and he/she needs to be heard by the Court.

On the other hand, a child of less than 12 years old will not be heard by the Court unless he/she appears. By reason of the thorough study ordered by the Youth Court and carried out by the expert social service, it follows that he/she receives the necessary sympathy.

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104 Article 344-2 of the Civil Code.
106 Article 344-2 of the Civil Code.
108 New article 350 of the Civil Code.
110 Article 1231.10 of the Code of Civil Procedure.
If the study report demonstrates an absence of sympathy, the child has 15 working days, from the notice of the study by the Public Prosecutor, to request the Youth Court in writing to form its own view on the sympathy due.

If the Youth Court considers itself competent, it hears the child. There is no appeal from the finding by the Youth Court that the child has capacity.111

At the time of his/her appearance, the child, who is more or less than 12 years old, can state that they do not wish to be heard.

If he/she is heard, the child will be alone, save for the presence of the clerk and of an expert or interpreters. This hearing tends to explore the child’s opinion on the adoption, and also on its effects like the creation of a family tie, the breaking of the bond with the family of origin, the change of name and the first name, etc...112.

His/her opinion is taken into account in accordance with his/her age and maturity. The hearing does not give to him/her the status of party to the proceedings, but the adoption subject being older than 12 years can always intervene113.

A transcript of the hearing (and not an official transcript for the reasons explained under question I) is placed in the file of the case114.

**N. NECESSARY CONSENT**

1. **The person to be adopted:** See supra.

2. **Legal parents** (holders of parental authority).

   The holders of parental authority will be able to give their consent only in default of other bonds of filiation or when the father and/or the mother or single relative has died, it is impossible for them to express their wishes or their whereabouts are unknown or they are declared absent115.

   If a guardian is the applicant, the consent is given by the Judge in guardianship or, in the event of a conflict of interests, by an *ad hoc* guardian.

3. **Biological parents**

   The child’s biological father and mother, these whose civil rights have been suspended or who are permanently disabled must all consent to the adoption. However, the consent of only one is sufficient when it is not possible for any other to express his/her wishes, or their whereabouts are unknown or they are declared absent. If only one bond of filiation is judicially established, the agreement of only one is enough116.

   In any case, the contest must specify if it relates to a simple adoption or a plenary one117.

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112 Doc. parl., CH., n° 50-1366/001, page 84).

113 Articles 1231.10, 1231.16 and 1231.17 of the Code of Civil Procedure.

114 Article 1231.11 of the Code of Civil Procedure.

115 Article 348-5 of the Civil Code.

116 Article 348-3 of the Civil Code.

117 Article 348-8 of the Civil Code.
To guarantee a free and sound agreement, Article 348-4 of the Civil Code determines that the father and mother are informed about the adoption and the consequences of their consent by the court before which the agreement is expressed and by the social services. Moreover, it is again emphasized that the applicants are also advised by the approved organizations during the procedure for adoption about the scope of the decision taken. This information must relate, in particular, to the assistance available to families to overcome the social problems, financial, psychological or other that they might face.

Knowing that the consent can be personally expressed by declaration made before the court seized of the matter or by deed completed in front of a notary or a Justice of the Peace for the applicants’ place of residence\(^{118}\), certain authors consider it regrettable that nothing is expressly contemplated for provision necessary of information when the second method of expression of the consent is chosen\(^{119}\).

4. Note: Particular cases of loss of parental authority:

Contrary to the last mentioned consequences of the total loss of parental authority, the loss will relate henceforth to the right to consent to the adoption of the child only if the judgment stipulates it expressly\(^{120}\). This new provision guarantees the protection of the child’s interests and the reversible character of the provision for loss of parental authority.

5. Other members of the family

Under the terms of article 348-2 of the Civil Code, with reference to question 6, when the applicants, one of the applicants or the person subject to adoption are married and not separated or in cohabitation at the time of the appearance before the Court seized of the proceedings on the application for adoption, his/her spouse or the person in cohabitation must consent to the adoption, save where it is impossible for them to express their wishes or their whereabouts are unknown or they are declared absent.

In case of a new adoption of a child, or of a person whose civil rights are suspended or of a person with permanent mental disability, who previously benefited from simple adoption, there are necessary:

- The consent of the people who agreed to the previous adoption;
- The consent of the applicants or of the previous applicants, save where the revocation or the revision of the previous adoption has been expressly pronounced against them.

If any one of these people has no opportunity of expressing his/her wishes and is without any known or declared residence, the consent is no longer necessary.

Likewise, the consent of the biological father and mother is not necessary, nor of guardian or guardianship Judge, nor of the spouse or of the person cohabiting with the person being adopted, where it would have been wrong to refuse consent to their adoption, nor that of the father and mother, where the child has been declared abandoned by them\(^{121}\).

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\(^{118}\) Article 348-8 of the Civil Code.


\(^{120}\) Article 8 of the law of April 24, 2003 modifying article 33 of the law of protection of youth.

\(^{121}\) Article 348-6 of the Civil Code.
- In the event of a new adoption of a child, a person whose civil rights are suspended or who suffers a permanent mental disability and who benefited from a plenary adoption, the consent of the applicants or of the former applicants is required, save where they have no opportunity of expressing their wishes, because their whereabouts are unknown, or because they have been declared absent or if revision of the previous adoption has been pronounced against them.

- Any member of the child’s family of origin, whose agreement is necessary, can specify in the declaration of agreement:

(a) That he/she intends to remain in ignorance of the identity of the applicants. In this very case it nominates the person who will represent him/her in the proceedings.

(b) That he/she does not wish to intervene in the proceedings any longer. In this very case, he/she also nominates the person who will represent them.

The person who takes one of the opportunities contemplated in the preceding subparagraph also makes an election of residence.

6. The biological parents’ consent

The biological parents are given a period of reflection before giving their consent that lasts for two months from the birth of the child.

However, withdrawal of the consent (subjected to the same rules as the consent itself) is permitted until judgment is pronounced and at the latest by 6 months after the filing of the adoption proceedings. By contrast, under the old law, the consensual character of adoption made it legally impossible to withdraw consent once given.

This withdrawal of consent prevents the adoption being concluded, save in the case of wrongful refusal of the consent in accordance with article 348-11 of the Civil Code.

7. Representation

The procedure of consent in blanc, which included a legal acceptance or homologation that was rather little used, has nowadays been abolished.

On the contrary, any member of the child’s original family whose consent is necessary, can declare in writing that he/she intends to remain in ignorance of the identity of the applicants or that he/she does not wish to intervene in the procedure any more.

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122 Article 348-7 of the Civil Code.
123 Article 348-5 of the Civil Code.
124 Article 348-8 of the Civil Code.
127 Old article 349 of the Civil Code.
Afterwards, he/she nominates the person who will represent him/her\textsuperscript{129}, but he/she could still be heard, in exceptional circumstances, according to the law, by the judge seized of the adoption proceedings\textsuperscript{130}.

Nevertheless, “in any event, the consent will be given only if there is a possibility of adoption for the child”\textsuperscript{131}.

8. The refusal of consent

By article 348-10 of the Civil Code, any person whose consent is required and who does not wish to consent to the adoption can express his/her refusal:

1. By declaration made in person before the Court seized of the adoption application;

2. By deed completed before a notary of his/her choice or before a Justice of the Peace for his/her place of residence.

A failure to appear before the Court after being summoned by the clerk by judicial letter is equivalent to a refusal to give consent.

When a person whose consent to the adoption is required under the terms of articles 348-2 to 348-7 of the Civil Code refuses to give consent, the adoption can, however, be granted by intervention of the Public Prosecutor if it appears that the refusal is wrongful.

Nonetheless, if such refusal emanates from the mother or the father of the child, the Court cannot pronounce the adoption, except in the case of a new adoption and except where the social enquiry concludes that the mother or the father neglected the child or compromised the child’s health, safety or morality\textsuperscript{132}.

\begin{flushright}
\textsuperscript{129} Article 348-9 of the Civil Code.
\textsuperscript{130} Article 1231.10 of the Code of Civil Procedure.
\textsuperscript{132} NR. GALLUS, “The new law on the adoption, in right of the families”, cup, 2007, volume 92, page 141.
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2.3. **BULGARIA**

1. **APPLICATION LAW**

- **CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION**, ratified by the Bulgarian Parliament, in force for Republic of Bulgaria as of 1.09.2002;

- **BULGARIAN CODE OF THE INTERNATIONAL CIVIL LAW** /Prom. SG. 42/17 May 2005, amend. 20.07.2007 s., amendment is in force as from 1.03.2008/;


- **ORDINANCE NO 3 LAYING DOWN THE CONDITIONS AND PROCEDURE FOR GIVING CONSENT FOR THE ADOPTION OF A PERSON OF BULGARIAN NATIONALITY BY A FOREIGNER** /Issued by the Minister of Justice, published, SG, issue 82 of 16 September 2003, in force as from 16 September 2003, amend. 30.09.2003, amend. 26.07.2005, amend. 20.01.2006, the amendment is in force as from 20.01.2006/;

- **ORDINANCE NO 4 CONCERNING THE CONDITIONS AND PROCEDURES FOR KEEPING OF THE REGISTER OF CHILDREN FOR FULL ADOPTION** /Issued by the Ministry of the labour and social politics on 9.09.2003/;


-ORDINANCE FOR CRITERIA AND STANDARDS FOR SOCIAL SERVICES FOR CHILDREN, adopted on 7.11.2003, promulgated in the State Gazette No 102 of 21.11.2003, in force since 21.11.2003, amended on 27.03.2007;

-ORDINANCE ON THE CONDITIONS AND ORDER FOR APPLYING MEASURES FOR PREVENTION OF LEAVING OF CHILDREN AND THEIR ACCOMMODATION IN INSTITUTIONS, AS WELL AS THEIR REINTEGRATION, adopted on 11.08.2003, promulgated in State Gazette No 74 of 22.08.2003, in force since 22.08.2003;

2. INTERCOUNTRY ADOPTION

The accession of the Republic of Bulgaria to the group of the state-parties signatory to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption of 29th of May 1993, prompted the Bulgarian legislator to modernize the basis upon which the national system providing adoption as a special service for children deprived of family environment stands. This was done through changes in the legislative acts, regulating these relations. As a result Bulgaria is deemed to be one of the States to apply the contemporary achievements of the intercountry adoption practice.

The Convention covers adoptions among countries that become parties to it and sets out certain internationally agreed-upon minimum norms and procedures with regard to such adoptions. The aim of the Convention is to protect children, birth parent and adoptive parent taking part in intercountry adoptions and to prevent abuses. The named convention has been in force for Bulgaria since 01.09.2002. At the time of ratification Bulgaria made the following declarations:

- Declaration pursuant to Article 2: In accordance with Article 2 of the Convention, the Republic of Bulgaria declares that the adoption of a child with habitual residence in the Republic of Bulgaria shall be made only in accordance with the internal law of the State whose citizen the child is.

- Declaration pursuant to Articles 17, 21 and 28: In accordance with Articles 17, 21 and 28 of the Convention, the Republic of Bulgaria declares that only children adopted by virtue of an enforceable judgment of a Bulgarian court may leave the territory of the Republic of Bulgaria.

- Declaration pursuant to Article 22, paragraph 4: In accordance with Article 22, paragraph 4, of the Convention, the Republic of Bulgaria declares that the adoption of children with habitual residence on the territory of the Republic of Bulgaria may only be made if the functions of the Central Authority of the receiving country are performed in accordance with Article 22, paragraph 1, of the Convention.

- Declaration pursuant to Article 25: In accordance with Article 25 of the Convention, the Republic of Bulgaria declares that it will not be bound to
recognize adoptions made on the basis of agreements concluded pursuant to Article 39, paragraph 2, to which the Republic of Bulgaria is not a Party.

- Declaration pursuant to Article 34: In accordance with Article 34 of the Convention, the Republic of Bulgaria declares that all documents addressed for the purpose of application of the Convention, should be accompanied by an official translation in the Bulgarian language."

- The ratification of the Hague Convention provoked some important amendments in Bulgaria’s national legislation and helped the harmonization of the latter with European law. One of the most significant consequences of the ratification of the Hague Convention is the amendment of the Family code, promulgated in SG 63 of 15.07.2003. The named amendment aimed to improve the adoption process, to increase the protection of children interests as well as to provide detailed legal frame on adoption. The main amendments refer to the following issues:

- Registration of children in a special registry, kept with the regional directorates for social assistance in case of full adoption;
- Grant of permit for adoption to candidate-adopters after on the basis of a social research performed by the regional directorates for social assistance;
- Appointment of suitable candidate-adopters by Adoption Councils crated at the respective regional directorates for social support;
- Explicit regulation of withdrawal of a preliminary consent for full adoption;

Introduction of a prohibition that the giving and withdrawing of consent for adoption is related with material profit;

Change of jurisdiction – adoption applications are to be filed at district courts and when they concern international adoption the competent body is the Sofia City Court;

Regulation of the competence of the Ministry of Justice with regard to international adoption as well as its appointment as a central body under the Hague Convention. The Council of international adoption is a newly created specialized body;

Specification of requirements for organizations, which can be granted status of "accredited organizations" and which shall be able to execute activity related to international adoption.

All of the above listed amendments of the Family Code inspired by the ratification of The Hague Convention lead to transparency and efficiency of the adoption procedure and ensure that international adoption will be applied only in case there is opportunity for raising the child in its home country.

Following the conclusions of the watchers of the accession process throughout the years the progress of the Republic of Bulgaria can be noted and this has been actually done in the yearly reports of the European Commission. In its Regular Report on Bulgaria’s progress towards accession of October 2004 it’s pointed out that first procedures implemented after the adoption of the new legislation had started to function in January 2004 and it is still too early to estimate the degree to which the legislative changes affecting adoption had influenced the number of intercountry adoptions, which according to some sources remains high. The report bears the
recommendation that Bulgaria should persist in its endeavors for implementation of the regulations of the Family Code, which was entered into force in 2003.

The European Commission’s Comprehensive Monitoring Report, October 2005 on the country’s progress towards accession to the European Union bears the following notes in the field of intercountry adoption in Chapter 32:

“It appears that changes in adoption legislation and practices have had an impact on the number of children being adopted internationally. However, it is too early to judge if the decrease in international adoptions is a long-term trend.”

The resolution of the European Parliament concerning the application of Republic of Bulgaria for a membership in the EU of the autumn 2005 urges for direction of more resources aimed at the improvement of the living conditions at orphanages and schools for children in unequal position and children in need of special care as well as more effective implementation of the deinstitutionalising plan; it encourages the amendments in the legislation and the adoption practice in order to diminish the number of children-Bulgarian citizens adopted abroad and to stimulate the national adoption including the creation of a unified national register of a potential prospective adoptive parent.

In the European Commissions’ regular report of may 2006 points out the decrease in the number of intercountry adoptions from 217 in 2004 to 101 in 2005 as well as the increase in the number of national adoptions as a positive tendency. It is also noted that the country has taken measures for drafting programs for alternative care, with the aim of decreasing the number of children placed in specialised institutions. At the same time the report notes that the number of children placed in institutional homes continues to be high.

Taking into account each one of those points in the reports and aiming at diminishing the number of intercountry adoptions and increasing and stimulating the national adoption procedures and with the aim of the creation of maximum transparency, as well as the improvement of the legislative arrangements for the protection of the parties in the adoption procedure, by the initiative of the Ministry of Justice a Working group was created to prepare a draft of a new Family Code. The draft envisages comprehensive arrangement of the grounds of intercountry adoption and regulates in detail the actions of the competent institutions and persons bounded up with the procedure, following the tendencies in the Bulgarian legislation in the grounds of adoption which were laid down by the legislative changes after 2003. This draft was inspired by the problems arising from the implementation of the new legislation as well as the recommendations made by the European Union Institutions within the monitoring of the accession process of Republic of Bulgaria to the EU.

Therefore, the following legal analysis will be focused not only on the applicable rules for intercountry adoption in Bulgaria, but will include parallel comparison with the relative rules in the Draft of the Family code, which, as noted above, is still subject to discussions in the Parliament of Bulgaria.

On the first place, it should be stressed on the applicable law in adoption procedures with international element in order to be able to define the competency of the Bulgarian courts and authorities where one of the participants in an adoption procedure is a foreign citizen or resides outside the boarders of Republic of Bulgaria.

The general rules are settled in art.10, para.1 in connection with art.4 from the International Private Law Code. Article 10, para.1 lays down the applicability of the merits for general competency on the cases for permitting, terminating and rescinding
of adoption. There are two connections to be respected in the adoption procedures under the International Private Law Code: a territorial and a personal.

The territorial connection is grounded on the customarily residence of the respondent in Bulgaria, not on its citizenship or on its lack. Therefore, foreigners could be constituted as party in a court proceeding on an adoption case. The personal connection is based on the Bulgarian citizenship of the claimant irrespectively of its customary residence. Bulgarian citizens with customary residence out of the boarders of Republic of Bulgaria are able to be a party of such national proceedings.

Notwithstanding the foregoing, there are additional grounds for international competency of the Bulgarian courts and other authorities competent of allowing, terminating and rescinding adoptions. They are based on the personal and on the territorial connection of the parties of adoption suits. The existence of any of these connections grounds the additional international competency of the Bulgarian courts and authorities. Unlike the general rules for settling the competency of the Bulgarian courts and authorities, the procedural status of the party is of no importance for the appliance of any of these additional grounds the International Private Law Code.

The personal connection is settled upon the Bulgarian citizenship of the party. That party could be the adopter, the person being adopted or their parent alternatively. For the establishment of the international competency of the Bulgarian courts and of the other authorities competent on the adoption procedures it is sufficient if one of these persons has a Bulgarian citizenship and to be a party in the proceeding – claimant, respectively –respondent. The Code does not made any difference on where the party has its customary residence. Furthermore, it is sufficient that the party has Bulgarian citizenship at the time of the initialization of the proceeding and the subsequent change of its citizenship will have no effect on the already initialized adoption procedure before the relevant Bulgarian court.

The territorial connection is based on the customary residence of any of the parties in the proceeding. Again under the concept of “party” it is to be assumed that it could be the adopter, the person being adopted or their parent alternatively. It is sufficient that one of the parties has a customary residence in Bulgaria for the Bulgarian courts and authorities to be competent on an adoption procedure. Furthermore, the Code does not provide any difference on the citizenship of the parties of an adoption procedure.

The two additional grounds are settled alternatively, i.e. the presence of each one of them is sufficient for the international competence of the Bulgarian courts and authorities to be applied.

As far as it concerns the applicable law on international adoption procedures, it is to be noted that according to the Bulgarian Code of the International Private Law, the conditions for adoption as well as the annulment of the adoption are settled by the law of the state of which the adopting parent (parent) and the person – subject of adoption have their citizenship at the moment of submission of the application for adoption. This is the case where both the person being adopted and the adopter have Bulgarian citizenship and it is of no importance where they reside. Again it should be noted that the Code requires the capacity of being a Bulgarian citizen to be present only at the time of the submission of the application for adoption and any further changes in the citizenship of either the person being adopted or the adopter shall have no effect on the applicable law.

In the case where the person being adopted and the adopter are of different citizenship, the respective native law is applied to each of the persons. Therefore, the relevant native law will apply to each of the persons - the person being adopted and the
adopter and each one of them will have to meet the requirements for being adopted or for being an adopting person set in the native law of each one of them.

If the person – subject to adoption is a Bulgarian citizen, and the adopting parent is a Bulgarian or a foreign citizen who has customary residence in another state, he must also meet the requirements for adoption as per the law of that state. The effect of the adoption as well as any other grounds for termination of the adoption with the exception of its annulment is settled by the mutual native law of the adopting parent and of the person being adopted. If they are of a different citizenship, the law of the state where their mutual customary residence is located shall apply.

The currently applicable Family Code considers as an intercountry adoption the case where the person being adopted is a Bulgarian citizen and the adopting parent is a foreign one. The new Draft of the Family code renders account of the permanent residence of the person being adopted and the adopter. It applies to the adoption of a child with Bulgarian or foreign citizenship but having a customary residence in Bulgaria as well as to adopter residing customarily in any other state, different from Bulgaria, no matter whether the latter is a Bulgarian citizen or has another nationality. But it should be noted, that an adoption by an adopter with another residence different from Bulgaria willing to adopt a person with Bulgarian customary residence could not be executed if the state of the customary residence of the adopter would not recognize the decision for the adoption issued by the relevant Bulgarian Court. And that is understandable because the Bulgarian Courts shall have competence in cases of adoption where the adopter or the person being adopted or one of the parents of the person being adopted is a Bulgarian citizen or has a customary residence in Bulgaria.

An adoption of child with Bulgarian citizenship customarily residing in other state could also represent an intercountry adoption in the case where the adopter is a person residing in other state, but in this case the legislation of the state, where the child resides, shall apply.

According to the applicable legislation as well as in the proposed new draft of the family code, the intercountry adoption is admitted only for a child whose opportunity to be adopted in Bulgaria are exhausted. In order to be established that a child - Bulgarian citizen could not be adopted in its country and an intercountry adoption is the sole alternative for the person to be adopted, as well as to guarantee and safeguards the child’s interests and those of the prospective adoptive parent, the adoption procedure of a Bulgarian citizen from a foreigner is long and complicated and consists of two phases – administrative and court procedure. These phases aim at unquestionably establishing that the rues of the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption concerning the acts of the competent authorities in the State of origin and in the receiving state are kept.

The possibilities of national adoption are deemed exhausted under the applicable Family Code in the case where within 6 months from the entry of the child in the register at least three candidate adopters have been nominated and no one of them has filed an application for his/her adoption or if no eligible prospective adoptive parent has been nominated, and if the child meets the requirements under art. 136, paragraph 2 – to have accomplished one year of age, the Council for national Adoptions shall notify the Council of Intercountry Adoptions within the Ministry of Justice to nominate an eligible foreign candidate adopter. This circumstance shall be noted in the register of children for full adoption.

Generally, the same rules for the inscription of the child in the register for children which could be adopted by foreign or Bulgarian citizens customarily residing out of the boarders of Bulgaria under the conditions of full adoption are foreseen in the draft of
the New Family Code. The only difference in that the entry of the child in the register for children which could be adopted by foreign or Bulgarian citizens customarily residing out of the boarders of Bulgaria under the conditions of full adoption does not preclude the possibility of the relevant regional adoption council within the respective Directorate “Social Assistance” to further nominate an appropriate adoptive parent.

According to the applicable legislation a Bulgarian citizen who has accomplished one year of age can be adopted by a foreign national who has presented permission for adoption of a child under his/her native law. As an exception, for reasons of health of the child or when other important circumstances are present, he/she can be adopted before accomplishing one year, if this is of his/her exclusive interest.

The presence of any permission for adoption under the national law of the adopter is not currently included in the Draft of the new Family Code. The proposed rules do govern the conditions under which a person with foreign or Bulgarian citizenship but customary residing not in Bulgaria could adopt a child with foreign or Bulgarian citizenship but customary residing in Bulgaria but according to the draft of the new Code the only requirement is the prospective adopter to be included in a special Register of persons able to adopt under the condition of full adoption which is foreseen to be established within the Ministry of Justice.

Regarding the intercountry full adoption there are certain rules applicable on the grounds on the Convention on protection of children and co-operation in respect of intercountry adoption, which is part of the Bulgarian national legislation since February 2002. Generally, the Convention is applicable where a child habitually resides in one Contracting State (“the State of origin”) has been, is being, or is to be moved to another Contracting State (“the receiving State”) either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

Therefore, the Bulgarian Family code enacts that when adopting a child who is a citizen of a State-Party to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, the adoption is recognized upon presentation of a certificate of the Central Authority, appointed by each contracting party. The Central Authority in Bulgaria is the Ministry of Justice, which carries out activities on intercountry adoptions in cooperation with the relevant Bulgarian and foreign competent authorities and accredited bodies.

It is interesting to be noted once again, that in the new draft of the Family code, the persons with foreign residence willing to adopt a person with Bulgarian customary residence shall not present a permission for adoption under their native law but the only prerequisite will be their filling in the new Register for adopter – Bulgarian of foreign citizens with customary residence in other state willing to adopt a Bulgarian of foreign person with customary residence in Bulgarian under the conditions for full adoption, which register shall be kept within the Ministry of Justice.

According to the legislative acts in force, an adoption procedure may start when a foreigner willing to adopt a child of Bulgarian nationality files an application at the Ministry of Justice with an enclosed number of compulsory documents. This should be done via the Central Authority of the State concerned or via an accredited body having obtained permission from the Minister of Justice. The application submitted is considered within 30 days as from submission.

The application shall include:
1. a brief description of the prospective adoptive parent: personal data, ethnic origin and nationality, number and place of issue of the identity paper, place of birth; country of domicile, permanent and current address;

2. a brief family history of the prospective adoptive parent;

3. information on the economic and social status of the prospective adoptive parent;

4. information on the central authority or the accredited body which serves as an intermediary for the prospective adoptive parent, including contact persons, address, telephone number, representative, conditions attaching to the permission issued to the accredited body;

5. other circumstances relevant to the adoption;

6. the signature of the applicant.

The following documents shall be enclosed with the application:

1. a permission to adopt a child in conformity with the native law and the law of the domicile of the prospective adoptive parent;

2. a document issued by a competent authority and certifying that the prospective adoptive parent is not deprived of parental rights;

3. a report on the social circumstances of the prospective adoptive parent containing inter alia information on the members of his or her family, including their health status;

4. a document describing the health status of the prospective adoptive parent and showing his or her physical and mental health, the lack of any chronic, contagious venereal diseases, AIDS, tuberculosis, and others which pose a threat to his or her life;

5. a document showing the criminal record of the prospective adoptive parent.

In the event of adoption by spouses, the report shall include details about the two prospective adoptive parent, and a certificate of the marriage contracted shall be enclosed with the application.

All documents issued abroad should be submitted in the original and in a Bulgarian translation authenticated by the Bulgarian embassy or consular office in the State concerned. Documents drawn up in the territory of a State Party to the Hague Convention Abolishing the Requirement of Legalization of Foreign Public Documents, of 5 October 1961, shall be submitted in the original and in a Bulgarian translation authenticated by the Ministry for Foreign Affairs.

Where gaps or inconsistencies are found in the documentation submitted, the Ministry of Justice shall provide guidelines for those to be amended within 14 days as from the notification.

Based on the filed application and the attached, properly prepared documents, the prospective adoptive parent shall be entered in the register of the foreign prospective parent willing to adopt a child under the conditions of full adoption.
In order to receive a proposal to adopt a child the prospective adoptive parent has to be defined by the Intercountry Adoptions Council as suitable to adopt a certain child from the register of children who may be adopted by foreigners under the condition of full adoption.

According to Art.136e, paragraph 1 of the Family Code an Intercountry Adoptions Council has been established with the Ministry of Justice possessing important consultative competences within the Intercountry adoptions procedures. This body is a joint committee and consists of a Chairman – Deputy Minister of Justice and members – one representative of the Ministry of Justice; one of the Ministry of Health; one of the Ministry of Education and Science; one of the Ministry of Labor and Social Policy; one of the Ministry of Foreign Affairs and one representative of the State Agency for Child Protection. The participation of representatives of different administrative departments in the Intercountry Adoptions Council is a guarantee for the presence of diverse expertise, which shall be a prerequisite for protection of the best interest of the child. The Intercountry Adoptions Council is a permanent functioning body.

According to the proposed rules in the draft of the new Family Code, the Intercountry Adoptions Council has the same structure and members as in the applicable Family Code. The new provisions refer to the defined minimum of 3 sessions per a calendar month, which shall be held by the Intercountry Adoptions Council. It is also stated that the minimum quorum for the session to be legitimately held shall be 2/3 of all the members of the Council as the minimum majority for taking a decision shall be 2/3 of the members participating on the relevant session.

The files of children entered in the register of children who may be adopted by foreigners in the context of full adoption, shall be examined by the Intercountry Adoptions Council in the sequence in which they were registered and shall be compared with the data of the prospective adoptive parent willing to adopt a child in the context of full adoption and with the conditions specified in their permission to adopt a child.

The 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption imposes as a main and leading principle solely the best interest of the child, which sets the needs of a specific child entered in the Register as leading when considering the applications of foreign prospective adoptive parent.

The selection of suitable prospective adoptive parent for any given child, entered in the register is determined by a number of factors:

1) the parameters specified in the permission to adopt a child, which was received by the candidates (age, sex, health status of the child, number of children, time frame for the adoption, conditions which the prospective adoptive parent had provided or will provide, etc.);

2) the expectations stated by the prospective adoptive parent (sex, age, number of children, health status, etc.);

3) and lastly on the assessment of the Council on the ability of the prospective adoptive parent to comply at best with the needs and interests of the child and to provide for its physical, psychical and social wellbeing.

As might be expected the complex assessment of the candidatures of the entered in the register prospective adoptive parent entered in the register includes multiple criteria, amongst them - social status, educational qualification etc. The declared by the Ministry of Justice criteria for hearing of the applications of the entered in the register
foreign prospective adoptive parent shall be considered together and separately because they are bind together and because of the need for the candidates to complexly correspond at best to the needs of a specific given child.

When taking a decision to guarantee the best interests of the child the Intercountry Adoptions Council is led by the ability of the adopting parent to provide the child with physical, psychical and social wellbeing.

Upon the so made assessment, the Intercountry Adoptions Council shall take a decision which holds information for the child and the adoptive parent as well as motivation of its choice and shall make a proposal to the Minister of Justice to determine a suitable prospective foreign adoptive parent for each child entered in the register.

As per the proposed provisions of the draft, the nomination of a suitable adoptive parent shall be grounded firstly on the possibility of the latter to meet the necessities of rising and bringing up the concrete child. Secondly, the assessment is made on the possibility of the adoptive parent to ensure the physical, mental and social welfare of the child, and lastly – on the preferences made by the prospective adoptive parent. In the case where the assessment of any of aforementioned conditions is equal and two or more candidates have received the same assessment under each one of these indexes, the Intercountry Adoptions Council could decide taking into account the sequence of the registration of the prospective adoptive parent in the Register.

The Minister of Justice shall pronounce within 14 days. In case the Minister of Justice approves the proposal, he shall give his consent to proceed with the administrative procedure on the adoption of specific child.

This proceeding consent, together with a report on the child, containing information on the child’s identity, its social status and environment, individual development and development within the family, health status, medical history, social needs and information on the received consents on the adoption shall be forwarded to the Central Authority of the receiving State and/or to the accredited body, and shall be accompanied by a full-length photograph of the child.

Within two months as from receipt of the report, the Central Authority or the accredited body (for States which are not State Party to the Hague Convention of 1993), shall forward to the Ministry of Justice notice of consent or dissent to proceed with the adoption procedure according to Art.17c of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

Within these two months the prospective adoptive parent too has the obligation to forward to the Ministry of Justice written consent or dissent with the adoption of the specified child. Within the same two months period, the central authority of the receiving country or the relevant accredited organization shall file within the Ministry of Justice a written consent or dissent of the prospective adoptive parent to adopt the child in question, where the consent shall include a statement that the prospective adoptive parent is aware of the health status of the child and has been informed about the effects of adoption, a statement that a contact has been established with the child, as well as consent for judicial proceedings to be launched.

The other document that shall be provided to the Ministry of Justice within the two months period is a document certifying that the native law or the law of the domicile of the prospective adoptive parent preclude further adoption by third parties, or a statement made by the prospective adoptive parent and authenticated by a notary
public to the effect that the child shall not be provided for further adoption, where such a possibility exists in law.

Lastly, declaration shall be provided certified by a notary public to the effect that the child shall not be made subject to experimental medical treatment, nor shall any part of the child’s body be used for the purpose of donating organs.

Within this two months period, the prospective adoptive parent must have established a personal contact with the child of at least five-day duration. Where such contact cannot be established as a result of objective reasons, the prospective adoptive parent shall submit a statement authenticated by a notary public to the effect that he or she assumes the risk connected with the origin and the future physical and mental status and development of the child. In this case, the contact with the child shall be carried out by a representative of the accredited body that is in Bulgaria and serves as an intermediary for the prospective adoptive parent. Where assistance is necessary for the purpose of carrying out the contact, the Ministry of Justice shall undertake the steps to ensure support.

The administrative procedure shall be concluded with an explicit written consent for the adoption pronounced by the Minister of Justice within 14 days as from providing the required documents or as for making the necessary amendments.

The issuance of this explicit written consent for adoption puts an end to the administrative phase of the adoption procedure and provides the possibility for the procedure to be brought to its judicial phase.

Within 3 days as from the issuance of the written consent of the Minister of Justice, an application has to be submitted to the Ministry of Justice has to be submitted an application addressed to the Sofia City Court for permission of the adoption and documents for the state fees, charged by the court paid in conformity with Tariff № 1. Within 7 days as per the lodgment of the application the Ministry of Justice shall transfer the file in the court ex officio.

It should be born in mind that the Bulgarian legislation does not arrange the duration of the period for which an entered in the register prospective adoptive parent is meant to receive a proposal for adoption of a child-Bulgarian citizen. The Bulgarian legislation puts the emphasis on the needs of a specific child not on the duration of the period for which a specific prospective adoptive parent has been entered in the register.

According to the Bulgarian legislation in the field of adoption, primarily leading is the interest of the child, which can be adopted and the necessity for the most suitable candidates to be selected. In general, those Bulgarian state institutions, involved in the adoption procedures are entrusted with the task to choose the most suitable family for every child liable to adoption. The law should not be interpreted and be understood in the sense that the candidates for adoption shall wait for them to be selected and offered a child for adoption, but on the contrary, the law should be interpreted in the sense that the candidates for adoption are in the position of expectation to be selected and identified as suitable to adopt a specific child, for which a candidate is being sought for.

Furthermore, it is of a great importance to be noticed that Ordinance № 3 laying down the conditions and procedure for giving consent for the adoption of a person of Bulgarian nationality by a foreigner of year 2003 introduced the requirement that the intermediation of an adoption of a person-Bulgarian citizen must be carried out on the basis of a concluded contract between the accredited body, having obtained permission from the Minister of Justice to serve as an intermediary for international
adoption and its clients (prospective adoptive parent). This measure has been taken in order to protect the prospective adoptive parent – as is well known the conclusion of a contract gives the possibility to conduct efficient control over its implementation.

Moreover, on the basis of Art.55 of the Ordinance before entering into a contract with the accredited body the prospective adoptive parent should receive vast information on the objectives and main activities of the accredited body; the contents of the permission to serve as an intermediary, obtained from the Minister of Justice; the amount of State fees and of its own fees; the organisation of its work; for the Bulgarian and the respective foreign legislation, which are to be applied in order for the intercountry adoption procedure to be carried out; the documents required for the adoption; as well as the effects of adoption and the general conditions of the contract.

When the legislation and the practice of the respective State make an obligation for the prospective adoptive parent to be represented by accredited bodies at the same state, arises the necessity that a foreign accredited body should enter into contract with a Bulgarian organisation, which is to serve as an intermediary in the intercountry adoption. The fact that the foreign body mediates the contact between the prospective adoptive parent and the Bulgarian body, creates an obligation for it to get acquainted with the above mentioned information and to familiarize in a suitable way the candidates represented by it in order to guarantee their interests.

The foreign nationals, having submitted application for adoption of a child – Bulgarian national, after the procedure of verification of the compliance with the regulatory requirements are also recorded in a special register.

The candidates for adoption can be identified as being suitable to adopt a child, where the Council on International Adoptions makes a proposal to the Minister of Justice and after its approval. In no case, a forecast could be made about when concretely the family will be identified as being suitable to adopt a specific child. The Bulgarian law does not give guarantees that having been recorded, the candidate by all means will be nominated as suitable for a certain child and adoption will be realized.

With the recording of the candidates for adoption in the register, the opportunity arises for their applications to be at the disposal of the Council on International Adoptions, when it considers the files of the children and assesses the candidates for adoption suitable for them. In this procedure, of the two registers – of the candidates for adoption and of the children who can be adopted – leading and primary is the one of the children.

According to the imperative decrees of the Convention, an adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention should be recognized by operation of law in the other Contracting States. The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption contains certain rules regarding the entities capable of executing intermediation in the process of intercountry adoption. The Convention refers to especially created bodies whose accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted. Furthermore, the Convention lays down certain obligatory conditions to be provided by the national legislator and kept by the entity willing to intermediate the intercountry process. More specifically, these conditions include an obligation of the relevant body to pursue only non-profit objectives according to such
conditions and within such limits as may be established by the competent authorities of
the State of accreditation. The relevant national legislation shall in any way contain
such rules as to ensure that the accredited body be directed and staffed by persons
qualified by their ethical standards and by training or experience to work in the field of
intercountry adoption and be subject to supervision by competent authorities of that
State as to its composition, operation and financial situation.

In compliance with the aforementioned decrees of the Convention, the Bulgarian
Family Code foresees the mediation in adoption of a child to be carried out only by a
Non-Profit Corporate Body for carrying out socially useful activity - “accredited
agencies” that has been entered in the Central Register for Non-Profit Corporate
Bodies and has obtained permission for that by the Minister of Justice in order to able
to perform mediation in intercountry adoptions. The permission is issued for a period of
2 years and it should be entered in the Register of the accredited agencies that act as
an intermediary in intercountry adoptions. In the agency should work lawyers,
psychologists, doctors as well as other specialists with knowledge and experience in
the area of intercountry adoption.

Foreign non-profit corporate body that has obtained permission for meditation in the
area of intercountry adoptions from the relevant foreign authority can exercise its
activity in Republic of Bulgaria after having obtained the permission of the Minister of
Justice to carry out mediation activity with the respective State.

The accredited agency mediates between the prospective parent and the different
national and foreign authorities participating in an adoption procedure and has a
substantial role throughout the whole process Firstly, the accredited agency presents to
the Ministry of Justice any request for adoption and the documents of the prospective
adoptive parent as well as any other information about him/her that is necessary for the
protection of the child’s interest.

On the second place, as aforementioned, the accredited agency provides to the
prospective adoptive parent detailed information about the rights and the obligations in
an adoption and about the legal consequences in full adoption under the laws in effect
both in the State whose citizens is the prospective adoptive parent and of the State of
residence of the child to be adopted.

The functions of the accredited agency includes also the presentation to the Ministry of
Justice of the application for adoption together with the whole file of the case, the
mediation for establishment of a contact between the nominated adoptive parent and
the person to be adopted and the provision to the prospective adoptive parent of the
report drawn up by the Ministry of Justice concerning the personal data of the person to
be adopted, his/her health status, social status, his/her picture and video records and
other materials related to the child, if appropriate.

Not on the last place, the accredited agency has its role in the cases of Bulgarian
citizens willing to adopt a child who is foreign citizen. The role of the given accredited
agency in such process is to provide to the prospective parent the information about a
specified child provided for by the relevant authority or agency.

Lastly, the accredited agency notifies the Ministry of Justice about the consent or the
refusal to adopt the proposed child expressed by the prospective adoptive parent,
ensures representation of the prospective adoptive parent before the court, mediates in
the issuance of a permission for the child to leave the State of origin and to enter the
receiving State as well as permission for him/her to reside permanently in the receiving
State, ensures that the transfer of the child takes place in secure and appropriate
circumstances and, if the adoptive parent decide so, carries out the transfer or ensure
accompanying of the child and lastly, the accredited agency undertakes acts to ensure the return of the child to the State of origin in the case where the decision of the Bulgarian court is not recognized in the receiving State within one year after its entry into force and shall supervise the state of the child during that period.

In is interesting to be noted, that under the proposed draft of the new Family Code, the regulation of the scope and the main characteristics of the activities executed by the accredited agencies was not subject to major amendments and generally the principals laid down in the Convention and the currently applicable Family Code are respected and led throughout the new draft as well.

One of the proposed amendments concerns the possibility of foreign accredited agency to execute services on the territory of Bulgaria. In accordance with art.12 of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, the draft provides such possibility for a foreign Non-Profit Corporate Body having received accreditation in the field of the intercountry adoptions by the relevant national body. Such agency will have the possibility to operate on the territory of Republic of Bulgaria the respective agency throughout a branch after receiving consent by the Minister of Justice for execution of mediation services with the relevant country.

Furthermore, the scope of activities of the accredited agencies is supplemented by the draft of the new family Code. It is proposed that the accredited agency will have the obligation to execute something like post-adoption control over the recognition of the Bulgarian decision for adoption by the relevant authorities in the receiving country and over the safeguarding of the interests of the child. Moreover, the accredited agency shall be entitled to notify the Ministry of Justice in cases where the decision of the Bulgarian court has not been recognized within one year of its issuance in which case the Ministry of Justice shall take measures to send back the child in Bulgaria.

These activities related to the post-adoption control include also a periodical examination and report to the Ministry of Justice on the status of the adopted child regarding the acquisition of its new citizenship and the decisions taken on this matter by the adopting parent and the relevant national authorities in the receiving country.

It is proposed also that the accredited agency, which has taken part in the adoption mediation, shall lodge in the Ministry of Justice a report on the adapting and integration process of the child in the family of the adopter. This report shall be drafted by the relevant foreign competent authority or body and is foreseen to be presented every six month in a period of two years after the adoption. Together with the report of the foreign authority, the accredited agency shall present before the Ministry of Justice also a report on its own assessment for the respective period.

It is finally to be noted that the draft of the new Family Code provides obligation for the accredited agencies to perform activities supporting children deprived of parental rights and to present before the Ministry of Justice a six months reports on this matter.

3. NATIONAL FULL AND INCOMPLETE ADOPTION PROCEDURES.

These procedures relate to the full or incomplete adoption of a Bulgarian person by Bulgarian person.

a) General Rules

Known as an institute of the family law from ancient times, the adoption has served and is still serving different social functions throughout the years. In the Bulgarian society,
the adoption is considered to be a humanistic institution. Its main social and legal purpose is the provision of parental care over a child, of family surrounding for its breeding and education, of that multifunctional influence which the family has over the moulding of the child’s personality. But the main public aim and central legislative purpose of the institute of adoption is the care for the child and this idea has been leading in the whole legislation process throughout the years.

It is important to be noted that before 1890 the adoption was settled by the so called ‘customary law” and was executed in a church manner by reading a prayer. For the first time this institute is settled in the written law with the Law for recognition of children born out of the marriage, for their legalization and adoption on 1890, but up to 1951 there was a prohibition for persons having their own children to adopt.

Republic of Bulgaria has come a long way until reaching the standards of the other Member-States of the European Union and to be able to be considered as one of the countries with fully implemented and harmonized Family Law.

b) Admissibility of the adoption

The admissibility of the adoption is preconditioned to certain conditions connected with the personality of the adopter and the person being adopted. According to the Bulgarian Family Law, a party being adopted can only be a person who, at the time of filing the application for adoption, has not accomplished eighteen years of age. The adoption of adult is impermissible under the Bulgarian legislation because the adoption has as its main purpose the breeding and the education of the child. The relative moment is the one of the lodgment of the application for adoption. The reaching of eighteen years of age during the procedure for adoption is irrelevant and is not an obstacle for the issuance of the court decision.

The Law has not settled a minimum age for the adoption to be permissible and a person could be adopted right after their birth. The Bulgarian Law does not recognize the fiction “conceptus pro nato habetur quotiens de ejus com modo egatur” and therefore a conceived unborn child could not be adopted.

There is a prohibition on a person to be adopted simultaneously by two persons. This would lead to confusion for the child and to insuperable contradictions regarding the exercising of the parental rights, the residence etc. But it is forbidden a person to be adopted by two or more persons simultaneously but his/her consequential adoption, after the previous one is being terminated is admissible by the Law. There is an exclusion of this prohibition and the Law permits simultaneous adoption by two persons in case they are spouses. Furthermore, unlike in other legislation systems, the Bulgarian family code does not put any requirements on the duration of the marriage of the spouses in order the latter to be able to adopt simultaneously. Moreover, the adoption by two spouses could be done with one act or could be done by two different court decisions.

According to the draft of Family Code, which is currently discussed in the Parliament the exception from this prohibition, applies not only to spouses but also to partners having registered factual partnership. The latter is a new institute introduced for the first time in Bulgarian legislation by the aforementioned draft of Family Code.

Age difference is not required when a spouse adopts the child of his or her spouse. When the adoption is effected simultaneously or consecutively by two spouses and the age difference is present with one of them such difference is not required for the other person.
The adoptive parent should be a legally able person. This means that the person shall have accomplished eighteen years of age and has not been put under full or incomplete restriction. The persons who are under the age of eighteen and are fully or incompletely restricted could not express valid will for the adoption itself. They are unable to exercise parental rights as well. But there is a contradictory practice of the Bulgarian Supreme Court where the latter regulates that the persons who were incompletely restricted could actually adopt\textsuperscript{133}.

But those married under age of eighteen could adopt and this is an important exception from the above rule. The logic is that a person capable of having its own family shall be admitted as an adopter as well.

The legal ability of the adopter shall be present not only at the moment of lodging of the application for adoption, but also at the time of the issuance of the court decision for the adoption. If it is not present at the moment of the court decision, the adoption could not be executed.

On the next place, the adopter shall be person who has not been deprived of parental rights. The person deprived of parental rights is admitted as unable to exercise parental right on his/her own children and therefore the person being adopted could not be entrusted to such person.

There are not any other restrictions for adoption related to the personality of the adopter as race, nationality, religion, etc. The same is valid also for the sex: a male could adopt as well as female a child form the other sex or from the same. The marriage status of the adopter is also of no importance: he could be married, single, divorced, widow/er.

This circumstances matters only on the assessment of the best interest of the child. The presence of own children is not an obstacle for adoption as well. It is possible that a person, having one or more children, to adopt other child/children. It is moreover permissible that a person, having adopted a child, to adopt another one or more.

There is a requirement put in the legislation for the presence of certain difference in the age of the person being adopted and the adopter. The latter shall be at least fifteen years older than the person being adopted.

This requirement is set in order the adoption relationship to be made more like the relationship of origin. The difference in age shall be similar to the one between parent and a child.

Two exemptions are made from this rule. The first one is the case where a husband adopts the native child of his/her spouse. The second is when the adoption is made by two spouses simultaneously or consecutively. In those cases, the difference in age is sufficient to present only to one of them.

There is not maximum margin in the age for adoption to be permissible set in the Law. But it is certain that an inadequate difference in the age /60-70 years/ represents diversion of the adoption from the normal parental relation and therefore, the court is empowered to dismiss such adoption.

On the next place, the Bulgarian Family code sets prohibition for the execution of adoption between relatives. An adoption between lineal relatives and between brothers and sisters is not admitted. But there is one situation where a person could adopt its

\textsuperscript{133} Decision 58-89-II, 138-90-5\textsuperscript{th} court session;
own child and this is the case where the origin was not formally established and therefore, the adoption will substitute the recognition of the child by either the father or the mother. But in the latter case, if the origin is been consecutively established, the adoption shall be automatically terminated ex lege\textsuperscript{134}.

Despite not expressly stated in the Law, the adoption between spouses is not admissible as well. The marriage relation is incompatible with the parental one. They could not exist simultaneously. The contrary would have been against the law and the moral. But the adoption is permissible is the event of any other family relations except with the aforementioned: step- father or stepmother could adopt their stepchildren; the uncle could adopt its nephew, etc.

An exemption is made only in the case where the adopted person is born out of wedlock or in the event where both or one of the parent have died. In this case, the grandfather and the grandmother or one of them could adopt their grandchild. On request for adoption of a grandchild by the grandparent on the sides of both the mother and the father the court resolves the issue in view of the interests of the child. Adoption of a child by a spouse of a parent the rights and obligations between this parent and his relatives, on the one hand, and the person being adopted and his/her descendants, on the other hand, are retained.

According to the general rule, no one can be adopted for a second time until the existing adoption is terminated. This prohibition does not apply regarding the spouse of the adoptive parent. Pursuant to the draft of Family Code the prohibition will not apply to the partner of the adoptive parent either.

The adoption shall be made in the interest of the child and the court shall permit the adoption only after establishing that it would be in the interest of the adopter. The concept “interest” is not defined in the Law but it certainly shall be corresponding to the Law and the moral. The interest shall not be considered as the exceptional one. On the one side, this corresponds to the idea that the adoption shall be made not only in private, but also in the interest of the Community. On the other, this permits the interest on the adopter not to be absolutely excluded. Generally, the interest of the adopter is connected to the need of the latter to receive normal conditions to be raised, to receive good upbringing and to be prepared for the life itself. Those prerequisites represent wide and versatile complexities. They are connected with the moral virtues of the adopter, its health condition, family and social status, profession, material conditions for living etc. As correctly pointed out by the practice, this interest is rather wider then the simple ability of the prospective adoptive parent to provide material prosperity\textsuperscript{135}. The material interest is not the leading requisite, but the right and proper breeding of the child is considered as important and decisive. The assessment on the interest is not grounded to any preliminary set scheme. It is been made by the court on a “case by case” manner on the grounds of all subjective and objective circumstances on the case.

c) Necessary consents and opinions for adoption

Adoption is an act, which concerns a considerable range of persons. For it to be executed, the Law sets the requirement for the statement of some of them to be taken – of the most concerned ones. This statement is sought in advance in the form of consent or opinion depending on the different persons and on their condition. The consent is a necessary element in the complicated factual composition of the adoption itself. The dissent is an obstacle for the Court to permit the adoption, as the opinion is

\textsuperscript{134} Ref. decision of the Supreme Court 982-57-11; 
\textsuperscript{135} Ref. decision of the Supreme court 1872-69-II;
one nonobligatory statement. The court is obliged only to hear the opinion but not to take it into consideration.

The content of the consent and of the opinion is whether the adoption to be executed and whether it shall be done under the conditions of full or incomplete adoption. The second consideration is valid in the cases where the form of the adoption depends on the will of the persons concerned. If there is an agreement reached on the admissibility of the adoption but there is dissention on the form of the adoption, this is equal to lack of agreement and therefore, the court could not permit the adoption.

Consent for adoption should be given by the adopting parent on the first place. Furthermore, the role of the adopting parent is not only to give its consent for the adoption, but the latter is in fact an initiator of the adoption procedure. Therefore, the consent of the adopter is an absolute prerequisite for the adoption. It is not capable of being substituted unlike the consent of the other parties in the procedure. In certain cases the consent of the latter could be substituted with their opinion or is not required at all. Only the consent of the adopter is absolutely necessary in any cases.

The consent of the person to be adopted is necessary in the case where the latter has accomplished 14 years of age. The minimum age required for the person being adopted to grant its consent is defined correctly in the Law as this is the age where the person being adopted could express valid will. There is nothing said in the Law regarding the moment when this age shall be present. If the person being adopted has accomplished fourteen years of age on the moment of the lodging of the application for adoption, there is no question that he/she shall give their consent. If, at that moment the person being adopted was under this age but during the court preceding he/she accomplishes 14 years, their consent shall also be taken into consideration. If, at the time of the court hearings the person being adopted is still under this age, but has accomplished it at the moment of the issuance of the court decision, therefore, the court shall consider this fact and shall appoint a new court session for the 14 year old person being adopted to be heard and to give his/her consent for the adoption.

Furthermore, if the person being adopted is between 10 and 14 years of age, it shall only be heard by the court. The latter takes only the opinion of the child and is not bound by its consent or dissent. If the child is under the age of ten, therefore, the court is not obliged to hear its opinion, but could do so if considers it necessary and possible. But it is important to be noted, that the court shall not hear the child if the latter considers the adopting parent as its native one.

Before hearing the child the court or must provide the child with the necessary information with which to help the latter to formulate his opinion as well as to inform him about the possible consequences of his wishes, of the opinion maintained by him as well as about any decision of the court or administrative body. In all cases the hearing and the consulting of the child should take place in appropriate ambience and in the presence of a social worker from directorate "Social assistance", and where necessary - in the presence of other appropriate specialist. The court or the administrative body must order the hearing to be also carried out in the presence of a parent, guardian or other relative who the child knows, with exception of the cases when this does not correspond to the interest of the child. Nevertheless, at each court procedure the court should notify the directorate "Social assistance" for the procedure, participating parties, specific task, officially determined or based on a claim of a party in the procedure, and term for execution and a representative form Directorate "Social assistance" shall must express an opinion, and where possible, present a report. Furthermore, the directorate "Social assistance" can represent the child in certain cases provided by law, but in any case the child have right to legal assistance in all the procedures affecting his rights or interests.
The next consent necessary for the adoption to be permitted is the one of the parents of the person being adopted. The parent of the child to be adopted shall grant their consent also in the cases where they are minors- between 14 and 18 years of age.

The mutual consent of both the parents is needed. In case of dissent of one of them, the adoption is inadmissible in principal. Only in certain cases strictly defined in the Family code, connected to reproachful behaviour of the parent, the adoption could be permitted without the consent of this parent.

Moreover, in certain cases, the consent of the parent is substituted with their opinion on the adoption and these are the cases where the parents are put under restriction or are deprived from parental rights. The restricted parent does not posses full legal ability and judicially has no possibility to express valid will. His statement on the adoption is irrelevant for the assessment of the court and the compromise resolution is such parent to be at least heard.

More interesting is the case where the parent has been deprived of parental rights. Even though the latter does not has the capacity of a parent for a certain tame, the blood relation is not been terminated with the deprivation and that is why such parent is necessary to be heard in the court proceeding. His opinion is not binding for the court as well, despite one reasonable statement of the parent could not be de facto without significance for the assessment of the interest of the child.

There are cases, where the consent or the opinion of the parents is not required at all. These are the situations where the latter are placed under judicial disability or their permanent address is unknown. The parent is considered to be with unknown permanent address in case where after thorough tracing down by the relevant state authorities the court is not able to establish it. This fact shall be officially ascertained. It is necessary to provide any guarantees for the rights of the parent. In such a situation the granting of the parents consent is absolutely impossible and is not reasonable because the situation itself refers to full disinterestedness of the parent to the child.

It is important to be noticed that the consent of the mother of the adopted person can be granted 14 days of giving birth at the earliest. Pursuant to the draft of Family Code this term shall be extended to 30 days. This rule is implemented on the first place in compliance with the Convention on protection of children and co-operation in respect of intercountry adoption, and on the second - in order to prevent the child’s abandonment at that early stage where the consent of the mother is being given before the birth. Furthermore, the Legislator presumes that after the mother sees her child it would be more difficult for her to abandon the new-born.

The other consent necessary is the one of the spouse of the adopter. The giving of such consent is reasonable despite there are no legal relations to be established between the spouse and the person being adopted. But they will appear to be in a situation of being relatives and one adoption against the will of the spouse of the adopter will lead to further difficulties in the family and will break up in the adoption itself.

The reasons for the requirement of the consent of the spouse of the person being adopted are similar. The spouse of the person being adopted will stay out of the commitments raised by the adoption relationships and even thought it does not lead to any rights and obligation for the spouse of the person being adopted, the latter shall give his/her consent as well. Moreover, according to the court practice, the required consent of the spouse is still necessary even in the case of a divorce claim is being
raised because the marriage is still not being terminated\textsuperscript{136}. The consent of the spouses is not required in the cases where the latter are placed under judicial disability or their permanent address is unknown.

There are other persons whose consent for the adoption is not requested but whose opinion on the matter is required - the guardian or the trustee, the parent, if they are below 14 years of age, if they are placed under limited judicial disability or deprived of parental rights, as well as the spouses if they are placed under limited judicial disability. The form of the consents and the opinions is set in the Law and it depends on the capacity of the person whose consent/opinion is required. The consent of the person being adopted shall be given before the court in person. The consent of the adopter, of the parents and of the spouses, as well as the opinion of the parents, of the guardian or the trustee could be expressed in three forms: personally before the court, with a separate act with a notary public certification or though a special proxy. But in any event, the court may decide to summon each one of these persons in order to hear them, if considers it necessary. The consent of the manager of the social institution could be expressed in two manners: personally before the court or in written without the necessity of a notary public certification.

The Bulgarian Family code has defined certain cases where the parent's consent for the adoption is not taken. As an exception from the general rule of the obligatory parent’s consent on the adoption, it will be admitted when the parent does not accede if he/she permanently does not take care of the child, as well as in the case where the parent does not provide support and raises and brings him/her up in a way detrimental to his/her development. The two conditions shall present simultaneously and this total non-execution of the parental rights shall present permanently. A concrete duration is not pointed in the Code but the assessment is made by the court on a case-by-case manner.

On the second place, adoption without consent of the parent will also be admitted when he/she has left the child to be raised in a specialized institution and he/she has not asked for him/her within six months from the day when he/she was supposed to take the child away. It is common for parent leaving their children for a long time in specialised institution without a prior consent for adoption, which was an obstacle for those children to be adopted. The idea of this legal solution is that the parent is unduly disinterested for the child. The adoption could not be executed without his consent in the case where the parent was prevented form being able to provide care for the child due to some objective reasons, for example an illness.

According to the draft of Family Code adoption without consent of the parent will be admitted when he/she has left the child to be raised in a specialized institution and he/she has not asked without a good reason within six months from the date of accommodating the child in the institution for termination of the accommodation or change of the measure for the purpose of raising the child in the biological family, with relatives or with a foster family.

Nevertheless, in these cases the respective parent is subpoenaed in order to be heard out in court. In the event of adoption is been admitted by the relevant court, Directorate "Social Assistance" supervises the process of bringing up of the child and the observation of his/her rights and legitimate interest for a period of 2 years and prepares annual reports for the supervision.

\textsuperscript{136} Ref. Decision of the Supreme court 2242-69-II;
d) Procedure for allowing an adoption

The procedure for allowing the adoption is dully organized as a guarantee that the adoption will be made in the interest of the child, in accordance with the Law and the moral and with the social purpose of the institute.

The application for adoption shall be considered by the district court at the location of the regional directorate for social assistance in which the child was entered. The maximum duration of the proceeding is defined in the Code. Therefore, the court shall issue a decision within 14 days from the filing of the application before the court.

The district court, in a session in camera, after hearing out the conclusion of the public prosecutor, shall rule by a decision. The decision shall be announced in a court session and after its coming into force it shall be forwarded ex officio to the municipality at the permanent address of the prospective adoptive parents, and in case of foreigners – to Sofia Municipality.

e) Termination of adoption

The grounds for termination of the adoption are exhaustively and strictly defined in the Family Code. The only case where the adoption is terminated automatically is the decease of the sole adopter in the case of incomplete adoption. In any other case the termination is done by a court decision. The adoption could not be terminated by one-sided denouncement by one of the parties, nor by an out of court settlement. It could not be deemed terminated on the grounds of the termination of a marriage where the adoption was made especially for that marriage.

Termination in case of decease: this is the case where the sole or both of the adopter passed away and the form of the adoption is incomplete. The termination is done automatically, ex lege, and therefore, a claim for its termination in a court procedure is inadmissible. This legal base for termination is justifiability settled in the Law because the incomplete adoption is a personal relationship between the adopter and the adopted person. The decease of one of them terminates this personal relationship and the child is returned to its native parent/s. Notwithstanding the termination of the adoption itself, the Family Code rules that the adopted person still inherits from the deceased adopter.

In the case where the child is been adopted by two spouses, the decease of one of them terminates the adoption only with regards to him/her, but the adoption relationship with the other adopter is retained because, as stated above, the adoption made by two spouses simultaneously, creates two different adoption relations, which has their separate existence.

The Code refers only to the decease of the adopter, not to the one of the adopted person and its influence on the adoption relationship in case of incomplete adoption. If the deceased adopted person has no descendants, the adoption is terminated as in the case of the decease of the adopter. The latter shall inherit from the deceased adopted person and with this the relation is terminated. The more complicated situation is the case where the deceased adopted person has descendants because the incomplete adoption creates relation also between the adopted person’s descendants and the

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137 Ref. Decision 715-58-III of the Supreme Court;
138 In the case of a full adoption, the decease is only a ground for a possible termination by the court;
139 Ref. Decision 1063-93-II of the Supreme Court;
adopter. Therefore, it is considered that the adoption relationship is kept and still exists between the adopter and the descending persons of the deceased adopted person, even though there is a disagreement in the practice on this matter.

Termination by mutual agreement: it could be done by the court on the ground of reached mutual agreement between the adopter and the adopted person, which shall be in full legal ability. The required legal ability shall mean that both of them shall have accomplished eighteen years of age. The accomplishment of 14 years of age is not enough even though this age the adopted person is entitled to grant its consent for adoption. But the significance of the will expressed in the both situation is different as in the procedure for permitting the adoption the court makes the final assessment while in the case of a mutual agreement reached for its termination, binds the court wit the obligation just to state it, without being able to assess the need or other circumstances.

On the other side, the consent for the termination shall be considered as a ground for termination of the adoption as the act that leads to this effect is the decision of the court. The consent shall be made “seriously and firmly” because one uncertain, evasive and hesitant consent could not be taken by the court as a ground for termination of the adoption. The parties are not required to state their motives for their decision, neither are they obliged to ground before the court the claim for the termination. But the expressed consent could be withdrawn\textsuperscript{140} and it could be done up to the moment of the court decision. The draft of Family Code does not envisage the above mentioned possibility for termination of adoption by mutual consent of the adopted person and the adoptive parent when both are legally able in the cases of incomplete adoption. Termination by the court: the grounds are severe offence by one of the parties or in the presence of other circumstances which deeply upset the relations between the adoptive parent and the adopted person or the decease of the adopter. The first ground is applicable to each of the forms of the adoption, as the second, could apply only to the full adoption. The concept of “severe offence” is not defined in the Family code and the assessment is given to the court to be decided on case-by-case manner. The author of this severe offence shall be only the adopter or the adopted person. In some decisions, the Supreme Court denies the act of any third parties to be able to lead to termination of the adoption specifically on this ground. For example, the refusal of the parents to leave the child with the adopter\textsuperscript{141}, the parents have separated the child from the adopters and sent it to their parents\textsuperscript{142}, the parents have not executed their obligation to take care of the adopter\textsuperscript{143}. The behavior of these persons and its possible reflection on the adoption could be considered only and a “other possible circumstance”\textsuperscript{144}. In other cases, there are situations of existing conflicts between the adopted person and the spouse of the adopter: the spouse approves the reproachful behaviour of the adopter and assists in the bad treatment of the adopted person\textsuperscript{145}, if the spouse encourages the adopter in his bad behaviour\textsuperscript{146} or is indifferent to such behaviour\textsuperscript{147}. These conflicts with the spouse are again to be considered as “other significant circumstance” in the procedure for termination of the adoption.

As far as if concerns the offence itself, it is the moral that is the criteria for the latter to be assessed as “severe”. It is not obligatory that the offence represent a crime. It is sufficient that it could be morally demandable\textsuperscript{148}.

\textsuperscript{140} Ref. Decision 118-48-11 of the Supreme Court;
\textsuperscript{141} Ref. Decision 1333-59-I of the Supreme Court;
\textsuperscript{142} Ref. Decision 295-59-II of the Supreme Court;
\textsuperscript{143} Ref. Decision 617-56-II of the Supreme Court;
\textsuperscript{144} Ref. Decision 1333-59-II of the Supreme Court; Decision 295-59-II of the Supreme Court;
\textsuperscript{145} Ref. Decision 1045-54-II of the Supreme Court;
\textsuperscript{146} Ref. Decision 160-55-IIC of the Supreme Court;
\textsuperscript{147} Ref. Decision 251-53-II-2 of the Supreme Court;
\textsuperscript{148} Ref. Decision 1652-59-III of the Supreme Court;
The concept of “other circumstances which deeply upset the relations between the adoptive parent and the adopted person” is defined in the theory as: all other circumstances out of the severe offence, which have led to the total and incorrigible disorganization of the adoption relationship, where its preservation is deemed to be unjustifiable form the society point of view as well as form the one of the adopter and the adopted person.

On the next place, as pointed out above, the decease of the adopter is a ground for termination of the full adoption throughout court procedure. But unlike the decease of the adopter in the incomplete adoption, in the present case it is not done ex lege, automatically, but is left on the assessment of the court in the case this is in accordance with the best interest of the adopted child. This interest, as pointed by the Supreme Court, could be material or moral: the adopter has not left any property and the adopted person is left without resources for living; the adopter has had a “bad name” in the society; etc.

Termination of the adoption due to its invalidation: the cases of invalidation are exhaustively listed in the family Code and are due to violation to certain general rules for the admissibility of the adoption.

The participation of a public prosecutor in the cases for termination is compulsory however the draft of Family Code does not envisage such obligation. In case of full adoption the court can terminate the adoption upon request of the adopted person, of his parent, of the guardian, of the trustee or of the public prosecutor if the only or both adoptive parents have died and this is required by the interests of the adopted person. The draft of Family Code deprives the public prosecutor of the right to request such termination and grants the Directorate “Social assistance” with that authority. Unlike the situation with the full adoption, in case of incomplete adoption, if the only or both adoptive parents die, the adoption shall be considered terminated. Nevertheless, the adopted person succeeds the adoptive parent. According to the draft of Family Code incomplete adoption shall be considered terminated not only if one or both adoptive parent die but also if the adopted person dies and leaves no descendants.

On the last place, in is important to be noted, that when the death of the adoptive parent or of the adopted person occurs in the course of the process of termination of the adoption, the case can be continued by the legatees or by the public prosecutor. This possibility is inapplicable in the situation of court proceeding for termination of the adoption due to a mutual agreement between the adopted person and the adopter. Should the court honour the claim the guilty living adoptive parent or adopted person shall not succeed the deceased.

f) Conditions for full adoption.

The concept of the “full adoption” represents the case where between the person being adopted and his descendants, on one hand, and the adoptive parent and his relatives, on the other hand, occur rights and obligations as between relatives by origin, and therefore the rights and obligations between the person being adopted and his descendants with their relatives by origin are terminated.

In the case of “incomplete adoption” between the person being adopted and his descendants, on one hand, and the adoptive parent occur rights and obligations as between relatives by origin, but the person being adopted reserves the relation with his/her relatives by origin.
Generally, the adoptive parent could choose whether to perform full or incomplete adoption. Nevertheless, the Legislator has determined some exclusions of this rule aiming at preserving children’s rights: full adoption is compulsory where the person to be adopted is a child of unknown parent, or he/she has been left in a specialized institution with the provisional consent of the parent for full adoption or he/she has been left in a specialized institution and has not been asked for by his/her parent within 6 months from the date on which he/she had to be taken away. According to the draft of Family Code: full adoption is compulsory where the person to be adopted is a child of unknown parent, or the parent have given their provisional consent, or when the parent has left the child to be raised in a specialized institution and he/she has not asked without a good reason within six months from the date of accommodating the child in the institution for termination of the accommodation or change of the measure.

In the case of a national full adoption procedure, the adopted person should be entered in advance in the relevant Register of children for full adoption. These registers are kept by each regional directorate for social assistance, which are situated in each region on the territory of Republic of Bulgaria. The Register includes information regarding the personal data of the child, the health status and medical examinations made of the child to be adopted as well as information about its special needs, the presence or absence of consent for its full adoption given by the parent, personal data of the parent and the other family members as well as data about their status of health, contacts of the child with his/her parent and the other family members, specialized institutions, foster families or other persons with whom the child was placed or who have taken care of it and the reasons for the placement, as well as any other circumstances of importance for the adoption.

For a child placed at a specialized institution with consent for full adoption given by the parent or whose parent are unknown, the manager of the specialized institution notifies within 3 days of his/her placement, the relevant regional directorate for social assistance about his/her entry in the register. Where a child is being placed at a foster family or with other persons with the consent of his/her parent for full adoption or whose parent are unknown, the director of the Directorate “Social Assistance” at the permanent address of the child notifies again within 3 days of the placement, the relevant regional directorate for social assistance about his/her entry in the register. According to the draft of Family Code when a child has been accommodated at a family of relatives, a foster family or a specialized institution and the parent of that child are unknown or they have given their provisional consent for full adoption the respective directorate “Social assistance” as per the current address of the child notifies the relevant regional directorate within seven days from the accommodation about the entry of the child in the register. When the parent has left the child for raising in a specialized institution and he/she has not asked without a good reason within six months from the date of accommodating the child in the institution for termination of the accommodation or change of the measure, the respective directorate “Social assistance” as per the current address of the child notifies the relevant regional directorate within seven days from the accommodation about the entry of the child in the register.

The aforementioned rules apply in the case where a consent for a full adoption is been given by the child’s parent. In the case where a consent is not been given, a court decision is an obligatory prerequisite for the child’s entrance in the Register. Therefore, a child placed at a specialized institution that have not been asked for by his/her parent within 6 months after the expiry of the time-limit of his/her placement, may be entered in the register with a decision by the regional court at the location of the specialized institution. Also, a court decision in needed for the entrance of a child whose parent are
unknown, dead or deprived of parental rights. Lastly, a child not placed at a specialized institution, with a foster family or with other persons may be adopted under the conditions of full adoption, after entry in the register upon request by the parent, with a decision of the regional court at the permanent address of the child. As per the draft of Family Code no court decision is needed for the entrance of a child whose parent are dead, deprived of parental rights or legally disabled. Such entry can be performed upon assessment of the director of the respective regional directorate “Social Assistance” on ground of an application filed by the guardian / trustee through directorate “Social Assistance”, on condition that such registration serves the interests of the child.

Person willing to adopt a child under the conditions of full adoption should file a written application with the Directorate “Social Assistance” to obtain permission for entry in Register of candidate-adopters for full adoption and the Directorate “Social Assistance” carries out social study of the person about its suitability to adopt a child. This study contains information about the identity of the prospective adoptive parent, his/her health status, family of the prospective adoptive parent, personal data of the members of his/her family as well as data of their health status, economic and social situation of the prospective adoptive parent, reasons for the adoption and any other circumstances that are of importance for the adoption. This study concludes with report on the basis of which the Director of the Directorate “Social Assistance” grants permission to the candidate-adopter. The permission is issued for a period of two years. Consequently, the person who has obtained permission for adoption by the Directorate “Social Assistance” is entered in the register of the relevant regional directorate for social assistance ex officio and, upon his/her request, in the registers of other regional directorates as well.

With each regional directorate for social assistance an Adoption Council is established. This specialized body nominates for each child from the register in the regional directorate for social assistance the eligible adoptive parent taking into consideration the order of his/her entry in the register of prospective adoptive parent, his/her qualities, whether he/she has not been nominated for eligible adoptive parent of another child and whether he/she has not filed application for adoption within the time-limits, as well as other circumstances of importance for the adoption. The draft of Family Code states that the criteria considered by the Adoption Council when assessing the application of the adoptive parent at hand will be: the ability of the latter to suit the needs of the child for rising, for education, for physical, psychological and social prosperity as well as other circumstances of importance for the adoption. The time of filing the application is considered only when there are candidates for adoptive parent who possess the same qualities with regard to the above listed criteria. After that, the prospective adoptive parent willing to adopt the child should file an application for adoption before the court. The application for adoption is considered by the district court at the location of the regional directorate for social assistance in which the child was entered. Upon an application being lodged, the district court, in a session in camera, after hearing out the conclusion of the public prosecutor, rules by a decision.

According to the draft of Family Code in the court hearing in addition to the above the report of directorate “Social assistance” has to be heard as well. Notwithstanding the consents given, the public prosecutor’s opinion on the adoption or the adoption permission granted to the prospective adoptive parent, the court decides whether to admit the adoption independently, taking into account on the interest of the person to be adopted. The decision for admission or refusal of adoption could be appealed before the appellate court whose decision is final.

In the case where the person nominated refuses the proposal or he/she does not file an application for adoption, the Adoption Council nominates another eligible
prospective adoptive parent for the child. If, within 6 months from the entry of the child in the register at least three candidate adopters have been nominated and no one of them has filed an application for his/her adoption or if no eligible prospective adoptive parent has been nominated, and if the child has accomplished one year of age, the Adoption Council notifies the Council of Intercountry Adoptions within the Ministry of Justice to nominate an eligible foreign candidate adopter.

3. SUMMARY OF THE CHILD PROTECTION LEGISLATION

a) General overview of the rules under the UN Convention on the Rights of the Child 20 November 1989

The main purpose of many significant amendments in the Bulgarian child protection legislation in the past years has been to introduce the regulations of the UN Convention on the rights of the child and to make them practically applicable in Bulgaria. The named Convention was ratified by the BG Parliament on 11.04.1991 and has been in force since 03.07.1991. Pursuant to the Bulgarian Constitution the ratified international agreements become an integral part of the national legislation and have supremacy over it. On 12 Feb 2002 Bulgaria ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. On the same date Bulgaria ratified also the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. No declarations or reservations were made to this Protocol.

The Convention creates unified standards, responsibilities and procedures with regard to children protection, which are of paramount importance. It solves specific problems and declares the importance of informing children of their rights and giving them the chance to participate in the process of adopting decisions, which concern their development.

The UN Committee on the rights of the child proclaims some of the regulations of the Convention as main principles, which must be abided by in all actions concerning children. One of the main principles is the prohibition of discrimination treatment of children, stated in art.2 of the Convention. The other fundamental principal, proclaimed by the Convention, is the obligation of any public or private social welfare institutions, courts of law, administrative authorities or legislative bodies to consider the best interests of the child in all actions concerning the latter. Furthermore, the Act states other rights of a primary importance, such as the right of life, survival and development of every child, as well as the obligation for taking into consideration the views of the child.

The rights proclaimed in the Convention can be summarized in three groups:

Right of protection against exploitation, torture, illicit transfer of children abroad, etc.

Right to be heard in any judicial and administrative proceedings affecting the child.

Right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Being an agreement on human rights, the Convention is a result of the desire to rationalize the efforts for protecting children in “the world of adults” and thus it turns into an instrument for guaranteeing childhood.

On the other hand, specific standards and procedures concerning parental responsibility and recognition and enforcement judicial decisions on such cases are
established also in the Regulation 2201/2003 adopted in Bulgarian legislation. In fact these are the two main areas of concern in the Regulation.

To be more clear about the scope we should say that the Regulation shall not apply to: the establishment or contesting of a parent-child relationship; decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption; the name and forenames of the child; emancipation; maintenance obligations; trusts or succession; measures taken as a result of criminal offences committed by children.

The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seized. Where a child moves lawfully from one Member State to another and acquires a new habitual residence there, the courts of the Member State of the child's former habitual residence shall retain jurisdiction during a three-month period following the move for the purpose of modifying a judgment on access rights issued in that Member State before the child moved, where the holder of access rights pursuant to the judgment on access rights continues to have his or her habitual residence in the Member State of the child's former habitual residence.

A judgment relating to parental responsibility shall not be recognized: (1) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought taking into account the best interests of the child; (2) if it was given, except in case of urgency, without the child having been given an opportunity to be heard, in violation of fundamental principles of procedure of the Member State in which recognition is sought; (3) where it was given in default of appearance if the person in default was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defence unless it is determined that such person has accepted the judgment unequivocally; (4) on the request of any person claiming that the judgment infringes his or her parental responsibility, if it was given without such person having been given an opportunity to be heard; (5) if it is irreconcilable with a later judgment relating to parental responsibility given in the Member State in which recognition is sought; (6) if it is irreconcilable with a later judgment relating to parental responsibility given in another Member State or in the non-Member State of the habitual residence of the child provided that the later judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought or (7) if the procedure placement of a child in another Member State.

4. SUMMARY OF THE APPLICABLE NATIONAL LEGISLATION

a) The Child Protection Act

The practical functioning of the UN Convention on the rights of the child in Bulgarian society and the direct engagements of the Bulgarian state authorities with regard to children’s rights are assured through the Child Protection Act /CPA/, promulgated in State Gazette No 48 on 13.06.2000. This act implements a new philosophy in the Bulgarian child protection legislation - the child is seen as an active subject of its own life and personal development and not as a passive object of cares provided by the state and society. The adoption of this act permits the creation of a new governmental child protection system. Following the adoption of the CPA in 2001 a State Agency for child protection was created in Bulgaria as a central authority for coordination and control of the state child protection policy. On a municipal level Departments of the central authority for child protection were created, the purpose of which is to practically apply the rules of the CPA. The creation of the above bodies is a result of the attempts to overcome the lack of coordination of child care and to find the right approach of solving the problems in this area.
In the CPA the legislator has tried to range over a large number of rights, principles and measures regarding child protection.

*The main leading principles of the child protection* are regulated in Article 3 of the CPA and are related to respecting the children’s personality, raising them in a family environment, securing the interests of children in the best possible way, providing special protection for children in risk or having a particular talent, providing qualified personnel to take care of children, assuring that all actions with respect to child protection are effectively supervised and controlled, etc.

*The main protection measures* are regulated in article 4 and they are applied through collaboration, assistance and services in a family environment; accommodating children with relatives, specialized institution, providing police protection and specialized protection in public spaces, spreading information on the rights and obligations of children and parents, providing precaution security measures and protection of children, providing legal assistance and special cares for children with physical or mental damage.

One of the most progressive ideas of the CPA is the attempt of the latter to regulate the institutionalization of the children as well as the determination of the significance of each separate protection measure by considering whether it guarantees the right of the child to live in a family environment and whether it gives such opportunity.

The amendments of the CPA in 2003 provided for a licensing regime for providers of social services for children. The Chairman of the State Agency for Child Protection grants a license for provision of social services for children following a procedure described in detail in the Regulation for application of the CPA. The Departments for child protection inform children or the people taking care of them about the list of providers of social services for children and supply them with a draft of the contract for provision of such services.

The Accommodation of a child out of the family is applied as last protection measure after having used all possibilities of protection within the family except for cases of need for an urgent removal. The CPA provides the general regime for accommodation of children out of the family regardless of where the child will be accommodated - with relatives, foster family or an institution. Foreseeing the importance of the question, the legislator decides that a court resolution is needed for the performance of such accommodation. Until the court issues its resolution the respective Directorate “Social assistance” can perform interim accommodation following an administrative procedure. The above procedure applies when the protection measure is changed in order to avoid automatic transfer of the child from one institution to another.

The CPA regulates also the police protection as urgent measure, which is undertaken:

when the child is subject to crimes, when there is a high danger for its life or health when there is a big chance that a child is involved in a crime when it is lost, helpless or left without supervision.

The specialized organs of the police accommodate the child in special quarters where the child is isolated from contact with people who can have a bad influence over it; they can provide special security for the child if that is considered necessary or can bring the child back to its parent or to the people executing functions of parent when this is needed. The police organs which initiated the protection measures must inform immediately the parent, the respective “Social assistance” Directorate and the
prosecutor's office. It is settled that the child can be under police protection for not more than 48 hours.

One of the later amendments of the CPA gave the Chairman of the State Agency for child protection the right to supervise and control the protection of rights of children in the specialized institutions, schools, kinder gardens, etc. When infringements are detected the Agency gives obligatory directions for their correction. Granting such rights to the Agency, gives the latter the possibility to supervise to what extent rights of children are protected anywhere they live and are raised.

b) Measures for child protection under the Bulgarian Child Protection Act and the regulation on the implication of the Child Protection Act

- General features

Under the Bulgarian Child Protection Act and the Regulations on the implication of the Child Protection Act several measures for child protection are stipulated: lodging in the family of relatives, lodging in foster family and lodging in specialized institution. The type of measure is to be imposed depending on the extent of risk exposure of the child by special administrative bodies or the court.

They are regulated in the Bulgarian Child Protection Act and the Regulations on the implication of the Child Protection Act and in the Administrative Procedure Code.

- Legal grounds

The legal grounds stated in the law for the imposition are equivalent for all measures in art.25 from the Bulgarian Child Protection Act. The parents of the child are deceased, unknown, deprived of parental rights or who have limited parental rights; the parents do not take care of the child without any substantial reason; the parents are in permanent disability to take care of the child; the child is abused in the family and a serious danger for child’s health is present. These grounds are equivalent for all measures for child protection.

The lodging of the child is officially imposed by the court as a permanent measure and only as an exception and as a temporary measure by the Director of the Direction “Social service”.

- Termination of the measure

All measures are to be terminated by the regional court if a letter of application is submitted by the family of the relatives, the Director of the Direction “Social service”, child’s parents or the prosecutor.

This measure may be executed temporarily by the direction “Social service” till the final decision of the court is pronounced. In this case the Direction may take decision concerning the future rising and education of the child or other temporary measure of protection to protect child’s interests.

The decision of the regional court may be appealed before the district court but the appeal doesn’t stop the execution of the decision. The decision of the district court is final and cannot be a subject to a further appeal.

c) Procedure for lodging of the child in the family of relatives
This measure of protection is imposed in order to guarantee child’s health and life in danger and after all possibilities for protection in the family environment has been exhausted.

It’s regulated in the Bulgarian Child Protection Act and the Regulations on the implication of the Child Protection Act as well as in the Administrative Procedure Code. Actors taking part in the entire procedure are not only the child and the relatives where the child will be placed but also the Direction “Social service” at the Agency for social services and Department “Child protection” at the permanent address of the child or his/her relatives.

Certain conditions should be present in order to impose this measure. The child to be protected should be at risk\textsuperscript{149}. On the other hand relatives should be present. Their prior consent of the relatives is also necessary.

- Lodging of the child. Procedure.

- Lodging of the child with court decision

To be imposed this measure a letter of application should be submitted by the Direction “Social service” at the permanent address of the child or his/her relatives, the prosecutor or the parent who is unable to take further care of the child at the correspondent regional court which is competent to hear the case. In that regard it has to be concluded that under the Bulgarian law a child may be placed out of his family environment and placed at relatives only with court decision and thus this measure for protection is stipulated and controlled by the court.

- Lodging of the child with an order of the Director of the Direction “Social services”

On the other hand, this measure may be imposed as a temporary one by the administrative body with an order issued by the director of the Direction “Social service”. However in one months’ term the director should submit an application before the regional court to stipulate a permanent lodging of the child at he relatives.

The order of the Director may be appealed before the Regional Direction “Social service” under the Administrative Procedure Code. The decision of the regional court may be also appealed before the district court in 7 days term and the district court tries the hearing of the case in a term not longer than 7 days.

d) Procedure for lodging of the child in foster care

- General overview

It’s imposed as a measure of protection in order to assure the rising and the education of the child in foster family.

According to the Bulgarian Child Protection Act a foster family is composed of a husband and a wife or a single person where a child is placed. The foster family may be also professional. If the family is a professional one then a supplementary

\textsuperscript{149} A child in risk is a child who has no parents or is deprived permanently of parental care; who is a victim of violence, abuse or exploitation or other inhuman or degrading treatment or punished in or out of his family; whose physical, moral, psychological, intellectual or social development is in danger; who suffers from mental or physical disabilities and from incurable diseases.
qualification for children rising and education must be present. Also, this type of foster family concludes a labor contract with the Director of the Direction “Social service”.

That measure is regulated in the Bulgarian Child Protection Act and the Regulations on the implication of the Child Protection Act, in the Administrative and the Civil Procedure Code.

Actors taking part in the entire procedure are the child in need to be placed in foster family, the parent or the legal representative, the foster family already registered in the Direction “Social service” at the Agency for social services, the Direction “Social service”, Department “Child protection”, the institution or the family in the case that the child is already out of family environment, the court and the prosecution office.

- **Special requirements**

Certain conditions should be present in order to impose this measure. The child to be protected should be at risk. Also, foster families should be present registered in the Direction “Social service” at the Agency for social services. The parents of the child must have given their written consent afore except for the case when there’s a direct risk for child’s health and life.

The procedure is the same as described in the point 1. The decision for the lodging of the child should be taken by the court as a permanent measure and as an exception by the Director of the Direction “Social service”.

However, there are specific requirements concerning the foster families stipulated expressly in the law. First, an evaluation concerning the suitability of foster families who apply for foster care should be made. Second a contract must be concluded between the foster family and the Director of the Direction “Social service” where the term, the budget, the rights and the obligations for the raising and the education of the child are determined.

e) **Procedure for lodging of the child in a specialized institution**

- **General overview**

This measure for child protection is undertaken only as a last measure of protection after all other sources for protection have been exhausted in order to secure child’s health and life.

It’s regulated in the Bulgarian Child Protection Act and the Regulations on the implication of the Child Protection Act, in the Administrative Procedure Code.

Actors taking part in the entire procedure are the child/ children are deprived of family care permanently, the parent/ the guardian or the person who is taking care of the child; the Direction “Social service” at the Agency for social services at the permanent address of the child as well as the Direction “Social service” at the territory of the specialized institution and the specialized institution which may be Home for medical and health care, Home for raising and education of children deprived of parental care, Home for children with mental disabilities and others.

- **Preliminary conditions**

The child to be protected should be at risk and a letter of application should be submitted by the parent. Also, the child should be in need to be placed in specialized institution and the parent should give his/her prior consent that the child may be placed
in an institution. Parents’ consent is not needed in case child’s life or health are in
danger.

- Procedure

First, a signal that there’s a child at risk should be submitted either in the Direction
“Social service” or a letter of application from parent for the lodging of the child in a
specialized institution. Second, the department “Child protection” in the Direction
“Social service” at the permanent address of the child research and gather necessary
information for the imposition of this measure. Then on the basis of the gathered
information the department makes an evaluation of the signal and the case.
Afterwards, a special report with motivated proposal for the lodging of the child in the
institution is elaborated as well an action plan for long and short term activities for the
protection of the child.

The next step is the order issued by the Director of the Direction “Social service” for
temporary lodging of the child in administrative order. Finally the court pronounces a
decision on the permanent lodging of the child in an institution.

- Police measures for child protection

The police protection is an emergency measure which is granted when the child is an
object to crime or there’s immediate danger for his/her health and life; when the child is
lost and in helpless mood or no one takes care of him/her. The measure is granted by
the structures of the Ministry of interior and by its officers.

The measures may be following: lodging of the child in specialized rooms where the
child is isolated in a healthy environment; lodging of the child in a specialized institution
and if necessary a physical guard will be assured; the child to be returned at his
parents or relatives responsible for his/her education.

The police officers that have assured the protection inform immediately child’s parents,
the direction “Social service” in which precinct the measure has been taken, the
prosecution office and the direction “Social service at the permanent address of the
child.

The duration of this measure is not more than 48 hours.
2.4. CYPRUS

1. Procedure

The principle of adoption was legally established for the first time in Cyprus in 1954 based on the English Law of 1954 whereas in England this principle has been legally established in 1926. The law is titled “Adoption of Children” and represents Cap.274 of the Cyprus Law which is comprised of 30 articles. The above mentioned law, Cap.274 has been in effect in Cyprus until the enactment of the current Cypriot law governing adoption, the Adoption Law of 1995, the Law 19(I) of 1995. However, the Procedural Rules of 1954 governing adoption are still in force.

Adoption is effected by a court order referred to as “adoption order” upon an application submitted in the prescribed form.

The adoption order is a judgment in rem binding not only on the interested parties but on everyone.

According to Rule 3 of the Adoption Procedural Rules of 1954, an application for an adoption order shall be made by originating application in the prescribed form. The proposed adopter shall be the applicant. The application shall be supported by an affidavit verifying the several statements therein.

The application for adoption shall be submitted by a person or persons, provided that:

(a) one of them is a permanent resident of the Republic of Cyprus or during the two years immediately before the submission of the application had his residence in the Republic of Cyprus. It must be noted that the adopted, who is or has been adopted by a person or persons referred to above after a judicial procedure abroad shall be deemed for the purposes of the Law 19(I) of 1995 that he resides in the Republic of Cyprus;

(b) at least one of the applicants has completed the twenty-fifth year of his age and the Court thinks that, after taking into consideration the ages of the adopter and the adopted respectively, the adoption does not entail any risk for the adopted and is generally for the interest of the adopted. However, the restrictions in relation to the difference of age between the adopter and the adopted shall not apply where an adoption of the applicant’s child or of the child of the wife of the adopter is concerned; or

(c) one of the applicants has completed the twenty-first year of his age and is a relative of the adopted.

It must be mentioned that (b) and (c) above will not apply where the application for adoption is submitted by the father or the mother of the adopted.

Application for adoption may be made by:

( ) the two spouses for a joint adoption;

(a) the natural father with his wife or the mother with her husband, jointly; or

(b) the husband of the mother or the wife of the father of the adopted.
An adoption order may also be made upon an application of only one person who is not married provided that the Court is satisfied that special reasons coexist.

For the purposes of the Adoption Law of 1995, ‘adopted child’ includes a minor and by exemption includes a person of over eighteen years of age, where this person is a child of one of the adopters. The adopted who is or has been adopted by a person or persons (provided that one of them is a permanent resident of the Republic of Cyprus or during the two years immediately before the submission of the application had his residence in the Republic of Cyprus) after a judicial procedure abroad shall be deemed for the purposes of the Law 19(I) of 1995 that he/she resides in the Republic of Cyprus. The Cypriot Courts may refuse to make an adoption order if it is established that the object of the adoption is not lawful and the adoption is motivated by foreign incentives which are irrelevant to the creation of a parent-child relationship.

The placement of a minor under the immediate care and custody of a person for purposes of adoption may be effected either through the Welfare Department or directly.

The placement of a minor through the Welfare Department shall be Placement effected by a written authorization of the parents or the guardian of the minor child after which the Welfare Department may proceed to or participate in the necessary arrangements for the placement of the minor under the immediate care of a person for adoption purposes, irrespective of whether the identity of the person intending to adopt the minor is known or not to the parents or to the guardian of the minor.

The direct placement of a minor shall be effected where any person directly proceeds to the necessary arrangements for the placement of a minor under the immediate care of another person who intends to adopt the minor.

The person, under the immediate care of whom the minor has been placed or is about to be placed for purposes of adoption, shall be referred to as “the custodian of the minor”.

Any person or natural parent wishing the placement of a minor for adoption purposes, that person shall inform the welfare officer of the area in which he resides about. At least three months before the direct placement of the minor in accordance with the arrangements that have been made, the proposed custodian and the natural parents of the minor, if any, shall inform in writing the welfare officer of the area in which the proposed custodian resides about his intention. The written notice shall mention the name, the gender, the date and place of birth of the minor, as well as the name and surname and the address of the proposed custodian and of the natural parents, if any. Then, the welfare officer investigates whether the proposed custodian is suitable for taking the minor under his care for adoption purposes and he serves the intended custodian and the natural parents, if any, with a copy of his reasoned report, in which it is mentioned whether the proposed custodian is a person suitable for taking over the minor for adoption purposes. Where the proposed custodian or the natural parents disagree with the report of the welfare officer, they may, upon their application, refer to the Court which shall decide accordingly.

Persons intending to proceed with an adoption procedure who have not found yet the child to be adopted, they are entitled, upon application, to refer to the welfare officer of the district in which they reside requiring the preparation of a report in which it shall be mentioned whether or not they are suitable persons for adoption purposes. The welfare officer must, within six months from the receipt of the notice, serve the applicants with a copy of a reasoned report.
Where the premises in which the minor has been placed or is intended to be placed are unsuitable due to the living conditions at these premises, or where the environment is detrimental to the minor or where the custodian under the care of whom the minor is or is intended to be placed is not a suitable person for reasons relating to his age, his mental condition or generally his behavior and conduct, or where the custodian has died, the Court may, upon an application of the welfare officer, order the removal of the minor child to a safe place until the minor can be returned to its parents or its guardian or until other arrangements are made.

The welfare office’s report constitutes a precondition for the issuance of an adoption order.

For an adoption order to be granted the following are required:

1. The consent of the parents or the guardian of the minor. However, the consent of the mother of the minor may not be given unless at least three months have elapsed since the birth of the minor;
2. The consent of the applicant’s spouse if he/she is married; and
3. The consent of the person to be adopted, if his age or mental condition permits that.

The consent to adoption shall be given in the prescribed form before a judge of a Family Court or before the consular authorities of the Republic of Cyprus where the consent is given outside the Republic. It must be noted that the consent given in a procedure for adoption abroad shall be deemed as consent given in accordance with (a), (b) and (c) above.

The consent may be withdrawn at any time before the making of the adoption order, if the Court thinks that this is reasonable under the circumstances.

The consent to adoption, provided that it does not concern the consent of the adopted, may be given without the identity of the applicant to be known to the person giving it. If the consent is subsequently withdrawn on the ground that the person who has given it was not aware of the identity of the applicant, such refusal for consent shall be deemed unreasonable.

The Court shall make the adoption order, if it is satisfied that:

1. The consent required by the Law has been given with full knowledge of the effects of the adoption;
2. The issuance of the adoption order will be in the interest of the adopted, by taking also into consideration his wishes, if his age and his mental capability permit that;
3. For at least three consecutive months before the issuance of the order the minor has been living and continues to live with the applicant or with one of the applicants and is under his care and supervision;
4. The applicant has not received or agreed to receive and no other person has given or has agreed to give to the applicant any amount of money or other reward as an exchange for the adoption;
(e) the report of the Welfare Department states that the custodian of the person to be adopted is in fact a suitable person for the purposes of the adoption.

The Court, in making the adoption order, may impose such terms as it thinks fit under the circumstances, and in particular it may require the applicant to take care for the financial security of the minor in any manner the Court thinks right and just.

The Court, in which an application for adoption is pending, shall, as soon as practicable, appoint an officer of the welfare department in the area in which the applicant or minor resides to act as a temporary guardian, with a duty to safeguard the interests of the minor in general as well as the interests of the minor in Court. The Court shall cause one copy of the originating application and the documents attached thereto to be served on him together with an undertaking by the applicant to pay the welfare officer’s relevant costs for acting as a temporary guardian of the minor.

When the temporary guardian has made his report to the Court, the registrar shall fix a date and time for the hearing of the application, and shall serve a notice in the prescribed form on the following persons:

a) the applicant;

b) every person whose consent to the order is required in accordance with the Law;

c) the temporary guardian;

d) any other person, not being the minor, who, in the opinion of the Court, ought to be served with a notice

and any person on whom a notice is required to be served under the procedural rules, shall be a respondent to the application.

Where the Court is notified by the temporary guardian that the minor is, in his opinion, of an age to understand and anticipate the effect of an adoption order, the Registrar shall serve on the applicant a notice in the prescribed form.

The Court shall not make the adoption order unless the applicant, the temporary guardian and also the child (except when the Court considers that the child is of an age which does not allows it to anticipate the consequences of an adoption order) are personally present before the Court at the day of the hearing of the application.

All documents filed in Court shall be confidential and the adoption application is heard and tried in private.

The Court may, while an application for adoption is pending, postpone its final decision upon the application and issue an interim order for adoption giving the custody of the minor to the applicant for a probationary period of not exceeding six months and upon such terms as the Court thinks necessary with regard to the maintenance, education and generally the welfare of the minor.

An interim order shall not be issued unless the required consents as these are mentioned above for the making of adoption order have been given, and the afore mentioned requirements are met but always subject to the power of the Court.

2. Intercountry adoption
The Convention on Protection of Children and Co-operation in respect of Intercountry Adoption was ratified in Cyprus by the Law 26(III) of 1994. The mentioned Law regulates for Intercountry Adoptions between Cyprus and the countries which have ratified it.

The Ministry of Labour and Social Insurance is the Competent Authority of the Republic of Cyprus to exercise all powers and discharge the duties imposed by the Convention upon such authorities. The Ministry of Labour and Social Insurance entrusted the Social Welfare Services the power and responsibilities to handle intercountry adoptions.

Any person or persons intending to proceed with an adoption procedure in respect to a child habitually resident in another Contracting State, they shall, upon application, refer to the Central Authority in the State of their habitual residence, that is, in the event that they habitually reside in Cyprus, they shall refer to the Director of the Department of Social Welfare Services of the Ministry of Labour and Social Insurance. The said application is forwarded to the Department of Social Welfare Services of the district in which the interested persons reside which shall prepare a report concerning the eligibility and suitability of the applicants to adopt, their identity, family and medical history, background, social environment, the reasons for adoption, the ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.

The said report accompanied by birth, health, marriage certificates and criminal records is transmitted to the Central Authority of the State of origin. In the event that the Central Authority of the State of origin is satisfied that the child is adoptable, it shall transmit to the Central Authority of the receiving State its report regarding the identity, adoptability, background, social environment of the child, the medical history of the child and its family, any special needs of the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement. It shall not reveal the identity of the mother and the father if, in the state of origin, these identities may not be disclosed.

The state of origin shall ensure that the persons, institutions and authorities whose consent is necessary for adoption, have been counselled when necessary and have been duly informed of the effects of their consent, in particular, as to whether or not an adoption will result in the termination of the legal relationship between the child and his/her family of origin. It shall also ensure that such persons, institutions and authorities have given their consent freely, in the prescribed legal form, and expressed or evidenced in writing, that the consents have not been induced by payment or compensation and have not been withdrawn and that the consent of the mother, when required, has been given only after the birth of the child.

The state of origin shall also ensure, having regard to the age and degree of maturity of the child, that he/she has been counselled and duly informed of the effects of the adoption and the effects of his/her consent to the adoption, that consideration has been given to the child’s wishes and opinion, that the child’s consent to the adoption has been given freely, in the prescribed legal form, and expressed or evidenced in writing and that such consent has not been induced by payment or compensation of any kind.

Any decision in the state of origin that a child should be entrusted to prospective adoptive parents may only be made if:

a) the Central Authority of that State has ensured that the prospective adoptive parents agree;
b) the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;

c) the Central Authorities of both States have agreed that the adoption may proceed;

d) it has been determined, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorised to enter and reside permanently in the receiving State.

On condition that the above mentioned requirements are satisfied, the Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and enter and reside permanently in the receiving State.

The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, the child shall be accompanied by the adoptive or prospective adoptive parents.

If the transfer of the child does not take place, the reports prepared by the Central Authorities of both States shall be sent back to the authorities who forwarded them.

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child’s best interests, such Central Authority shall take the necessary measures in order to protect the child and in particular, to withdraw the child from the prospective adoptive parents and arrange temporary care, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care. Also, as a last resort, it shall arrange the return of the child, if his/her interests so require.

Having taken into consideration the age and degree of maturity of the child, the Central authority of the receiving State shall consult the child and, where appropriate, it may obtain his/her consent with regard to the above mentioned measures.

An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognised by virtue of the law in the other Contracting States. The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

The recognition of an adoption includes recognition of the legal parent-child relationship between the child and his/her adoptive parents, parental responsibility of the adoptive parents for the child and the termination of a pre-existing legal relationship between the child and his/her parents, if the adoption has this effect in the Contracting State where it was made.

In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other
Contracting State where the adoption is recognised, rights equivalent to those resulting from adoptions having this effect in each such State.

In Cyprus, the Family Courts have the jurisdiction to hear and try cases in regard with adoption issues raised by virtue of the provisions of bilateral or multilateral conventions to which the Republic of Cyprus acceded.

The application for recognition and execution of an adoption order in Cyprus shall be made either by the adoptive parents or the Ministry of Labour and Social Insurance (as the Central Authority of the Republic of Cyprus) and shall be supported by an affidavit. The affidavit shall contain the facts on which the application is based.

Adoptions completed in States which have not acceded to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, shall be repeated in Cyprus according to the Cypriot legislation in order for them to have effect. However, this does not apply for adoptions that take place in countries whose governments have signed bilateral Conventions with the government of Cyprus.

In the event that the welfare Department is requested by the appropriate authorities of any foreign country which has not acceded to the Hague Convention to prepare a report concerning the eligibility and suitability of the applicants to adopt, the Welfare Department shall proceed with it and prepare the requested reports. The policy of the Welfare Department is to provide the relevant report, should the request come from the competent State Authorities of that country or from its Embassy in Cyprus.

3. Procedure

The Department of Social Welfare Services of the Ministry of Labour and Social Insurance is the official agency of the state for the provision and promotion of social welfare services. Its policy forms an integral part of the government’s overall policy for social and economic development and may be broadly defined as the advancement of social welfare and the prevention of social problems in individuals, families and communities. The nature of the Department of Social Welfare Services is social.

The welfare officers, sometimes known as social workers, are designated by Law to act for the protection of the children, to safeguard the interests of the children and to preserve their rights before and during the adoption procedure.

The placement of a minor under the immediate care and custody of a person for adoption purposes may be effected through the welfare department by a written authorization of the parents or the guardian of the minor irrespective of whether the identity of the person intending to adopt is known or not to the parents or guardian of the minor.

A person or a biological parent intending the placement of a minor for adoption purposes, shall inform the welfare officer of the area in which he resides of his intention.

At least three months before the placement of the minor, the proposed custodian or the natural parent inform in writing the welfare officer of the area in which the proposed custodian resides. Having received the said notice, the welfare officer shall examine whether the proposed custodian is appropriate and suitable to take the minor under his care for adoption purposes. The welfare officer shall, within three months from the date of the receipt of the notice, serve on the intended custodian and the natural parents, a copy of a reasoned report which will mention whether the proposed custodian is a suitable person to take over the minor for adoption purposes.
The welfare officer’s report stating that the proposed custodian is a suitable person for adoption purposes constitutes a precondition for the issuance of an adoption order.

Person or persons intending to adopt a child and they have not found yet the child to be adopted, they have the right, upon application, to refer to the welfare officer of the district in which they reside requesting the preparation of a report which will mention whether or not they are suitable persons for adoption purposes. The welfare officer shall, within six months from the date of the receipt of the notice, serve on the applicants a copy of a reasoned report.

In the event that the custodian of the minor changes residence, while the minor continues to be under his immediate care, he must give a relevant notice to the welfare department at least 15 days earlier.

Where the premises in which the minor has been or is going to be placed are unsuitable and inappropriate for the minor child due to their condition, or where the condition of the premises is detrimental to the minor or where the custodian under the care of whom the minor is placed is not a suitable person for reasons relating to his age, his mental condition or his behaviour, or where the custodian dies, the Court may, upon an application by the welfare officer, order the removal of the minor and its placement to a safe place until the minor can be returned to its parents or its guardian or until other arrangements are made. The Court order may be enforced by a welfare officer.

The welfare officer has a duty, after receiving the notice of the intended placement of the minor, within a reasonable period to visit the premises in which the minor has been placed or is going to be placed and examine those premises and the minor. The custodians have the obligation to allow the welfare officer to visit the said premises otherwise the welfare officer may seek from the Court the issuance of a relevant warrant.

In the event that the proposed custodian omits to submit an application for adoption within a period of twelve months from the placement or notifies the welfare department of his intention not to proceed with the adoption, if the placement had been effected through it, the minor shall be returned to a person designated by the Department of Social Welfare Services.

The views of the Department of Social Welfare Services are presented in Court in order for the Court to grant leave for the adopted to be informed about his origin and also to have access to the records of the Supreme Court Registry. The relevant information is given by the Welfare officer.

The welfare officer is appointed by the Court to act as a temporary guardian of the minor, with a duty to safeguard the interests of the minor in general as well as before the Court.

The welfare officer who acts as a temporary guardian has a duty to fully examine all circumstances relating to the intended adoption and prepare a relevant report to present to the Court. Specifically, the welfare officer has a duty to:

- Examine all matters mentioned in the application and also:
  - the condition of the applicants (marital status, family structure, living conditions, financial conditions, health, whether they suffer or suffered any disease and whether there is a family history of tuberculosis, epilepsy or
mentally and psychic disease, whether they realize that the adoption order is irreversible, and that by this order they will have the obligation to support and raise the child, e.t.c);

the condition of the child (rights in property, whether the child wishes the issuance of the adoption order and anticipates the consequences e.t.c);

the condition of the natural parents (whether they consent to the adoption, the reasons for which they give their child for adoption and whether their consent has been given without pressure from other people, whether they anticipate that the adoption order is irreversible and that by the adoption order every parental right in relation to the child shall cease, in the occasion that the natural parent’s consent is requested to be ignored because the natural parent can not be found, the welfare officer shall examine whether necessary steps have been taken to trace the natural parent, e.t.c).

- Prepare a relevant report to present to the Court:

To interview any person that seeks the adoption order or any person mentioned in the application or the persons the consent of whom is required.

The welfare officer shall, the latest within 21 days from the receipt of the application, examine as to whether or not the age of the child permits it to realize the consequences of the adoption order, and in the event that the welfare officer is satisfied that the minor’s age permits that, he shall inform the Court about that and he shall become aware as to whether the child has been informed about the application and its consequences and if it has not been informed he himself shall inform it.

The welfare officer shall be present in Court whenever his presence is required for the adoption purposes.

Therefore, the social welfare officers aim to safeguard the best interests and rights of children, before, during and after the adoption procedure. The social welfare officers’ main responsibilities during the adoption process are:

- To investigate whether an individual or a family are eligible to become adoptive parents;

- To safeguard the best interests of children as soon as the application for adoption is submitted to the Court;

- To submit to the Court a report indicating whether the adoption is in the best interests of a child;

- To act as a temporary guardian to a child and to submit to the Court the report in order to issue the adoption order;

- To counsel and provide assistance, if required, after the adoption takes place.

The Department consists of a central office, six district welfare offices and a sub-office through which social services are provided to every community in Cyprus. The Department is comprised of the Director and the welfare officers for the time being
authorised in writing by the Director to act, among others, for the purposes of implementation of the Adoption Law of 1995.

The Welfare officers are social workers who mainly hold a degree in sociology, psychology or social policy and they are prepared to work with families and individuals in order to counsel them and resolve problems within the family.

Within the framework of the Social Welfare Services policy concerning the continuous development of its human resources, an on-going in-service training programme operates for all personnel in the form of seminars and training courses. Training is provided by experts on their field and covers a broad range of knowledge and skills. The staff of the Social Welfare Services is given the opportunity to receive additional education and vocational training abroad in specific areas of interest where needs have been identified.

The social welfare officers aim to safeguard the best interests and rights of children, before, during and after the adoption procedure. The welfare officers may, if requested and where appropriate, provide their services and assistance to the families of the adopted children after the issuance of the adoption order as well.

The Chief Registrar of the Supreme Court of Cyprus shall keep a record, the “Register of Adopted Persons” for the entry of the adoption orders according to the directions of the particular adoption order.

A certified copy of an entry into the “Register of Adopted Persons” which bears the seal of the Supreme Court shall be admissible as evidence of the particular adoption.

The Chief Registrar shall keep an index of the “Register of Adopted Persons” at the Registry of the Supreme Court. As soon as the adopted person attains eighteen years of age, he/she may, upon leave of the Court, which is granted after the Court has heard the views of the Welfare Department, be informed by the welfare officer of his origin and he/she may obtain a certified copy of every entry that has been made in the “Register of Adopted Persons” concerning him.

Every adoption order shall contain directions to the Chief Registrar for entry of particulars in the “Register of Adopted Persons”.

In the event that the precise date of birth of the adopted person is not proved to the satisfaction of the Court, the Court shall determine the probable date of birth and the date so determined shall be specified in the order as the date of birth of the adopted person.

In the event that the name or surname which the adopted is to bear differs from the name and surname which the adopted bore until the making of the adoption order, the new name or surname shall be specified in the order instead of the initial one.

In the event that the place of birth of the adopted is not proved to the satisfaction of the Court, the relevant details of the place of birth may be omitted from being mentioned in the order and the entry in the “Register of Adopted Persons”.

Where upon an application for adoption, it is proved that there is an entry in the Register of Births as regards the adopted person, the adoption order shall include directions that the word ‘adopted’ shall be marked on the entry into the Register of Births.
Where an adoption order is made by the Court in respect of a minor who has previously been adopted according to the provisions of the Law, the order shall include directions that the entry in the Registry of Births be marked with the word “re-adopted”.

After the making of the adoption order by the Court, the Registrar of the Court shall forward the Chief Registrar with the order and the Chief Registrar shall comply with the directions contained in the order.

The Court which has issued an adoption order may, upon application of the adopter or the adopter person, amend the order by correcting any error contained therein. The Registrar shall forward the said amendment to the Chief Registrar and the necessary correction in the “Register of Adopted Persons” shall be made.

4. European adoption

Where a child habitually resident in one Contracting State (the State of origin) has been, is being, or is to be moved to another Contracting State (the receiving State) either after his/her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin, the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption which has been ratified in Cyprus by the Law 26(III) of 1994 applies. The procedure under the said Convention is described in Title 2 above.

There are occasions where Cypriot persons apply for adoption to countries, either European or non-European countries, where the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, does not apply. These countries usually request from the Welfare Department, as the competent authority, reports on the eligibility of the persons who have applied for adoption. The policy of the Welfare Department is to provide the relevant information only when the request comes from the competent State authorities of these countries or from their Embassies in Cyprus. According to the Cypriot legislation, the adoption process that takes place in the child’s country of origin must also take place in Cyprus. However, this does not apply for adoptions that take place in countries whose governments have signed bilateral Conventions with the government of Cyprus.

According to the judgment of the Supreme Court of Cyprus, In Respect of J. Kristoffer Ajero (2006) 1 J.S.C 1165, the Cypriot Family Courts have the jurisdiction to hear and try cases concerning adoption provided that the applicants or one of the applicants have been residents in the Republic of Cyprus for any continuous period in excess of three months. Moreover, section 3(3. of the Adoption Law of 1995 provides that the application for adoption shall be submitted by a person or persons, provided that one of them is a permanent resident of the Republic of Cyprus or during the two years immediately before the submission of the application had his residence in the Republic of Cyprus and provided also that the adopted at the date of submission of the application for adoption had his/her residence in the Republic of Cyprus. It must be noted that the adopted, who is or has been adopted by a person or persons referred to above after a judicial procedure abroad shall be deemed for the purposes of the Law 19(I) of 1995 that he/she resides in the Republic of Cyprus. Therefore, the national adoption procedure shall apply only in the event that the above requirements are satisfied.
The Cypriot Courts may refuse to make an adoption order if it is established that the object of the adoption is not lawful and the adoption is motivated by foreign incentives which are irrelevant to the creation of a parent-child relationship. An adult who was residing in Cyprus for a certain period of time and at the date of the submission of the application had been residing in Cyprus was not deemed by the Court as having been residing in the Republic for the purposes of section 3(3) of the Law (In Respect of J. Kristoffer Ajero (2006) 1 J.S.C 1165). It shall be established that the child has stronger ties with the country in which he/she resides. It is not sufficient to be proved that the adopted at the date of submission of the application for adoption had his/her residence in the Republic of Cyprus.

5. Conditions

As far as the conditions to adopt are concerned, we would like to state the following:

According to the national adoption law, the Law 19(I) of 1995, the application for adoption shall be submitted by a person or persons, provided that:

a) at least one of them is a permanent resident of the Republic of Cyprus or during the two years immediately before the submission of the application had his residence in the Republic of Cyprus;

b) at least one of the applicants has completed the twenty-fifth year of his age and the Court thinks that, after taking into consideration the ages of the adopter and the adopted respectively, the adoption does not entail any risk for the adopted and is generally for the interest of the adopted. However, the restrictions in relation to the difference of age between the adopter and the adopted shall not apply where an adoption of the applicant’s child or of the child of the wife of the applicant is concerned;

c) one of the applicants has completed the twenty-first year of his age and is a relative of the adopted.

It must be mentioned that (b) and (c) above will not apply where the application for adoption is submitted by the natural father or the mother of the adopted.

Application for adoption may be made by:

a) the two spouses for a joint adoption;

b) the natural father with his wife or the mother with her husband, jointly; or

c) the husband of the mother or the wife of the father of the adopted.

An adoption order may also be made upon an application of only one person who is not married provided that the Court is satisfied that special reasons coexist.

The relevant consents and criteria for the making of the adoption order are mentioned in Answer 1 above.

The conditions to adopt within the context of an international adoption are mentioned under title 2 above. The competent authorities of the receiving State shall determine whether or not the prospective adoptive parents are eligible and suited to adopt and also ensure that the prospective adoptive parents have been appropriately counselled.
As far as the conditions to be adopted are concerned, we would like to state the following:

According to the national adoption law, the Law 19(I) of 1995, “adopted child” includes a minor and by exemption includes a person of over eighteen years of age, where this person is a natural child of one of the adopters. The adopted at the date of submission of the application for adoption shall be residing in the Republic of Cyprus. The adopted who is or has been adopted by a person or persons (provided that one of them is a permanent resident of the Republic of Cyprus or during the two years immediately before the submission of the application had his residence in the Republic of Cyprus) after a judicial procedure abroad shall be deemed for the purposes of the Law 19(I) of 1995 that he/she resides in the Republic of Cyprus.

The Cypriot Courts may refuse to make an adoption order if it is established that the object of the adoption is not lawful and the adoption is motivated by foreign incentives which are irrelevant to the creation of a parent-child relationship. An adult who was residing in Cyprus for a certain period of time and at the date of the submission of the application had been residing in Cyprus was not deemed by the Court as having been residing in the Republic for the purposes of section 3(3. of the Law (In Respect of J. Kristoffer Ajero (2006) 1 J.S.C 1165). It shall be established that the child has stronger ties with the country in which he/she resides. It is not sufficient to be proved that the adopted at the date of submission of the application for adoption had his/her residence in the Republic of Cyprus.

According to the national adoption legislation, an adoption order may also be made in relation to a person that has already been adopted provided that:

- it relates to a minor who has already been adopted by the spouse of the adopter;
- the previous adopter has died;
- the first adoption has been terminated.

Where the Court refuses to make the adoption order and if the special circumstances of the case render it necessary, the Court may order that the minor be put under the supervision of the Welfare Department.

According to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption which has been ratified in Cyprus by the Law 26(III) of 1994, the Convention ceases to apply if the agreements by the Central authorities of the State of origin and the receiving State that the adoption may proceed have not been given before the child attains the age of eighteen years.

The relevant criteria and consents required for the making of the adoption order in respect to the adopted in the context of an international adoption are mentioned under title 2 above. The competent authorities of the State of origin shall establish that the child is adoptable. It shall also ensure that the child, having taken into consideration the age and degree of maturity of the child, has been counselled and duly informed of the effects of the adoption or his/her consent to the adoption where such consent is required.

6. Interests of the child

According to section 33 of the Adoption Law of 1995, the Court, in which an application for adoption is pending, shall appoint an officer of the Welfare Department in the area
in which the applicant or the minor child resides to act as a temporary guardian. The temporary guardian has a duty to safeguard the interests of the minor child in general, as well as the interests of the minor child before the Court. The temporary guardian has, among others, the duty to become aware, within twenty one days from the date the receipt of the application for adoption as to whether or not the minor child is of an age which permits it to anticipate the consequences and the effects of the adoption order. In the event that the temporary guardian is satisfied that the minor is able to anticipate, he shall also become aware as to whether the child has been informed about the application and its consequences and if it has not been informed he himself shall inform it.

According to the Adoption Procedural Rules of 1954, the Court may issue a notice requiring any person or body that has the actual custody of the child to present the child at the hearing of the application.

The Court shall not make the adoption order unless the applicant, the temporary guardian and also the child (except when the Court considers that the child is of an age which does not allow it to anticipate the consequences of an adoption order) are personally present before the Court at the day of the hearing of the application.

In practice, however, the adopted child, regardless of age, shall be present before the Court at the day of the hearing of the application. In the event that the Court considers that the particular child is in a position to anticipate, it may be questioned by the Court as to whether he/she wishes the issuance of the adoption order and whether he/she realizes the effects and consequences of the said order.

7. Question VIII

The matter of consent is governed by section 4(1. of the Adoption Law of 1995. For an adoption order to be granted the following are required:

(a) The consent of the parents or the guardian of the minor. However, the consent of the biological mother of the minor may not be given unless at least three months have elapsed since the birth of the minor;

(b) The consent of the applicant’s spouse if he/she is married; and

(c) The consent of the person to be adopted (subject of adoption), if his age or mental condition permits that.

The consent of the adopted person shall be given only when the identity of the applicant is known to the adopted person.

The consent to adoption shall be given in the prescribed form (according to the procedural rules) before a judge of a Family Court or before the consular authorities of the Republic of Cyprus where the consent is given outside the Republic. It must be noted that the consent given in a procedure for adoption abroad shall be deemed as consent given in accordance with (a), (b) and (c) above.

The consent may be withdrawn at any time before the making of the adoption order, if the Court thinks that this is reasonable under the circumstances.

The consent to adoption, provided that it does not concern the consent of the adopted, may be given without the identity of the applicant to be known to the person giving it. If the consent is subsequently withdrawn on the ground that the person who has given it
did not know the identity of the applicant, such refusal for consent shall be deemed unreasonable.

8. Consent of the natural mother

The consent of the natural mother of the minor may not be given unless at least three months have elapsed since the birth of the minor.

9. Blank consent – Dispense of consent

According to section 4(5) of the Adoption Law of 1995 the parent’s consent to adoption may be given without the identity of the applicant to be known to that parent giving it. If the consent is subsequently withdrawn on the ground that the parent who has given it did not know the identity of the applicant, such refusal for consent shall be deemed unreasonable. Therefore, it is possible for a parent, who must consent to the adoption, to sign a blank consent, i.e., to sign a consent although the adopting family is not yet known.

According to section 4(4) of the Adoption Law of 1995 the Court, by its decision issued after an application of every person concerned and provided that the particular persons are previously heard, may dispense with the required consent, if it is satisfied that any of the following circumstances coexist:

a) The parent or guardian of the minor has abandoned or is neglecting the minor or persistently ill-treating him or has seriously ill-treated him.

b) The parent or guardian of the minor persistently and without reasonable ground omits to fulfil his duties towards the minor and especially his support and maintenance;

c) The adopted is not in a position to give his consent because of his mental condition;

d) The wife or the husband of the applicant cannot be found or is incapable of giving the required consent or unreasonably denies this consent or the spouses have separated and are living apart and this separation is expected to be final.

e) The person whose consent is required cannot be found or is incapable of giving his consent or unreasonably refuses to give his consent.

Therefore, the Court, upon an application and having heard evidence and being satisfied that any of the above circumstances exist, may dispense with the required consent.
1. Definition of a child in the Czech legal system

The definition of the "child" is contained in several legal norms of the Czech legal system. Regarding social legal protection of a child, the definition in Act No. 359/1999 Coll. on social legal protection of a child (hereinafter referred to as "ASPOCH"), s. 2/1 is relevant: "for the purpose of this law, a child is a minor person." Regarding the term maturity, Act No. 40/1964 Coll., Civil Code (hereinafter referred to as "CivC") in s. 8/2 stipulates that: "Majority is attained by reaching the eighteenth year. Prior to this age, majority is attained by marriage only. Majority attained in this way does not cease to exist upon divorce or the marriage being declared invalid. Insofar as a child may be delivered by a person younger than 18 (s. 242/1 of act No. 140/1960 Coll., the Criminal Code, hereinafter "CC" a contrario), it may happen that the protection granted under ASPOCH will apply not only to the child but also to the unmarried parent younger than 18.

The CC stipulates that a person younger than 18 is a child for the purposes of s. 216 and 216 a). Section 216 defines the crime of kidnapping, s. 216 a) defines the qualified facts of illicit child smuggling. Contrary to ASPOCH, the CC grants protection to all persons under 18 regardless of their majority.

In 1991, the Convention on the Rights of the Child dated 1989 became applicable to the Czech Republic. A child is defined in Article 1 as follows: "... a child means every human being below the age of eighteen unless under the law applicable to the child, majority is attained earlier." The Convention is an international treaty that prevails over national laws pursuant to Article 10 of the Constitution of the Czech Republic, constitutional law No. 1/1993 Coll.
2. **Related legislation**

Legal standards defining the rights of the child and his/her protection are present not only in Czech law but also in many international treaties which are legally binding on the Czech Republic.

The Charter of Fundamental Rights and Freedoms, as part of Czech legal system, guarantees under Article 32, the protection of parenthood and of the family. Special protection is granted to parents on the basis of their right to care for and raise their children; children have the right to upbringing and care from their parents. Parental rights may be limited and minor children may be removed from their parents’ custody against the parents will only by the decision of a court on the basis of the law.

Article 1 of the Constitution of the Czech Republic, constitutional law No. 1/1993 Coll. stipulates that Promulgated treaties, to the ratification of which Parliament has given its consent and by which the Czech Republic is bound, form a part of the legal order; in case of any differences in the provisions of a treaty and a national statute, the treaty shall apply. The applicable international treaties are: the Convention on the Rights of the Child dated 1989, the Convention on the Adoption of Children dated 1967, the Hague Convention on Inter-country Adoption, dated 1993, and the Hague Convention on Parental responsibility and Protection of Children, dated 1996.

The principle legislation for the provision of social legal protection of children is Act No. 359/1999 Coll. on social protection of children which is a public-law counterpart of private-law issues dealt with in Act No. 94/1963 Coll. on the family (hereinafter only "FA"); The two pieces of legislation operate separate to one another. The other legal norms related to the issues discussed are the CivC and Act No. 99/1963 Coll., Civil Procedure Code.

The CC outlines the crime of child smuggling.

3. **Regulation of adoption from the Family Act perspective – material law aspects**

The FA defines two main types of alternate family care. These types are fostering and adoption. The laws stem from the basic premise that a family is irreplaceable in terms of the care it provides for a child. In this way, the state attempts to grant an alternate form of care to a child whose parents have either failed in child care or who are incapable of caring for a child for any reason.

The main difference between foster care and adoption is that fostering does not create a relationship between the child and the foster parent identical to that of the child and its parents, and in particular, the relations of the child to the original family are not interrupted. The foster parent may, contrary to the rights of the parents, execute rights and obligations over the child, thus the foster parent must take care of the child personally. The right to represent and administer the child's matters applies to common matters only. For example, the foster parent does not have the right to administer the child's estate. Foster care has been used particularly for older or handicapped children.

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Adoption can be understood as creating a relationship between the adoptive parent and the adopted child which is equal to that of a child and its natural parents, and hence, a non-own minor child is considered as one's own, and a family like relationship is created between the adopted person and the adoptive parents relatives (s. 63/1 FA). At the same time, the court's decision on adoption imposes the child care responsibility on the adoptive parents. Similarly, any legal relationships with the natural parents, and other natural relatives, cease to exist (s. 72/1 FA). Consequently, adoption fully replaces the biological and consanguineous relationship between the parent and the child. In this regard, adoption exceeds the term of alternate family care (which is for example represented by foster care). The reason is that the child's (personal) status changes. Due to the increasing number of couples who cannot have children, the frequency of adoption, as a legal institution, has grown in recent years.

The FA distinguishes between two adoption types - revocable and irrevocable. It is common with both types that the mutual rights and obligations between the adopted child and original family cease to exist. However, in the case of revocable adoption, where the adoption is revoked, the relationships to the original family are recovered. The FA enumerates the conditions common for both adoption types, and in addition to this, further ones are provided for irrevocable adoption. Conformance therewith is necessary for the court to decide on adoption.

The adoptive parents may be natural persons only, whose lifestyle guarantees a positive effect for the adopted person and society (s. 64/1 FA). Therefore, the main principle for adoption is the benefit of the child. This principle is also contained in s. 65/2 FA. The court must examine whether there is an emotional relationship between the adopted person and the adoptive parent, equal to a child and a parent, and whether the adoptive parent will properly conform with the obligations towards the child resulting from parental responsibility. Also, the court must examine the health condition of the adoptive parents based on a medical examination, their personal dispositions, and the adoption motivation, whilst also assessing whether the principle of adoption is consistent in this case. The court has to request a statement from a social protection of children organ (hereinafter "SPO"), which is elaborated by the SPO organ in accordance with s. 27 ASPOCH (s. 70 FA). A person without a legal capacity cannot be an adoptive parent (s. 64/2 FA).

Only a minor person may be adopted (s. 65/2 FA). A nasciturus, i.e. conceived but still undelivered child, may not be adopted. There must be an adequate age difference between the adopted person and the adoptive parent (s. 65/1 FA) for adoptive parent to be perceived as a parent of the adopted person, it is up to the court to consider in each particular case whether the age difference is adequate or not. The Czech Republic made use of the exception to the European Convention on the Adoption of Children and did not pass Article 7 requiring the adoptive parent to be aged between 21 and 35.

Only spouses may adopt a common child (s. 66/1). The adopted person will then have the same surname as their other children (s. 71/1 FA). The adoption by a single person is possible in two cases: Firstly, by the spouse of the child’s parent. In such a case, the adoption is not an ordinary adoption in the sense that the child stays in an environment where he/she has lived over years and remains in contact with the same relatives. Secondly, under s. 74/2 of the FA, adoption will only be approved for a single person in exceptional circumstances, and only as long as the adoption conforms to its social purpose.
A legal representative of the child being adopted must agree to the adoption. The child must agree to the adoption if he/she is able to understand and consider the effects and consequences of the adoption - as to the age of assent to the adoption, by the adopted child there is no specific age in the Czech legislation. The same applies for a child’s parent who is a minor. For adoptions abroad, the approval by the Office for International Legal Protection of Children (s. 67 FA) is necessary. In cases where the spouses adopt a child as their common child, or in cases where the adoptive partner is the husband/wife of a biological parent, the consent of both spouses will be required and refusal to give consent by any one of them will result in impossibility of adoption. Should the husband/wife have no legal capacity or if the consent of the husband/wife would be hard to reach, no consent is required (s. 66/2 FA). The request for a child’s consent under the conditions stipulated herein conforms to s. 31/3 FA which generally stipulates the child’s right to express itself freely. The consent should conform to requirements applicable to expression of will in conformity with the applicable provisions of the CivC; therefore, it must be express and clear (s. 104 FA and s. 37 an. CC).

No consent will be required under conditions determined in FA, s. 68 or in case of so-called blanket consent pursuant to s. 68a which regulates the situation where parents give consent to adoption in advance, without any relation to the specific adoptive parents. However, such consent cannot be given until six weeks after the birth of the child. In these circumstances, the consent may be recalled until the child is placed in the care of the future adoptive parents, (based on a court decision).

Should the legal representatives of the adopted child be his/her parents, no consent is required for adoption where a) they did not express a real and continuous interest in the child continuously for six months, for instance, by not visiting the child regularly, or nurturing the child regularly or voluntarily, and not demonstrating the effort to arrange their family and social situation, within their capabilities, to take care of the child personally or b) they did not express any interest, following the child birth, within at least two months, without being hindered by any serious obstacle.

This is similarly applicable to minor parents, although legislators did not take into account the possibility that the parent could be a minor who remains a child in the sense of Article 1 of the Convention. In this regard, as well as regards related to other legislation, the child requires special increased protection not granted in this case.

A court (s. 68/3 FA) decides whether these conditions are fulfilled as of the submission date of the petition filed by the SPO organ as the child’s guardian (s. 17 ASPOCH), or by the child’s parent (s. 68/3 FA).

In cases where no consent is required from the parents regarding adoption pursuant to s. 68 and s. 68a FA, the consent of the guardian assigned to the child during the adoption proceedings will be required (s.68b FA).

Another condition for adoption is the court’s decision regarding paternity tests that have been initiated as a result of an action by a man claiming to be the father of the child being adopted. The child may not be adopted until the legal validity of the claim of the person has been determined (s. 70a FA). Another obligatory condition is the so-called pre-adoption care pursuant to s. 69 FA. Here, the law is based on Article 17 of the Convention on the Adoption of Children, dated 1967. Prior to the court’s judgement regarding the adoption, the child must have been in the care of the future adoptive parents at their own expense for at least three months. In the case of a child placed in an institute or facility for children requiring immediate assistance, due to the court’s decision or the will of the parents, SPO will decide on placing them in the care of the future adoptive parents; the SPO is a municipality authority (hereinafter "MA") of a
The pre-adoption care condition is not required in cases where the child is to be placed with foster parents or a person, other than the parent to whom the child was entrusted before, or the guardian of the child who takes care of the child personally, and has cared for the child for at least three months (s. 69/3, 4 FA).

In case of irrevocable adoption there are two further conditions: Irrevocable adoption of a common child is possible by spouses only, or by one of the child's parents, a bereaved parent, or adoptive parent of the child. Only in exceptional cases will the adoption be approved for a single person, provided that the adoption will conform to its social purpose. The second further condition in irrevocable adoptions is that the minor adopted person is at least one year old.

Adoption comes into existence when the court's decision on the adoption becomes effective. This decision is of a constitutive character and the legal consequence of it is the change of the legal position of the adopted person - the legal relationships with the original parents are terminated, and are instead created between the adoptive parents and their relatives. In the case of irrevocable adoption, the court will decide on registering the adoptive parents in place of the adopted person's parents in the birth register. A record of the authentic parents remains in a note. The adopted person may be re-adopted only under the conditions specified in s. 76 FA. The adoption cannot be cancelled.

In the case of revocable adoption, it may be cancelled due to serious reasons, based upon a proposal of the adopted person, or of the adoptive parents. Following termination, the mutual rights and obligations between the adopted person and the natural family are re-established. The adopted person will bear his/her original surname (s. 73 FA). This adoption proceeding is one which may be initiated upon a proposal only.

4. Regulation in Act on social legal protection of a child – procedural law aspects.

4.1 Introduction

The procedural law aspects of adoption are specified in ASPOCH. ASPOCH explicitly specifies in s. 1 what social protection of children means. It includes the child's right to favourable development and proper education, the protection of legitimate interests of the child including protection of his/her estate, and measures towards the restoration of damaged family functions. This list is not exhaustive because with reference to s. 5 ASPOCH, according to which the paramount purpose of social-law protection is the interest and well-being of the child, there may be other cases not listed in s. 1 specifically, but which may provide circumstances where the appropriate bodies must grant protection to the children.

As mentioned, the paramount principle of the social-law protection is the interest and well-being of the child (s. 5 ASPOCH). The law here stems from the Convention of the Rights of the Child. The interests of the child may never be subordinated to other interests, e.g. those of the parents or other persons or the state.
Adoption is a multi-level process involving all bodies involved in the social protection of children except for municipality authorities (see below). ASPOCH determines the relevant deadlines, and should the adoption be unsuccessfully completed at the Regional Authority level, the documentation must to be forwarded to the Ministry of Labour and Social Affairs, and then to the Office for International Legal Protection of Children, for intermediating adoption abroad.

### 4.2 Receivers of protection

In s. 2/2, the ASPOCH stipulates a list of children to whom social protection is granted. This includes; a) a child having permanent residence in the territory of the Czech Republic, b) a child having permanent residence pursuant to a special law directive applicable to stay of foreigners in the territory of the Czech Republic (Act No. 326/1999 Coll. on stay of foreigners in the territory of the Czech Republic), or a child who has registered for a stay in the territory of the Czech Republic for at least 90 days, c) a child who has submitted an application for asylum in the territory of the Czech Republic, d) a child which is authorized to stay here permanently in conformity with s. 87 of Act No. 326/1999 Coll. on stay of foreigners in the territory of the Czech Republic as amended, or e) a child that stays with a parent who submitted an application for the right to stay, for the purpose of the granting of temporary protection in the territory of the Czech Republic, or stays here based on authorization to stay for the purpose of temporary protection in the territory of the Czech Republic, according to the special legal directive; Act No. 221/2003 Coll. on temporary protection of foreigners.

In accordance with s. 37 and 42 ASPOCH, social bodies also grant protection to children who do not conform to the conditions given in s. 2/2 b) to d) ASPOCH. This is of particular relevance to children requiring immediate assistance, i.e. they find themselves without any care; their life or favourable development is seriously damaged or threatened; they fail to receive care adequate for their age; they are subjected to physical or mental ill-treatment; or are in a situation where their fundamental rights are seriously threatened.

In addition to permanently residing children in the territory of the Czech Republic, the same is granted to temporary residence children. ASPOCH thereby conforms to Article 2 of the Convention on the Rights of the Child requiring member countries to ensure and provide protection of the rights granted in the Convention to each child under their jurisdiction without any discrimination. The social-law protection focuses (s. 6/1 ASPOCH) on children whose parents have died; children whose parents have failed to conform to parental responsibility (s. 31 FA); children whose parents do not execute the rights of parental responsibility or misuse them; children who have been entrusted to the nurture of a natural person other than their parents (s. 45 FA), where the person fails to conform to the applicable obligations; children with indolent or immoral lifestyles; children who have committed a crime or an act otherwise punishable, or who have committed offences either repeatedly or continuously; children repeatedly attempting to run away from parents, or other natural or legal persons responsible for their education (s. 6/2 ASPOCH); children who have been victims of a crime or suspected of being victims of a crime; children who are, based on a request from the parents or other persons responsible for their care, repeatedly placed in facilities providing uninterrupted care, or care which has exceeded six months; children threatened by violence between parents, persons responsible for their care or other natural persons and; child asylum applicants separated from their parents or persons responsible for their care.

A condition that applies to all the facts specified in s. 6/1 b)-h), is that the events last for such period of time or are of such intensity that they negatively influence the
development of children, or are, or may, be the cause of unfavourable development of the children. Therefore, the law does not assume a one-off event or short-term influences. In the case of a one-off event, an intensity resulting in the unfavourable development of the child would be required.

The list under s. 6/1 ASPOCH is not exhaustive because it is not possible to contain any and all conceivable defective behaviour. The legislators allow the social-legal protection body discretion to determine behaviour which they consider being detrimental to the child, or which threatens the interests and well-being of the child, which is the paramount principle of this Act.

4.3 Bodies of social-law protection of children

The social-law protection of children is granted by social-law protection bodies, which are regional authorities, municipal authorities of municipalities with extended competence, municipal authorities, the Ministry, and the Office for International Legal Protection of Children (s. 4/1).

The Ministry refers to the Ministry of Labour and Social Affairs, which has general competence over issues relating to the family and child care. The Office for International Legal Protection of Children is involved in child protection with respect to issues involving other countries. The Office was established and based upon the principles set out in s. 3 ASPOCH and is located in Brno. The Office is an administrative organ, with nationwide competency, and it is subordinate to the Ministry of Labour and Social Affairs. These bodies, except for municipality authorities, are the bodies responsible for the adoption process.

In addition to these bodies, social-law protection is also provided by independent municipalities and regions, commissions for social-law protection of children, and other legal and natural persons if entrusted with labour-law protection performance (s. 4/2). In particular, these include, non-profit making sectors, which for example, prepare natural persons for their role as adoptive parents and the inclusion of the child in the family, or search for such persons and provide information about them to the municipal authorities with extended competences. The principal difference between these social-law protection entities and state organs is that the entities do not have the powers of a state organ. Therefore, they do not have the general authority of the social-law protection organ. The following paragraphs will describe the competency of individual social-law protection bodies in terms of their authority and role in the adoption process.

4.3.1 Municipal authorities with extended competences

a) Consultancy

The primary effort of the authorities is aimed at the restoration of the damaged relation between the child and biological parents. Therefore, the municipal authorities with extended competences (hereinafter referred to as "MA with extended competences") provide consultancies for which responsibility includes; a) monitoring adverse influences affecting children and detecting their source and; b) making measures to limit the effects of adverse influences on children (s. 10/3), c) receiving records from health-care facilities created in the case of suspicious mistreatment of the child, or negligent child care (s. 10/5), d) helping the parents to solve either behavioural or other child care related problems, providing or intermediating in consultancies for parents in the care and education of the child and in the care of handicapped children, organizing lessons and seminars within the consultancy activities focused on resolving education,
social and other problems related to the child’s care and education (s. 11/1a)-c). Authorized entities may perform these activities, once a decision on authorization to perform such activities has been made, in conformity with s. 48/2a) ASPOCH. These activities, for example, focus on assistance to parents of children with behavioural problems, children experimenting with drugs, pregnant girls and women, children from socially weak families, and dysfunctional families, etc.151

Based on the amendment to ASPOCH No. 134/2006 Coll., the MA with extended competences provides candidate foster or adoptive parents with consultancy assistance relating to the adoption or fostering of the child, with particular regard to behavioural matters (s. 11/1d).

Following placement of the child in a facility for institutional fostering (s. 28), or a facility for children requiring immediate assistance (s. 42), the primarily concern is in helping to amend the family situation to allow the return of the child to the family, as well as in resolving the life and social situation, including the material condition of the family. In assisting with the cooperation of social security bodies, other state organs and other entities, the MA with extended competences shall assist the parent, or intermediate in assistance, from a consultancy centre (s. 12/2). The law obliges the consultancy centre to provide assistance to other entities responsible for the child’s care (s. 12/3).

The MA with extended competences shall immediately submit a proposal to a court for issue of a preliminary measure, according to s. 76a of the Civil Procedure Code, should a child end up without any care, or should his/her life or favourable development be seriously threatened or disrupted (s. 16).

b) Guardianship and custody

Pursuant to the FA, the CC and the Rules of Administrative Proceedings, the authority performs the function of guardian and custodian; it may be assigned as the representative of the child in relation to foreign countries.

According to s. 36 FA, the parents represent their child in legal proceedings where the child lacks the necessary legal capacity. Neither of the parents may represent the child in legal proceedings which are related to matters that could involve a potential conflict of interest between the parents and the child, or between the children of the same parents. In these circumstances, the court will appoint a guardian to the child to represent him/her during the proceedings, or during certain legal transactions. The guardian is usually an organ of social-law protection of children (s. 37 FA). This is also the case where parental responsibility is restricted (s. 44/2 FA), and where a guardian is appointed during other adoption proceedings (s. 68b FA). Under the conditions of s. 44 FA, a petition to the court to restrict or deprive parental responsibility or postponement of performance thereof (s. 14/1 b) is submitted to the court.

Regarding foreign countries or in case of international adoption, the Office for International Legal Protection of Children in Brno is the primary entity involved in representing the child (s. 35 an.). Should the Office be appointed guardian, it may ask the MA with extended competences of the relevant jurisdiction to represent the child and to forward the necessary files, including a statement thereto. The required MA with

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extended competences shall conform to the application and is authorized to represent the child in the proceedings (s. 62/2).

A guardian is appointed to the child, in case his/her parents are deceased, were deprived of their parental responsibility, the performance of their parental responsibility was postponed\textsuperscript{152} or they are not capable of legal transactions to the full extent (s. 78 FA). Usually, persons recommended by the parents are preferred, provided that the interests of the child are not contravened. Should nobody be recommended in this way, the court will appoint a guardian from among relatives or persons close to the child, or his/her family, or any other natural person. Upon exhausting the possibilities given above, the court will appoint the MA with extended competences as the guardian (s. 79/1-3 FA). The MA with extended competences has a significant role until the guardian is appointed. During this time, it takes the necessary steps in the interest of the child (s. 79/4 FA in association with s. 17 b) ASPOCH).

c) The adoption

The MA with extended competences is obliged to assess whether measures towards protection of the child need to be taken where the child is entrusted to the care of a person intending to accept the child for long term or permanent care. These measures should be adopted primarily in case the person accepting the child fails to submit a proposal to an organ for adoption without undue delay, or a proposal for any other arrangement of his/her relation to the child (s. 16a). The obligation of the person who accepted the child with the intention of accepting the child for permanent care, to inform the relevant MA with extended competences, is stipulated in s. 10a/2 ASPOCH.

It is the role of the MA with extended competences to submit a draft for the court's decision on conforming to the adoption conditions under the conditions stipulated in s. 68/1, 3 of the Family Law regarding lack of a parent's interest in his/her child (s. 14/1a).

A family environment is crucial for the care of a child and for creation of a harmonious environment which favours the development of the child. Therefore, should the biological family be dysfunctional for any reason, and should no care be provided, alternate family care will be ensured, should it be effective. Alternate family nurturing does however have a serious impact on the life of the child, as well as the persons interested in the adoption. Therefore, the law requires a form of care which demonstrates that the creation of a new family will be favourable for the child, before the court's make a decision.\textsuperscript{153} The child will be entrusted to the care of the future adoptive parents where the child is in an institution or facility for children requiring immediate assistance,\textsuperscript{154} based on a court decision or the will of the parents, unless it is an international adoption.

\textsuperscript{152}The postponement of parental responsibility may be ordered by the court when a parent is prohibited from performing it by a serious obstacle and the child's interest is at stake. These conditions are cumulative and they must be conformed to at the same time. A serious obstacle is one of an unbiased character, i.e. an obstacle not resulting from insufficient performance of parental responsibility or illegal behaviour of the parents. It may include e.g. long-term sickness or imprisonment. Should the parent fail to perform his/her obligations resulting from parental responsibility and if the child's interests so require, the court will restrict parental responsibility and it shall always define what rights and obligations are subject to the restriction. These conditions are cumulative as well; however, the parents' behaviour is viewed from the subjective point of view. The court will deprive the parents of their parental responsibility in case of misusing or neglecting it in a serious way.


\textsuperscript{154}The protection and assistance will be granted to a child in circumstances where he/she has ended up without any care or, should his/her life or favourable development be seriously threatened or, should the child end up without care adequate to his/her age (s. 15). It furthermore applies to a child mentally or physically mistreated or, a child who ended up in an environment or situation where its elemental rights are threatened in some way.
The decision to entrust the child to this form of care is the task of the MA with extended competences. The MA with extended competences submits draft proposals for entrusting the child to the care of an institution for children requiring immediate assistance, as well as proposals for extension of the duration of this entrusting, and for cancellation of the decision thereof (s. 14/1e).

The decision to entrust the child to the care of the future adoptive parents is conditioned by the fact that (1) the situation is not covered by s. 20/3, for example, in cases where no intermediation is carried out. This may result from the advance consent of the parents to certain adoptive parents (so called direct adoptions), or where the proposal for adoption has been submitted by the spouse of the child’s parent or, husband/wife bereaved after the child's parent or adoptive parent, (2) The decision is directed towards the applicant specified in the notification of the regional authority or the Ministry according to s. 24/3 and s. 24a/4 (s. 19/1). This arises where an applicant, registered in the applicant’s file administered by the Regional authority or the Ministry, is suitable for the foster or adoptive parent role for a child registered in the children’s file administered by the Regional authority or the Ministry, and who was immediately informed about this fact. In relation therewith, the MA with extended competences receives a written approval from the parent for adoption of the child (s. 19/3).

The MA with extended competences monitors the development of children entrusted to the nurturing of persons other than their parents in this way. For this purpose, the employees visit the families where the child lives or any other environment where the child stays, based on a special authorization issued by the MA with extended competences. As mentioned above, one of the most suitable ways of taking care of the child without its biological family is to provide care in another suitable family. Despite this, there may be situations where this fails, and therefore the law makes the MA with extended competences conduct regular monitoring, at least once every three months over the first six months of the alternate parental care. After this, visits must be made in conformity with the interests and needs of the child, however, visits must be made once every six months at least (s. 19/5).

The MA with extended competences receives, assesses and rejects applications from a natural person, a citizen of the Czech Republic, with residential address within its territory or, a foreigner with permanent residence approved in the territory of the Czech Republic or, a foreigner who is reported to have stayed in the territory of the Czech Republic for at least 365 days pursuant to a special legal directive related to the stay of foreigners in the territory of the Czech Republic, and who are interested in adopting a child (s. 20/1). This application is a pre-condition for intermediating the fostering or adoption (s. 19a) in the Czech Republic and adoption of children from abroad to the Czech Republic.

It also searches for children specified in s. 19a/1 ASPOCH, i.e. a) those with permanent residence in the territory of the Czech Republic, b) those having permanent residence pursuant to a special law directive applicable to stay of foreigners in the territory of the Czech Republic (Act No. 326/1999 Coll. on stay of foreigners in the territory of the Czech Republic or those registered for stay in the territory of the Czech Republic for at least 90 days, c) those having submitted an application for asylum in the territory of the Czech Republic, d) those authorized to stay here permanently in conformity with s. 87 of Act No. 326/1999 Coll. on stay of foreigners in the territory of

The protection and assistance of the child requires that his/her basic life needs are provided for, including accommodation, health care from a health facility and psychological and similar care needed (s. 42/1).
The Czech Republic, or e) those staying with a parent who submitted an application for the right to stay for the purpose of being granted temporary protection in the territory of the Czech Republic, or those whose parent/s stays here based on an authorization to stay for the purpose of temporary protection in the territory of the Czech Republic according to a special legal directive, Act No. 221/2003 Coll. on the temporary protection of foreigners.

The MA with extended competences carries out further searches for natural persons able to carry out the role of adoptive parents. Potential adoptive parents may be searched for and recommended by the MA with extended competences as well as authorized persons (s. 48/1), and records and documents about these children and applicants are kept, a copy of which is immediately forwarded to the Regional Authority (s. 21/6). It also decides on termination of proceedings and on registering in the register of applicants for adoption under the conditions of s. 21/7 ASPOCH. Such cases may arise when a person asking for intermediation (1) revokes his/her application before forwarding the documents to the Regional Authority or (2) does not provide the data and documents needed for the files maintenance upon the request of the MA with extended competences.

4.3.2 Regional authorities

Based on s. 11/2, the Regional Authority, within its consultancy services, provides training of natural persons suitable for the adoption process for entrusting a child to the family, as well as providing the assistance needed in relation to adoption of the child. Furthermore, it provides the adoptive parents with assistance related to the adoption, particularly in the matter of nurturing.

Pursuant to s. 20/2 ASPOCH, the Regional Authorities and the Ministry conduct intermediation of adoptions in the Czech Republic. It includes a) searching for children listed in s. 2/2 who are suitable for adoption, b) searching for natural persons suitable for the adoptive parent role, c) expert training of the adoptive parent candidates and finally d) selecting a certain natural person suitable for the adoptive parent role with whom the adoption is intermediated, and organizing a personal meeting of the child with that person (s. 19a/1). Regarding the latter, the law explicitly forbids intermediating of adoption and foster care by bodies, legal entities or natural persons other than the social-law protection bodies specified under s. 4/1, i.e. Regional Authorities, MA with extended competences, municipality authorities, the Ministry, and the Office (s. 19a/2). Non-adherence to the wording of the law is an offence pursuant to s. 59 ASPOCH and a penalty of up to CZK 200,000 may be imposed for non-compliance.

The intermediation process includes expert assessment of the child and applicants for the adoption (s. 27/3a). Experience shows that the expert assessment of the child and applicants is the basis for establishment of a functioning family-law relationship between the child and applicant. Undoubtedly, the decision to adopt a child or to foster a child is a result of certain common considerations on how to resolve the problem of childlessness or how to nurture another child in addition to one’s own. It does not however mean that everybody who comes to this decision is a suitable alternate parent; they are unable to assess it themselves. Therefore, the expert assessment is arranged in detail. For the child, it includes assessment of physical and mental development including specific needs and demands, as well as the suitability of the alternate form of family care (s. 27/2a). For applicants, the following is assessed: characteristics of personality, mental condition, health condition, including assessment

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of whether the health condition of the applicant could hinder long-term child care regarding mental, bodily and sensory condition. Furthermore, the ability to nurture a child, the motivation leading to submission of the application, the stability of the marriage, the family situation and other important facts are considered (s. 27/2b).

Whereas the expert assessment is always performed for the applicant, for the child, the same depends on his/her age, the statement of the expert doctor, or other important facts. Regarding the child, the law provides the possibility of expert assessment; however, this is not an obligatory assumption for registering the child in the records.156

Pursuant to s. 27 ASPOCH, the expert assessment includes a) assessment of the child and applicant (s. 27/1a), b) assessment of the preparation for welcoming the child into the family, c) statement of the applicant's children on accepting the child, on condition they are capable of doing so considering their age and maturity, d) assessment of the ability of the children living in the applicant's household to accept a new family member, e) ascertaining the integrity of the applicant, his/her spouse, partner, child and of other persons forming part of the common household with the applicant. The law specifies that persons should have no criminal record. A person with a criminal record is one who was legally sentenced for a crime against life, health, human dignity, moral development, or estate of the child, or for any other crime which may result in the inability of the applicant to properly nurture the child.

For the purpose of preparing documents for the expert assessment, the Regional Authority employees may visit the child or invite the child, if suitable as for his/her age, for discussions (s. 27/5).

Equally, the Regional Authority may appeal to the applicant and candidate adoptive parents of children without permanent residence who have not reported for a stay in the territory of the Czech Republic for at least 365 days, to present themselves at the oral hearing in order to assess their assumptions and facts decisive in entrusting the child (s. 27/4). In this case, they cooperate with the MA with extended competences, municipalities, health and school facilities, as well as other expert facilities, authorized persons, (s. 48) nurturing experts, and child care experts.

Once the MA with extended competences has searched for children specified in s. 19a/1 ASPOCH, as well as adoptive parent candidates, and has registered them in the file of applicants for intermediation of adoption, the Regional Authority maintains these records for the adoption intermediation (s. 22/1). Section 21/6 obligates the MA with extended competences to forward a copy of the file about the child specified in s. 19a/1, as well as the file about the applicant, to the Regional Authority immediately. The intermediation of adoption is provided by the Regional Authority or the Ministry (unless the adoption is international). The legislator made here the assumption that a municipality would be unable to find in its region a sufficient number of applicants to choose a suitable adoptive parent from.

Should the Regional Authority not intermediate the adoption a) within 3 calendar months of the date of registration of the child in the records or b) within 3 years of the effective date of the legal validity of inclusion of the applicant in the register of applicants, a copy of information from the files will be sent within 15 days of the deadline to the Ministry for intermediation of the adoption by the Ministry (s. 22/8). Adoption intermediation is a lengthy process in many cases and it takes some time to find a suitable applicant for a child in the register of applicants. Therefore, the law limits

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the deadline. Should no intermediation be successful at the regional level, a copy of the records should be sent to the Ministry for adoption intermediation on the national level.

Par. 24 of the ASPOCH governs the very process of adoption mediated by the regional authority. For children registered under the administration of this regional authority, the regional authority seeks applicants in the applicants’ register administered by this regional authority and in the applicants’ register administered by the Ministry. Upon mediation of adoption the regional authority takes into consideration the recommendation of an advisory board.157 Should the regional authority find, in the introduced way, an applicant eligible to become an adoptive parent of a child who is in the children's register administered by this regional authority, the regional authority shall announce this fact, without any delay, to a) the applicant; b) the Ministry, if it concerns an applicant who is listed in the Ministry’s register of applicants; c) the Office, if it concerns an applicant who is also listed in the Office’s register of applicants; d) MA of the municipalities with extended competences. On the basis of the mentioned announcement the applicant has the right to meet the child, and the person, by who the child is to be found, is obliged to make such meeting possible. The ASPOCH restricts this possibility by a time period of 30 days from the day the written announcement of the regional authority was delivered to the applicant. An application for custody by the future adoptive parents must also be submitted within this time period.

The regional authority may, at any time during which the child is listed in the children register, or the applicant is listed in the applicants’ register, investigate whether there has been any change in the facts decisive for the mediation of adoption, namely, it is entitled to carry out new expertise on the child or the applicant pursuant to par. 27.

Par. 24b of the ASPOCH lays down the cases in which the mediation of adoption by the regional authority will be suspended: a) the applicant requests such suspension in writing, and specifies a period of time for the suspension; b) the applicant was informed by the regional authority, in writing, that there was a child in the children register for who he/she would be an appropriate adoptive parent, c) if the child was consigned to the future adoptive parent, on the basis of a decision of the MA of the municipality with extended competence or, d) if at the time of the mediation of adoption for the applicant, the regional authority discovers material circumstances that restrain the mediation of adoption. The regional authority then renders a decision on the suspension, and the suspension term of the mediation of adoption is not included in the time periods stipulated under par. 22/8 (see above).

Par. 24c of the ASPOCH lays down the criteria for deletions from the children register, or the applicants’ register administered by the regional authority. In the case of a child, the regional authority can delete a child from the register: 1) on the basis of a decision on adoption; 2) if it discovers material circumstances under which the mediation of adoption in the case of the particular child is not possible; 3) upon the expiry of the term stipulated under par. 22/8 (see above) and the sending of a copy of the children register data to the Ministry. In case of an applicant the regional authority does so: 1) on the basis of a decision on adoption; 2) if it discovers material circumstances under which the mediation of adoption in the case of the particular applicant is not possible; 3) in case the applicant commits a material breach of the obligation to inform about

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157 The advisory board is established by the regional marshal as a special regional organ. It recommends eligible applicants, registered by the regional authority or by the Ministry in their applicants’ register, for a certain child listed in the register of the regional authority. The advisory board is formed by experts from the field of social-legal protection, namely from the field of paediatrics, psychology and pedagogy. It has five members (Par. 38a of the ASPOCH).

The advisory board for children listed in the register administered by the Ministry is established by the Minister of labour and Social Affairs (Par. 38b of the ASPOCH).
changes in data decisive for the mediation of adoption; 4) if the applicant requests it; or 5) upon the expiry of the term stipulated under par. 22/8 letter b), that means upon expiry of 3 years from the day the decision on the applicant’s entry into the applicants register came to force and the applicants register data copy was sent to the Ministry. Par 24c further states that a regional authority can delete an applicant listed in the applicants register administered by such a regional authority, if the applicant, without good reason, failed to take part in perpetrations for the adoption of the child into the family even though he was invited to do so.

The regional authority renders decisions on an applicants’ deletion from the applicants’ register in cases 2 and 3, only when the applicant, without good reason, fails to take part in preparations of the adoption of the child into the family even though he was invited to do so. Otherwise the regional authority informs the applicants about their deletion from the register in writing. Within 15 days of the day the decision on the applicant’s deletion from the applicants’ register comes into force, the regional authority sends information on such deletion to the MA of the municipality with extended competence.

Thus, the regional authority provides preparation of natural persons eligible to become adoptive parents; renders them consultancy assistance; mediates the adoptions; makes expertise assessments of children and applicants for adoption; and last but not least, it administers the register of applicants for mediation of adoption.

4.3.3 Ministry of Labour and Social Affairs

For the purposes of mediation of adoption the Ministry administers the register of children and the register of applicants (par. 23/1). If the Ministry does not mediate an adoption within 3 calendar months from a child’s entry into the children register administered by the Ministry, or within 6 calendar months from an applicant’s entry into the applicants register administered by the Ministry, it shall pass copies of these register data onto the Office. The Office submits this data to the register for mediation of adoption in relation to foreign countries. If it concerns an applicant, his consent is necessary pursuant to par. 21/5 f) of the ASPOCH, which means he shall agree that upon expiry of the time period he would be filed in the Office’s register for mediation of a foreign adoption (par. 23/3). However, the Ministry still administers the registers of children and applicants.

Par. 24a of the ASPOCH governs the very process of adoption’s mediation lead by the Ministry. For the purposes of mediation of adoption, the Ministry seeks applicants in the applicants register administered by the Ministry, for children listed in its register. The Ministry takes into consideration the recommendation of the advisory board. Should the Ministry establish the applicants register administered by the Ministry includes an applicant eligible to become an adoptive parent of a child, who is in the children register administered by this Ministry, the Ministry shall announce this fact, in writing, to a) the applicant; b) the regional authority; c) the Office, if it concerns an applicant who is also listed in the Office’s register of applicants; d) the MA of the municipalities with extended competence. On the basis of such announcement the applicant has the right to meet the child, and the person, by who the child is to be found, is obliged to make such meeting possible. Also in this case, the ASPOCH restricts this possibility by a time period of 30 days from the day the written announcement of the regional authority was delivered to the applicant. An application for custody by the future adoptive parents must also be submitted within this time period. If the Ministry mediated an adoption of a child who is listed in the register of children for foreign adoption, the Ministry is obliged to announce this fact to the Office without delay.
The Ministry may, at any time during which the child is listed in the children register or the applicant listed in the applicants’ register, investigate whether there was any change in the facts decisive for the mediation of adoption, namely it is entitled to carry out new expertise on the child or the applicant pursuant to par. 27.

The suspension of adoption at the Ministry level is governed by par. 24b of the ASPOCH. The provisions are then the same as in the case of regional authorities.

Par. 24d of the ASPOCH lays down the circumstances in which a child or an applicant can be deleted from the children register or the applicants’ register administered by the Ministry. The Ministry can delete a child from its children register: 1) on the basis of a decision on adoption; 2) if it discovers material circumstances under which the mediation of adoption in the case of a particular child is not possible. The Ministry deletes an applicant: 1) on the basis of a decision on adoption; 2) if it discovers material circumstances under which the mediation of adoption in the case of the particular applicant is not possible; 3) in case the applicant commits a material breach of the obligation to inform about changes in data decisive for the mediation of adoption; 4) if the applicant requests it. The Ministry can also delete an applicant from its register if the applicant, without good reason, did not take part in preparations for the adoption of the child into the family even though he was invited to do so.

Within 15 days of the day the decision on the applicant’s deletion from the applicants’ register comes into force, the Ministry sends information on such deletion to a) the MA of the municipality with extended competences; b) the regional authority; c) the Office, if the applicant is also listed in its register. The Ministry informs the Office on the deletion of a child from the children register and the reason of such deletion, if it concerns a child listed in the Office’s register, as well as the regional authority.

4.3.4 Office for International Legal Protection of Children (“Office”)

The Office provides foreign adoptions of children from the Czech Republic or adoptions of foreign children into the Czech Republic (par. 24/2b). It also provides social-legal protection in relation to a foreign country if it concerns: a) children mentioned under par. 2/2 of the ASPOCH; b) children who are citizens of the Czech Republic but have no permanent residence on the territory of the Czech Republic; c) children who are not citizens of the Czech Republic and have no permanent residence permit for the territory of the Czech Republic, or their residence on the territory of the Czech Republic was not reported for at least 90 days, under the special legal regulation governing the residence of foreigners on the territory of the Czech republic, nor have they sojourn on the territory of the Czech Republic, if their parents or other natural persons with nurturing obligations towards these children sojourn in the Czech Republic.

In the case of adoption based on par. 26 of Act No: 97/1963 Coll., on international private and process law, the adoption process is governed by the law of the country of which the adoptive parent is a citizen. In the case of a husband and wife who are citizens of different countries, the condition of legal systems of both countries must be satisfied. Pursuant to par. 27 of the mentioned Act, a possible condition of the child’s assent to adoption will be governed by the legal system of the country of which the child is a citizen.

Par. 35/2 of the ASPOCH defines the powers of the Office which performs a number of important tasks in the field of the social-legal protection of children, not only on the basis of this Act, but also on the basis of international treaties which are binding on the Czech Republic. In accordance with these treaties, the Office is the receiving and dispatching organ, and further operates as the central organ. It performs the function of a child’s guardian, and also performs the tasks arising out of the mediation of adoption.
In addition, the Office plays an important role in negotiation and cooperation with other similar authorities and subjects abroad. It also cooperates in issues of parental liability in accordance with the directly applicable European Community regulation, (No: 2201/2003), under articles 53 to 58, on the court’s competence, acknowledgement and execution of decisions on marriage matters and on parental liability matters.

The mediation of adoption is governed by par. 25 of the ASPOCH. For mediation purposes the Office administers the register of: a) children who are provided with social-legal protection (par. 2/2) and who are eligible for foreign adoption; they are filed in the register on the basis of the Ministry’s announcement; b) children eligible for adoption in the Czech Republic who have no permanent residence permit for the territory of the Czech Republic or, their residence on the territory of the Czech Republic was not reported for at least 90 days, under the special legal regulation (Act No: 326/1999 Coll., on the residence of foreigners on the territory of the Czech republic, as amended), nor were they entitled to sojourn on the territory of the Czech Republic under the special legal regulation (par. 87 of Act No: 326/1999 Coll., on the residence of foreigners on the territory of the Czech republic, as amended); they are filed in the register on the basis of announcement made by government bodies of the Czech Republic, or foreign government bodies, or other organizations duly authorised by their countries, to execute duties upon international adoptions; c) applicants eligible to become adoptive parents of children mentioned under letter b); d) natural persons eligible to become adoptive parents of children mentioned under letter a), if these persons have no permanent residence permit for the territory of the Czech Republic, or their residence on the territory of the Czech Republic was not reported for at least 365 days, under the special legal regulation (Act No: 326/1999 Coll., on the residence of foreigners on the territory of the Czech republic, as amended).

The Office deletes from the register, a child or person mentioned above under letter d), if the mediation of adoption took place on the date of the decision of adoption. Further, it deletes from the register, an applicant or a person, mentioned above under letter d), if 1) it discovers material circumstances under which the mediation of adoption cannot take place; 2) the applicant or mentioned person commits a material breach of the obligation to submit data decisive for this register; or 3) the applicant or mentioned person requests it. The Office also deletes a child from the register if it is requested by a foreign authority or, a foreign organization that is duly authorized by its country to execute duties upon international adoptions.

The Office renders a decision on deletion from the register in cases of applicants and persons mentioned above under letter d) only. The Office suspends a mediation of adoption if it concerns children who are also filed in the children register for mediation of foreign adoptions or register of children eligible for adoption in the Czech Republic, or if it concerns applicants mentioned above under letter c). The mediation of adoption is suspended for the same periods of time as in the case of suspension by the regional authority.

The Office is obliged to inform the MA of the municipality with extended competences, the competent registry office in accordance with the special legal regulation, the regional authority, and the Ministry, about the foreign child adoption.

If it concerns an adoption in the Czech Republic, on mediation, the same applies as was mentioned in the case of the regional authorities. That means, for children in its children register, the Office seeks applicants in the applicants’ register administered by the Office.

On the basis of a written announcement made by the Office, the applicant has the right to meet the child, and the person, by who the child is to be found, is obliged to make
such meeting possible. The applicant has the possibility to meet the child and to submit an application for custody as the future adoptive parents, within 30 days from the date he received the written announcement from the Office (par. 26).

4.4 Right of Notice

The Act governs the right of every man to give notice to the SPO about any breach of obligations, or any abuse of rights arising from their parental responsibilities, or any circumstances under which the parents cannot perform the duties arising from their parental responsibilities. This right is consigned to natural persons, legal persons and the SPO (par. 7/2).

4.5 Liability to Notify

In addition to this right, there is also a liability to notify, which is governed by the ASPOCH as well as special acts, such as the CC. For governmental bodies, schools, educational institutions and other possible institutions dedicated to children, par. 10/4 lays down liability, to notify the municipal office of a municipality with extended competence, about facts which indicate its concern that parents have, for example, died, or are failing to perform the duties arising from their parental responsibilities. Such notification must be made upon discovery of these facts, without any unreasonable delay. If this obligation is not fulfilled, a legal, natural, or undertaking natural person commits an offence or an administrative tort and this person can be penalized.

Pursuant to par. 8, a child can also turn to the responsible authorities and these authorities are obliged to provide such child with adequate assistance. A child may also exercise this right unknown to his parents or other persons responsible for his upbringing.

5. Role of the court - Civil Procedure Code - Preliminary measures

If a minor child finds himself without any care, or if his life or favourable development is at serious risk or detriment, it is possible to order so-called preliminary measures.

The institute of preliminary measures is governed by Act No: 99/1963 Coll., the Civil Procedure Code (hereinafter “CPC”). The provisions of par. 76a are applied in regard to the protection of children to whom the presiding judge lays down preliminary measures, in order to move the child into the custody of a person determined by the resolution. The presiding judge decides on the preliminary measures petition without any delay. If there is no delay risk the decision can be made within 24 hours after the petition was submitted. The resolution is delivered to the parties to proceedings upon enforcement of its implementation only.

On the preliminary measures order the minor child must not be represented. In later proceedings, when the minor child has no legal representative or cannot be represented by a legal representative during the proceedings, the court appoints a guardian for such child, without any delay, upon enforcement of implementation of the preliminary measures.

The preliminary measures apply for the time period of 1 month from its enforcement. The parents of the minor child, the SPO, and the guardian can, at any time, propose to the court an annulment of the preliminary measures. The court must decide on such proposal without any delay, within 7 days at the latest.
a) Proceedings on the determination of whether the consent of parents to adoption is necessary

The legal regulations are set forth in par. 180a and 180b of the CPC. The parties to proceedings include the child and his parents, if they are his legal representatives. In a case where a child’s parent is a minor, he/she is a party to proceedings even though he/she is not a legal representative of the child. A minor parent of a child has a right to litigation in these proceedings. If the parent has not reached the age of 16 years, the presiding judge may decide that he/she must be represented by his/her legal representative in such proceedings even though he/she could act independently otherwise (par. 23).

The court is obliged to determine, with the highest priority and acceleration, whether parents’ consent to adoption is necessary. The final judgement which determines that the parents’ consent to adoption is not needed, can be annulled by the court if the situation changes. A proposal can be submitted, at the earliest, upon an expiry of one year from the date of the judgement’s legal validity. However, should the child be already adopted, or should proceedings on his/her adoption be instigated, or should the child be in the custody of a future adoptive parent, or should proceedings on the child’s custody by a future adoptive parent be instigated, the above-mentioned proposal cannot be submitted.

b) Adoption Proceedings

The adoption proceedings are governed by par. 181 to 185 of the CPC. The parties to the proceedings include the child under adoption, his/her parents or guardian, an adoptive parent and his/her spouse. A minor parent of a child has a right to litigation in these proceedings. If the parent has not reached the age of 16 years, the presiding judge may decide that he/she must be represented by his/her legal representative in such proceedings, even though he/she could act independently otherwise (par. 23).

The parents of a child under adoption will not be parties to adoption proceedings if: they were divested of their parental responsibilities, or they were divested of their legal capacity as parents, their legal capacity was restricted, or they gave their consent to the adoption in advance (unrelated to any specific adoptive parents), or the courts delivered a final judgement that their consent to the child’s adoption was not necessary. A spouse of an adoptive parent is not a party to proceedings if there is no need for his/her consent/s to the adoption. The court will hear out the child under adoption only if his/her consent to adoption is necessary. Should the child under adoption not be heard out, he/she is not required in the proceedings. The court must always hear other parties to proceedings, personally if possible. In the judgement proclaiming the adoption the court must state the surname that the adopted child will bare. The foregoing similarly applies in an annulment of adoption. However, the proposal can also be submitted by the adopted child.

6. Authorized entities according to s. 48 of ASPOCH (non-profit associations in the Czech Republic)

Based on a decision made by a regional authority, as to the role played by commissions, the so-called commissioners are involved in the task of providing social-legal protection. Within its framework they also exercise activities that are directly connected to adoptions. The scope of activities that these commissioners can exercise is exhaustively listed in par. 48.

Among some of the activities directly connected to adoptions are; the establishment of institutions for children requiring immediate assistance; the provision of guidance and
preparation for natural persons eligible to become adoptive parents, for a child's acceptance into a family, which is otherwise provided by regional authorities; searching for natural persons eligible to become adoptive parents, and their reporting to the MA of the municipality with extended competences; searching for children referred-to under par. 2/2 who are eligible for adoption and their reporting to the MA of the municipality with extended competences; the provision of consultancy assistance connected to child adoptions for natural persons eligible to become adoptive parents and for adoptive parents.

The social-legal protection can be provided directly by persons who have obtained the necessary professional qualifications.

2. ordinary university degrees in the fields of pedagogical and social sciences specialized in social care, social politics, pedagogy, law, psychology, tutorship or nursing, and in the field of medicine with specialization in general and child medicine;

3. ordinary education programs run by colleges in the fields of social work, pedagogy, charity and social care, charity and social activities, social-legal activities, two-subject study of pedagogy and theology, or an ordinary nursing diploma or ordinary high-school graduation in these fields of study;

4. education within the scope necessary to obtain a special professional qualification certificate in the field of social-legal protection, in accordance with the special legal regulation under Act No: 312/2002 Coll., on municipalities officers and on change of other acts, and at least one years experience;

5. graduation from education programs in the field of family and child care, with a total length of at least 100 hours, and at least one years experience, if it concerns persons who ordinarily graduate from universities or colleges in other fields of study, or in the same fields of study but with specializations other than those mentioned under letters a) and b);

6. graduation from education programs in the field of family and child care, with a total length of at least 100 hours, and at least one years experience, if it concerns persons who obtained basic school or secondary school education; or

7. placements organized for volunteers by sending organizations that are accredited by the Ministry of Internal Affairs under a special legal regulation contained in Act No: 198/2002 Coll., on volunteer services and on change of other acts, if such preparation is oriented at the assistance of children, young people and family care during free time.

Within the research part of the project we approached the following non-profit-making organizations: STŘEP (splinter), o.s., Fond ohrožených dětí (The Fund for Children in Need) o.s., Středisko náhradní rodinné péče (The Centre for Adoption and Foster Care), o.s., Sdružení linky bezpečí dětí a mládeže (Safety Line Association for children and young people). Their activities regarding the overall adoption and social-legal protection issues are outlined below.

STŘEP, o.s. (www.strep.cz)

On the basis of Act No: 108/2006 Coll. on social services, the STŘEP, o.s. provides social-activation services for families with children. The social-activation services are
provided for a family with a child whose development is at risk due to the possible impact of a long-lasting crisis or social situation that the parents cannot surmount alone, without any help. The services are provided to families with children up to the age of 15. The endeavour of the mentioned unincorporated association is to redevelop the relations between the family and child so that the need for adoption is eradicated.

Its other objectives are to reduce the risk of a child’s withdrawal from a family, to reduce a child’s deprivation upon his/her placement into an institution for the enforcement of an institutional foster care, to ensure a safe and purposeful contact with the parent of a placed child.

Fond ohrožených dětí, o.s. (The Fund for Children in Need-www.fod.cz)

Fond ohrožených dětí, o.s. (hereinafter referred to as the “FOD”) is an unincorporated association for the assistance of hag-ridden, uncared, abused or otherwise socially threatened children with their activities on the whole territory of the Czech Republic. The main focus of their activities are; the search for foster families for children who are difficult to place; the search for, and the provision of assistance to, hag-ridden and otherwise socially threatened children; the operation of Klokánek (Kangaroo) as an alternative to institutional care; the provision of advisory and material assistance to foster families, as well as own families with children in need. The FOD also pursues improvements in education and change to legislation. It is a propagator of so-called direct adoptions.

Středisko náhradní rodinné péče, o.s. (The Centre for Adoption and Foster Care-www.nahradnirodina.cz)

Středisko náhradní rodinné péče, o.s. (hereinafter referred to as the “SNRP”) helps abandoned and threatened children, as well as foster families. The Centre wishes to contribute to the fulfilment of a child’s basic right to grow up in a family. The SNRP searches for foster families for abandoned children with special medical and social needs, it advises applicants for foster family care, and provides psychosocial and legal consultancy services for foster families.

Sdružení linky bezpečí dětí a mládeže (Safety Line Association for children and young people).

The activities of the Sdružení linky bezpečí dětí a mládeže consist of a crisis intervention telephone line, the provision of basic emotional support, and a search for possible changes to the law. The Association cooperates with bodies responsible for social-legal protection of children. In cases where a threatened child decides to come out of anonymity the Association informs the SPO.

7. Jurisprudence – e.g. Walla, Wallová vs the Czech Republic - Finding of the Constitutional Court No. 72/1995 Coll.

One of the most significant judgements in the field of Czech family law is the judgement of the European Court of Human Rights (hereinafter only as the “Court”) of 2006 in the matter of Wallova, Walla versus the Czech Republic. In this judgement the Court drew attention to the duty of the state to adopt positive steps in order to limit or exclude the need to place children into state institutions, in order to facilitate their stay with the families.

The claimants, husband and wife Walla, had 5 children. For reasons of unsatisfactory housing, a court wardship over the claimants’ children was imposed in 2000. In the same year, a proposal for preliminary measures was accepted, and so the children
were temporarily placed in institutional fosterage; the oldest three into an institution in the city of V and the other two children into an institution in the city of K. These steps where taken on account of the fact that since 1997 the family had had no permanent and satisfactory accommodation, the parents had not been able to find a solution and had avoided controls connected to the imposed court warship.

A number of decisions followed, in which the children’s placement in an institutional foster care was decided for reasons of the unsatisfactory housing, inadequate parents’ interest in contact with their children – whether telephone or written contact. In addition, the court decided that the conditions of par. 68/1a of the FA, for adoption without the need for the parents consent, was satisfied as regards the two youngest children.

In November 2002 the claimants filed a complaint with the Constitutional Court (hereinafter referred to as the “CC”) regarding the compatibility of the decision to place the children within institutional foster care, and the decision relating to the parents consent, with the provisions of Art 18 of the Convention for the Protection of Human Rights and Fundamental Freedoms (HEREINAFTER, the ECHR), the Convention on the Rights of the Child, and Czech Law. According to the claimants, the opinions of the minors were not sufficiently considered, and the intervention had not been necessary in a democratic society. Further, there had been no positive measures taken by the relevant authorities in an effort to solve the unsatisfactory material situation. The claimants also argued that the conditions for the children’s adoptions without their consent had not been fully satisfied.

In 2005 the institutional foster care of the older children was annulled and, under a court warship, they were confided to the care of the claimants. According to the court, the decision was made on the basis of the resolution of the main problem, that of unsatisfactory housing. However, the younger children stayed in the care of a foster family.

The Committee on the Right of the Child, established on the basis of Art 43/1 of the Convention, stated in response to a report submitted by the Czech Republic, that in the CR, the principle of prior consideration of the child’s interests is not appropriately defined and reflected by all legal regulations. Further, that there is an insufficient number of professionals in the CR. And, last but not least, it was concerned by the lack of help and support given to parents on issues relating to parental liability, and by the number of children being placed in institutional care.

On 22 June 2004, the claimants filed a complaint with the European Court of Human Rights. In their complaint they pointed namely to the fact that they were separated from their children, and had received insufficient help on the part of the national authorities, referring as they did to Art 1,6,8, and 13 of the ECHR, and Art 1 of Protocol No: 12.

Art 8/1 of the Convention for the Protection of Human Rights and Fundamental Freedoms stipulates that everyone has the right to respect for (……..) family life (…….).

The Court stated that for the parents and the child, the fact of being together is a fundamental element of family life (Kutzner v. Germany), and that the protective national measures in question intervened in the rights contained in Art 8 of the ECHR. Such an intervention will not breach Art 8 if it is in accordance with the law, pursues one or more of the legitimate aims stipulated under the second paragraph of Article 8, and is necessary in a democratic society. For the intervention to be necessary in a democratic society, the measure must be based on a pressing social need which is proportionate to the legitimate aim. An order for institutional foster care represents an “intervention” into the claimants’ right to respect for family life. The claimants’ children were not subjected to any violence or any ill-treatment on the part of the claimants. In
addition, the educational and emotional aptitude of the claimants was not disputed. The only alleged deficiency was the unsatisfactory housing, which could have been remedied by the national authorities, for the benefit of leaving the children with their family. Therefore, in the aims of proportionality, the Czech authorities should have proposed a less radical solution to the placement of the children in institutional foster care.

The Court unanimously adjudicated that the complaint was permissible regarding the objections made under Articles 8 and 14 of the Convention.

On 26 October 2006 the Court adjudicated that the Article 8 of the Convention had been breached.

Findings of the CC No: 72/1995 Coll.

In the findings of the Constitutional Court, the provisions of par.46 of Act No: 94/1963 Coll., on the family (hereinafter, referred to as the “FA”), were repealed due to its conflict with Art 32/4 of the Declaration of the Basic Rights and Freedoms (hereinafter, referred to as the “DoBRaF) and Art 9/1 of the Convention on the Rights of the Child.

On 16 February 1994 the claimant, Zdeněk Novotný, filed a constitutional complaint with the Constitutional Court of the Czech Republic against the resolution of the Regional Court in Brno, which dismissed his appeal against the judgement of the Municipal Court in Brno, and at the same time he filed a proposal for repeal of the above-mentioned provisions. On the basis of these proceedings, the constitutional complaints were stayed and the proposal for repeal of these provisions was passed on for a decision to be made by the Constitutional Court plenum, in accordance with par. 78/1 of Act No: 182/1993 Coll., on the Constitutional Court.

The claimant argued, that the ruling on preliminary measures, made by the Office of the town district Brno-Černovice in 1991, was decided on the placement of his son in the institutional foster care. The claimant appealed against these preliminary measures, however, the appellate authority (Brno Municipality Office, department of social affairs) did not allow this appeal.

Also, in connection with these decisions, the criminal court ruled in 1993, on the breach of the father’s obligation to pay the care-fee for the time period of his son’s placement in the institutional care, but did not take into consideration the claimant’s objections that this ruling infringed the rights of the claimant as well as of his child. Specifically, Art 32/4 of the DoBRaF stipulates that the rights of parents may be reduced, and the children may be separated from their parents against their will, only by a court’s judgement based on the law. Similar provisions are also included in Art 9/1 of the Convention on the Rights of the Child. The claimant argued that the provisions of the Conventions took priority over national law, according to par. 2 of the constitutional law No: 23/1991, meaning that the provisions of par.46 FA were invalid. Thus, contacting parties to the mentioned Conventions have a duty to ensure that a child is not separated from his/her parents against their will, unless the relevant authorities determine, on the basis of a court judgement and in compliance with the effective law that such separation is in the child’s interest.

On 1 November 1994 the proposal was sent to the parties of the proceedings, i.e. the Chamber of Deputies of the House of Parliament of the Czech Republic, with a request for a statement in regard to par. 69 of the Act on the Constitutional Court. This statement was sent to the Constitutional Court on 17 November 1994. It contained a general statement at the beginning, outlining the exercise of the parents’ rights and obligations that are the subject of public control. As far as the conflict between the
contested provisions and the provisions of Art 32/4 of the DoBRaF, and Art 9/1 of the Convention on the Rights of the Child is concerned, the statement claimed that no conflict with the Constitution of the Czech Republic and other legal regulations were found. It recommended that the provisions of the FA should remain part of the legal system of the Czech Republic, and that the proposal submitted to the Constitutional Court by the claimant, should not be accepted.

In the case of disapproval by the parents’, regarding the reduction of their rights as parents and the separation of their children from them, under the express wording of the DoBRaF, which is a part of the constitutional arrangement of the Czech Republic, such measures can only be executed on the basis of a decision by a court and in accordance with the law. The Convention on the Rights of the Child provides a similar protection, which also takes precedence over Czech law.

Accordingly, if the mentioned Article of the DoBRaF stipulates that a minor child can only be separated from their parents against their will, on the basis of a court’s decision in accordance with the law, then the mentioned provision of the FA, which stipulates that the district’s people’s committee (a district office at that time) was obliged to adopt preliminary measures in urgent cases and to immediately inform the court, with only an additional ruling from the court, was, according to the Constitutional Court’s judgment, in conflict with the constitutional law in the sense of par. 70 of Act No: 182/1993 Coll. on the Constitutional Court. The provisions of the FA were therefore repealed. The Constitutional Court did not agree with the statement that the court could make an additional decision on an immediate placement of a child into care, after the relevant administrative authority had already decided on such placement in its preliminary measures.}

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2.6. **DENMARK**

1. Introduction

Denmark has ratified **The Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption**, and the convention entered into force in Denmark on November 1st, 1997. It should also be noted that the UN Convention on the Rights of the Child entered into force in Denmark on August 18th, 1991.

The basic principle in regard to adoption in Denmark is that the adoption must be in the best interest of the child. This consideration for the child and its future is the superior principle in all adoption activities.

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In order to ensure and promote the welfare of the child to be adopted, all prospective adoptive parents must be subject to an examination, and for almost all prospective adoptive parents an adoption course is mandatory before adopting a child from abroad.

The basic legislation regarding adoption in Denmark is stipulated in The Danish Act on adoption.

2. Conditions

Adoption is granted by an administrative decree issued by the Regional Government Department ("Statsamtet"). Where a child from a foreign country is being adopted, the adoption decree becomes effective from the date when the child arrives in Denmark.

An adoption decree may be granted only where, following an investigation into the matter, it is assumed to safeguard and promote the welfare of the child to be adopted, and where the prospective adopter wishes to raise or has raised the child, or where other special reasons justify adoption. A decree for adoption by the child's original parents may not be granted.

An adoption decree may be granted only to persons who have attained the age of 25. However, where warranted by special reasons a decree may be granted to a person having attained the age of 18. Where the child to be adopted is under the age of 18, adoption is subject to the applicant having been approved as adopter, cf. sections 25(a) and 25(b) of this Act.

Approval is not required, however, in the case where a prospective adopter wishes to adopt the child or adoptive child of the spouse of the adopter, nor in cases, as set out by the Minister of Family and Consumer Affairs, where the adopter is closely related to or has other special ties to the child or its parents.

Except in the cases mentioned in section 5 a(2. of this Act, a married person may only adopt together with his or her spouse unless the spouse cannot be found or is by reason of insanity, mental deficiency or any similar condition incapable of managing his or her own affairs. **Only married couples may adopt together.** A married person may adopt the child or adopted child of the other spouse (stepchild adoption).
Furthermore, stepchild adoption of the child or adopted child of a former spouse may be effected. If the marriage has been dissolved by divorce or annulled, stepchild adoption shall only be allowed if the person to be adopted is of full age.

Where the child to be adopted has attained the age of 12, the decree shall be granted only after obtaining the consent of the child to be adopted, except where obtaining consent is considered to be detrimental to the best interests of the child.

The consent of the child should be given in person before a representative of the Regional Government Department or before another authority or institution approved pursuant to section 8(1) of this Act. Before the child gives his or her consent, the child has to attend an interview about the adoption, and the child shall be informed about the legal and other effects of the adoption.

Where the child is under the age of 12 information shall be obtained about the attitude of the child to the adoption to the extent relevant with regard to the age and maturity of the child and the circumstances of the case. In making the decision the attitude of the child in this respect should be considered to the greatest possible extent.

The consent of the parents is to be obtained where the person to be adopted is under the age of 18 years and a minor.

- Where one of the parents does not have parental responsibility, cannot be found, or is by reason of insanity, mental deficiency or any similar condition incapable of managing his or her own affairs, only the consent of the other parent is required.

- Where the restrictions set out in subsection (2) above apply to both parents, consent is to be obtained from the legal guardian of the child.

The consent to be obtained pursuant to section 7 of this Act, must be given in writing during the personal attendance of the parents (legal guardian) before a representative of the Regional Government Department or another authority or institution approved for this purpose by the Minister of Family and Consumer Affairs.

- Consent for adoption may not be accepted until three months after the birth of the child except in exceptional circumstances.

- Prior to acceptance of consent, the parents (legal guardian) shall be instructed about the legal effects of adoption and consent.

The parents (legal guardian) may consent to the child being adopted by a person selected by an authority or institution authorised to act as intermediary in the adoption of children.

The Minister of Family and Consumer Affairs may decide that consent given before an authority or institution abroad shall have the same legal effect as consent given before a Danish authority or institution, and may in that case permit departure from the provisions extended in subsections (1) to (3) above.

If the consent of the parents (legal guardian) given by virtue of section 8 of this Act is revoked, an adoption decree may, nevertheless, be granted where, with special regard to the welfare of the child, the consent is revoked unreasonably.

Where the consent required by virtue of section 7 of this Act cannot be obtained, the Regional Government Department may, nevertheless, grant an adoption decree in special circumstances where it is decisive importance to the welfare of the child. Where the child is in the care of a child or youth welfare authority, the consent of the Social Appeals Board must be obtained.
At the request of the Social Appeals Board, the Regional Government Department may give permission that a child placed in the care of a children or youth welfare authority may later be freed for adoption, even though the consent required by virtue of section 7 of this Act cannot be obtained. Permission may only be granted subject to the provisions extended in section 9(2) of this Act.

Where the Regional Government Department decides to grant a decree or permission by virtue of sections 9 or 10 of this Act, even though the permission required pursuant to section 7 of this Act has not been obtained, the parents or legal guardian is to be notified hereof. Where the Regional Government Department decides that a decree of adoption shall not be granted under section 9(1), the applicant or the person with whom the child has been placed with a view to adopting the child shall be notified hereof. The decision shall be given in writing and be delivered by the Regional Government Department to the appropriate individuals in person or served upon them. Within 14 days of receiving the decision or the service thereof, they may demand that the matter be brought before the Minister of Family and Consumer Affairs or the courts. Where special reasons so warrant, the Regional Government Department may determine a longer time limit, or extend it before its expiry. The decision shall contain information about provisions for having the decision reviewed by the Minister of Family and Consumer Affairs and the courts as well as the time limits applied.

The provisions of subsection (1) above shall apply correspondingly where a decision by virtue of sections 9 or 10 is made or upheld by the Minister of Family and Consumer Affairs.

The Minister of Family and Consumer Affairs cannot review the decision where an application for submission to the Minister is received after the expiry of the time limit as set out in subsection (1) above.

Where the Regional Government Department receives an application for a review of the decision by the courts, the Regional Government Department shall bring the matter before the courts pursuant to the provisions of Part XLIII b of the (Danish) Administration of Justice Act, unless an adoption decree has been granted after the expiry of the time limit set out in subsection (1) above.

Where the court upholds a decision made by the Regional Government Department or by the Minister of Family and Consumer Affairs to the effect that a decree or permit is to be issued by virtue of sections 9 or 10 of this Act, or where the court decides that a decree may be granted even though the consent of the parents (guardian) has been revoked, the decree cannot be issued until the period allowed for lodging an appeal or interlocutory appeal has expired, without appeal proceedings having been instituted. This shall also apply where the court dismisses a motion for a review of the decision, cf. subsection (4) of section 475 b of the (Danish) Administration of Justice Act.

Where the Regional Government Department decides to dispense with obtaining consent, the child, if in the care of the prospective adopter, cannot be removed from the home of the applicant by the person holding parental responsibility over the child while an application for adoption is pending. This shall also apply where the Social Appeals Board has consented to adoption by virtue of the second sentence of section 9(2) of this Act, or has made an application under section 10 of this Act.

Where the consent of a parent is not required by virtue of subsections (1) and (2) of section 7 of this Act, a declaration from the parent shall be obtained before a decision is made, unless where this is considered to be fundamentally detrimental to the best interests of the child or would cause undue delay in the proceedings.

A person who has been placed under guardianship pursuant the section 5 of the (Danish) Guardianship Act, or has been declared legally incompetent cf. section 6 of
that Act may not be adopted unless a declaration has been obtained from his or her legal guardian.

An adoption decree shall not be issued if any of the parties required to consent to the adoption are to give or receive any kind whatsoever of payments or consideration including compensation for loss of earnings. Any person who is familiar with the matter may be required by the Regional Government Department to supply all information known to them in order for the Regional Government Department to ascertain whether any payment or consideration etc. has been received by any of the parties, as specified in the first sentence of this section.

3. Legal effects

The effects of adoption are to create between the adopter and the adopted child the same legal relationship as that between parents and their child, and the adopted child and its issue shall succeed to the property of the adopter and his or her family, and vice versa, as if the adopted child were the adopter's own child. At the same time, the legal relationship between the adopted child and its original family will be extinguished.

In the case of stepchild adoption under section 5 a of this Act, the legal relationship between the adopted child and the spouses or former spouses shall be the same as if the child had been born to the couple or former couple.

In respect of the name of the adopted child, the provisions contained in the (Danish) legislation on personal names shall apply.

Adoption does not confer upon the adopted child a right of succession to entailed estates of whatsoever nature, except where this is specifically provided by legislation.

4. Revocation

An adoption decree may be revoked by the Minister of Family and Consumer Affairs when the adopter and the adopted child so agree. Where one of the parties have been placed under guardianship pursuant to section 5 of the (Danish) Guardianship Act, or has been declared legally incompetent cf. section 6 of that Act, a declaration from his or her legal guardian is to be obtained.

Where the child is a minor under 18 years of age, the adoption decree may be revoked by virtue of subsection (1. above, when the adopter and the original parents of the adopted child so agree, and when revocation is in the best interests of the child.

If the adopted child has attained the age of 12, the consent of the child should also be obtained. The consent of the child should be given in person before a representative of the Regional Government Department or before another authority or institution approved pursuant to section 8(1. of this Act. Before the child gives his or her consent, the child has to attend an interview about the revocation, and the child shall be informed about the legal and other effects of the revocation.

Where the child is under the age of 12, information shall be obtained about the attitude of the child to the proposed revocation to the extent relevant with regard to the age and maturity of the child, and the circumstances of the case. In making the decision the attitude of the child in this respect should be considered to the greatest possible extent.

When the adopters have died, the Minister of Family and Consumer Affairs may, at the request of the original parents, revoke the adoption decree where this is in the best interests of the child. Subsections (3. and (4. above shall apply correspondingly.

The adoption decree may, upon a statement of claim being filed, be revoked by a court order if the adopter is guilty of serious misconduct towards the child or of persistently
failing to discharge his or her parental duties in respect of the child, or if, for any other reason, a revocation of the adoption decree is found to be of fundamental importance to the welfare of the child.

Action for the revocation of an adoption decree is to be brought by the adopted child. If the child is a minor or is by reason of insanity, mental deficiency or any similar condition incapable of managing his or her own affairs, action shall be brought by the legal guardian of the child, its original father or mother, or by the Minister of Family and Consumer Affairs or any person authorised by him.

Where a married couple has jointly adopted a child, the adoption decree can be revoked only in respect of both spouses.

In the cases referred to in section 19 of this Act, revocation may be effected although the grounds for revocation are attributable to one of the adopters only.

Where, under the general provisions of the (Danish) Administration of Justice Act, it is not possible to designate an agreed venue before which action for the revocation of an adoption decree may be brought, action shall be brought before a court to be determined by the Minister of Family and Consumer Affairs.

In the case of a new adoption, any previous adoptive relationship will be considered to have been extinguished, cf., however, section 16(2).

In the event of the revocation of an adoption decree, the legal relationship between the adoptive child and the adopter and his or her relatives shall be extinguished. Under special circumstances the court may decide, upon revoking the adoption decree pursuant to section 19 of this Act, that the adopter shall pay maintenance to the child.

Where an adoption decree is revoked by virtue of sections 18(2) and 18(5) of this Act, the child shall be reinstated in the legal relationship with its original family.

In the circumstances set out in section 19 of this Act, and having regard to the grounds for the revocation, the age of the child, and other circumstances, the court may decide that the child shall be reinstated in the legal relationship with its original family.

Where the adoption decree has been revoked for a person who has attained the age of 18 years, the Minister of Family and Consumer Affairs or the court may at the request of the adopted person decide that the person concerned shall be reinstated in the legal relationship with its original family if the original parents consent thereto. If only one of the adopted person’s original parents grants its consent under the first sentence hereof, it may be decided that the adopted person shall be reinstated in the legal relationship with that family.

In no other respects will the child be reinstated in the legal relationship with its original family.

Prior to the revocation of an adoption decree under section 19 of this Act, the court shall, to the extent possible, obtain declarations from the persons who are to give consent or make a declaration in respect of the issue of an adoption decree. Nevertheless, under special circumstances, where there is no question of reinstating the child in the legal relationship with its original family, the court may dispense with obtaining such declarations.

5. Miscellaneous

The Minister of Family and Consumer Affairs sets out the rules for approval of prospective adopters and for adoption proceedings, including the contents of
applications for adoption etc., and the consents to be obtained in respect of adoption, cf. sections 6 and 8 of this Act.

At each county and at the municipal councils of Copenhagen, Frederiksberg and Bornholm respectively, the Minister of Family and Consumer Affairs sets up one or more joint councils, that, following an inquiry made by the county (municipal council), decides whether an applicant may be approved as a prospective adopter, cf. section 4 a of this Act.

The joint council may decide to withdraw an approval of a prospective adopter, where the applicant no longer fulfils the requirements for being approved, or where the applicant is otherwise considered unfit to adopt.

The above mentioned joint council shall consist of a member who is trained in social work, a member of the legal profession and a physician. One member must be employed by the social service centre (municipal authority or social service committee).

The members of the joint councils and their substitutes are appointed by the Minister of Family and Consumer Affairs for periods of up to four years at a time.

Joint council decisions are made by majority vote. The Minister of Family and Consumer Affairs sets out the rules of procedure for the joint councils.

The board consists of a chairman and a number of other members. The chairman shall be a judge. At least five members, including the chairman or a member who fulfils the requirements for chairmanship, shall participate in the hearing of complaints. Decisions of the board are made by majority vote. The Minister of Family and Consumer Affairs sets out the rules of procedure for the board.

The members of the board and their substitutes are appointed by the Minister of Family and Consumer Affairs for periods of up to four years at a time.

The decision of a joint council in pursuance of this Act may be brought before the Adoption Board.

The joint councils are supervised by the Adoption Board. The Minister of Family and Consumer Affairs sets out the rules for supervision.

The Minister of Family and Consumer Affairs may assign additional matters to those mentioned in subsections (3. and (4. above to the Adoption Board.

In connection with the processing of cases other than complaints, the Adoption Board may seek the advice and assistance of other persons considered to have expert knowledge of or a special interest in the cases processed by the board.

Where an applicant has not previously adopted a child from a foreign country, an approval as prospective adopter of such a child shall be subject to the applicant having attended a preparatory course for prospective adopters.

By virtue of rules laid down by the Minister of Family and Consumer Affairs the joint councils may decide that applicants who have previously adopted a child from a foreign country shall attend a preparatory course for prospective adopters before being approved again, if the joint council considers it necessary.

The Minister of Family and Consumer Affairs may determine detailed rules for the contents and planning of the courses mentioned in subsections (1. and (2. above, including rules for payment for the courses.
Upon agreement with a foreign country, it may be determined that the nationals of that country shall be eligible to adopt or be adopted in Denmark only subject to specific conditions set out in a treaty.

Similar agreements may be decided in respect of the revocation of an adoption decree, when the adopter is not a Danish national.

In respect of specified foreign countries, it may be determined by virtue of an Order in Council that Danish nationals shall be eligible to adopt or be adopted in that country only subject to specific conditions.

Similarly, it may be determined that an adoption decree cannot be revoked in a foreign country with effect in Denmark, when the adopter is Danish national.

Danish residents may adopt only under the provisions of this Act.

Notwithstanding subsection (1. above, foreign adoption decisions are recognised in this country if the adoption is effected with a view to adoption of the child by an adoptive parent or parents in Denmark in accordance with the provisions of the Hague Convention of 1993 on Protection of Children and Co-operation in Respect of Inter-country Adoption. The Minister of Family and Consumer Affairs may lay down rules thereon. Furthermore, the Minister of Family and Consumer Affairs may lay down rules to the effect that other foreign adoption decisions shall be recognised in this country.

A resident in a foreign country may only adopt under the provisions of this Act provided that the applicant or his or her spouse is a Danish national and consequently would be unable to adopt in the country of residence, and provided that a Danish adoption decree shall be valid in the country of residence.

The Minister of Family and Consumer Affairs may permit adoption, moreover, if the case involves special relations with Denmark.

However, subsections (1. and (2. above do not apply in the case of adoption decrees issued pursuant to the provisions of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Inter-country Adoption.

Decisions made by the Regional Government Department under this Act may be appealed to the Minister of Family and Consumer Affairs. However, this does not apply to decisions under sections 9-10 of this Act which have been brought before the court, cf. section 11 of this Act.

The Minister of Family and Consumer Affairs may lay down rules on the processing of complaints.

6. Adoption services

The Minister of Family and Consumer Affairs may authorise one or more private organisations to act as adoption placement agencies for children who are not Danish nationals. The Minister of Family and Consumer Affairs sets out the specific rules and conditions to be followed by adoption placement agencies pursuant to subsection (1. above, and acts as supervisory authority over such agencies.

The Minister of Family and Consumer Affairs may authorise the Adoption Board to supervise the organisations that have been authorised pursuant to subsection (1. above. The Minister of Family and Consumer Affairs may direct that prospective adopters shall be under an obligation to seek assistance from adoption placement agencies that have been authorised by virtue of subsection (1. above.
Only the authorities and organisations mentioned in sections 25, 25 a, 25 b and 30 of this Act may provide assistance in establishing contact between prospective adopters and a child with a view to adopting, and implementing the adoption (adoption assistance).

The provision of subsection (1. above does not, however, include legal advice etc. in connection with contact to the above mentioned authorities, or in relation to procuring the information required by the said authorities.

a) Foster children

Assistance in arranging the placement of a child under the age of 14 with foster parents for an extended or indefinite period may only be granted by and received from a public authority, or with the prior consent of a public authority.

Advertising for foster parents pursuant to subsection (1. above may only be carried out by or with the consent of a public authority.

b) Mediation in connection with surrogate mothers

No assistance may be granted or received for the purpose of establishing contact between a woman and a person wishing that woman to bear a child for them.

No advertising is to be undertaken for the purpose of establishing contact of the nature described in subsection (1. above.

c) Penalties

Any person who disregards the provisions set out by virtue of section 30(2. of this Act, or contravenes sections 31 to 33 of this Act shall be liable to a fine or imprisonment for a term of up to four months.

Any regulations issued pursuant to section 30(2. of this Act may provide that any contravention of the regulations shall be punishable with a fine or imprisonment for a term of up to four months. Any person who as an intermediary pays a consideration to obtain consent to adoption shall be subject to the same punishment.

Companies etc. (i.e. juristic persons) may be held criminally liable by virtue of the provisions in Part V of the (Danish) Penal Code.

7. Commencement and provisions

This Act shall come into force on 1 October 1972. The provisions of sections 6(2. and 8 of this Act shall not apply to consents given prior to the commencement of this Act.

Part II shall apply to: adoption decrees taking effect from 1 January 1957, or later adoption decrees taking effect prior to 1 January 1975, where by virtue of section 39(2.), the decree has been issued with the legal effects following from Part II, and adoption decrees taking effect prior to 1 January 1957, where by virtue of section 27(2. of Act on Adoption no. 140 of 25 May 1956, the decree has been issued with the legal effects following from section 13, cf. section 12 of that Act.

Notwithstanding the provisions of paragraph (i) of subsection (1. above, the provisions of the second sentence of section 13(2. of Act on Adoption no. 140 of 25 May 1956 shall apply to adoption decrees granted prior to the commencement of this Act, to the effect that the child shall maintain the right to succeed to the property of its original family.

Part III shall also apply to adoption decrees granted prior to the commencement of this Act.
The Act on Adoption no. 87 of 26 March 1923, except section 13(2.) and sections 18 to 24 of that Act, shall extend to adoption decrees taking effect prior to 1 January 1957 where paragraphs (ii) and (iii) of section 37(1.) of this Act do not apply.

Where specific reasons so warrant, the Minister of Family and Consumer Affairs may decide that the legal effects following from Part II of this Act shall extend to adoption decrees taking effect prior to 1 January 1957.

As from the commencement of this Act, Act on Adoption no. 140 of 25 May 1956 shall be repealed.

The Danish government may make agreements with the governments of foreign countries with respect to the legal framework pertaining to adoption, between Denmark and the country in question. Upon being published in the (Danish) Law Gazette the agreement shall subsequently be applied in Denmark.

The Minister of Family and Consumer Affairs may, moreover, set out rules with respect to the legal framework pertaining to adoption, between Denmark and other Scandinavian countries.

This Act does not extend to the Faeroe Islands or Greenland except that the provisions hereof may be brought into force by an Order in Council for the said parts of the realm subject to any variations in their operation necessitated by the specific conditions prevailing in The Faeroe Islands and Greenland respectively.

Act No. 446 of 9 June 2004 (Simplification of Rules in the Family Law Area etc) contains the following commencement provisions: This Act shall come into force on 1 October 2003, cf., however, sections 10 and 11, of this Act.

Sections 5 and 5 a, section 16(2.) and sections 23 and 28 of the Danish Adoption (Consolidation) Act as amended by paragraphs (1., (2., (4., (5) and (8) of section 5 of this Act shall also apply to applications for adoption filed before 1 October 2004 provided that no decision has been made in the case. Section 28 of the Danish Adoption (Consolidation) Act as amended by paragraph (8) of section 5 of this Act shall also apply to foreign decisions on adoption made before 1 October 2004 provided that no Danish adoption decree has been issued in the adoption case.

8. Danish rules on approval as prospective adoptive parent

The procedure regarding to approve applicants as prospective adoptive parents is described below in the paragraph “Danish rules on approving prospective parents”.

Danish rules on approval as prospective adoptive parent: The secretariat of the joint council in the county of the applicant carries out a thorough investigation of the applicant, before the approval can be granted. The results of the investigation are presented to the joint council, which is the authority competent to decide whether or not the applicant can be approved as a prospective adoptive parent. The investigation is divided into three phases.

a) The first phase

The first phase determines whether the applicants meet the following general conditions for adoptive parents:

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The age difference between the applicant and the child should not be more than 40 years. Applicants, who want to adopt a child together must have lived together for at least 2.5 years and must be married. Married couples must adopt as a couple. Single people can also adopt. Danish law prohibits same-sex couples for adoption in Denmark. The physical and psychical health conditions of the applicant must not imply a risk that the adoption does not turn out to be in the child’s best interest. The applicant’s home must be fit to house a child. The applicant must have proper economical conditions. The applicant must not have a criminal record, which implies that the applicant is not fit to be an adoptive parent.

The applicant can only go on to the second phase of the investigation, if the joint council has decided that the applicant fulfils the general conditions or if under specific circumstances - the applicant is granted an exemption from the rules.

b) The second phase

The second phase is a pre-adoption counselling training program. It consists of a pre-adoption counselling course, which is mandatory to all applicants, who have not previously adopted a child from abroad. The purpose of the course is to supply the applicants with information concerning different aspects of adoption, and to provide a basis for the applicants themselves to assess, whether or not they possess the necessary resources to adopt a foreign child. The course consists of one weekend session and one Saturday or Sunday. Participation in a pre-adoption training program costs Danish Kroner 1,500 (200€).

c) The third phase

The third phase includes one or more interviews with the secretariat of the Joint Council. The purpose of this phase is to investigate if the applicant possesses the individual resources to adopt a child. At the end of the third phase, a home study report is presented to the Joint Council for final decision and approval. The prospective parents proceed by submitting their approval to one of the Danish government-authorized adoption agencies.

9. Further requirements and general information

a) Residency

Adoptive parents must be legally admitted residents of Denmark to adopt domestically or inter-country. Temporary visitors without an established home in Denmark cannot apply.

b) Time Frame

From the initial contact with the Joint Council at the Regional State Administration until the adoptive parents can be united with the child, the time frame is a minimum of 18 months, but may be as long as 2½ years.

c) Adoption Agencies and Attorneys

Domestic adoptions in Denmark are processed via the five Regional State Administrations in the jurisdiction where the prospective parents reside. Private adoption agencies are accredited by the Danish government to provide adoption services. Prospective adoptive parents are advised to fully research any adoption agency or facilitator they plan to use for adoption services.

d) Adoption fees in Denmark
Domestic adoptions of Danish children are free of charge. The cost of an inter-country adoption (adopting a child in a third country and then taking him or her to Denmark to reside) is approximately Danish Kroner 74,000 (9,920€), depending on the country of the child’s origin. Travel expenses must be added to this amount. Once the adoption has been finalized, the adoptive parents are entitled to a Danish Government lump-sum relief benefit of Danish Kroner 42,000 (5,630€) to help reduce their overall expenses.

10. International Adoption in Denmark

Until the middle of the 20th century, most adoptions in Denmark involved Danish children, who were adopted by Danish parents. However, since then adoption in Denmark has for various reasons changed from being a national matter into being mainly an international matter.

Since 1970, more than 15,000 children have been adopted by Danish parents through inter-country adoption. In the recent years approximately 600 adoptive children have arrived to Denmark every year, the equivalent of one percent of children born in Denmark per year.

a) Nationality by adoption

Adopted children under 12 years of age: A foreign child under 12 years of age adopted through a Danish adoption order or a recognised foreign judgment will automatically become a Danish national as a consequence of the adoption if the child is adopted by:

- an unmarried Danish national; or
- A married couple and at least one of the spouses is a Danish national.

The child acquires Danish nationality from the time when the legal effects of the adoption come into force. It is a condition that the adoption is recognised under Danish law.

Stepchildren adopted by Danish nationals can only acquire nationality by naturalisation, that is, by statute upon application. Children under 12 years of age are not required to live in Denmark, and they need not prove any skills in the Danish language, etc.

Adopted children above 12 years of age: Foreign children above 12 years of age who are adopted by Danish nationals will not automatically acquire Danish nationality. Accordingly, these children can only acquire Danish nationality by naturalisation, that is, by statute.

Adopted children above 12 years of age therefore have to submit an application for Danish nationality to the local police station. On that occasion, they have to prove skills in the Danish language, etc., and they must have lived in Denmark for at least 2 years.

b) Documents required for Adoption in Denmark

The initial application form, which can be obtained from the Regional State Administration, must be accompanied by the following documents:

- birth certificate,
- marriage certificate,
- latest tax return showing financial status and documentation whether outstanding arrears exist,
- and a certificate of health.
An application to participate in the pre-adoption counselling program must be filed with the Department of Family Affairs, Office of Training Programs. If the applicants wish to continue the process after they complete the counselling program, a third application must be filed to start phase three. The adoptive parents must apply to the Regional State Administration for an Adoption Certificate, when the child arrives in Denmark from his or her country of origin (after that country’s adoption procedures have been completed). With the Adoption Certificate, the adoption is finalized, and pursuant to Danish law, the adopted child has the same rights as a biological child.

c) Adoption Authorities in Denmark

The Danish Ministry of Family & Consumer Affairs, Department of Family Affairs is the adoption law-making branch of the Danish government and is also the Central Authority for the Hague Inter-country Adoption Convention. The Department certifies adoption agencies and monitors their work to ensure that they comply with the law.

The Danish Ministry of Family and Consumer Affairs, Department of Family Affairs, lays down the Danish rules on approval as a prospective adoptive parent and on the procedures in regard to this matter. The Department is also appointed as the Central Authority according to the Hague Convention. Besides, the Department authorizes the adoption placement agencies, and oversees the agencies’ fulfilment of the conditions in their authorizations. Finally, the Department arranges the pre-adoption courses as described in the above section “Danish rules on approving prospective parents”.

The Danish Ministry of Family and Consumer Affairs has authorised two private non-profit organisations to act as adoption placement agencies for adoptive children who are not Danish nationals. The following adoption placement agencies, which have been authorized, are:

AC Børnehjælp (AC International Child support) Elkjærvej 31 (8230) Åbyhøj Phone: +45 86 12 65 22 Fax: +45 86 19 78 53 E-mail: adoption@a-c.dk Web-site: www.a-c.dk

DanAdopt (Danish Society for International Child Care) Hovedgaden 24 DK-3460 Birkerød Phone: +45 81 63 33 Fax: +45 45 81 74 82

According to Danish law, inter-country adoption should preferably be performed through these adoption placement agencies. However, when somebody wants to adopt a child, to whom the applicant is closely related, or if there are other special reasons, the Danish Ministry of Family and Consumer Affairs, Department of Family Affairs, can allow the adoption to be performed without assistance from an adoption agency.

d) Joint Councils

Joint Councils are established at the five Regional State Administrations (Statsforvaltning) in Denmark. The Regional State Administration mainly concentrates on family issues: divorce, child custody, maintenance. The joint council makes the decision at first instance of whether or not an applicant can be approved as an adoptive parent. The secretariat of the joint council performs the actual investigation including the interviews with the applicant. Furthermore, the joint councils decide in some cases whether or not a specific child can be adopted by an applicant, who has already been approved as a prospective adoptive parent. The prospective parents file their initial application with the local Joint Council of the Regional State Administration in the jurisdiction where they reside. A Joint Council consists of three members – a social worker, a lawyer, and a medical officer. The Joint Council determines whether the initial application for adoption may be approved for further processing. A complete list of Joint Councils can be found at http://www.statsforvaltning.dk
The Danish National Board of Adoption supervises the Joint Councils, observes national and international developments in adoption matters, collects information concerning adoption, negotiates with authorities and organizations in other countries, and supplies general information.

e) The National Adoption Board

The National Adoption Board: www.adoptionsnaevnet.dk was set up in 1976 in order to deal with complaints over decisions made by the joint councils. The National Adoption Board consists of 10 members with different professional backgrounds.

The duties of the Board also include supervising the work of the joint councils and their secretariats, observing the national and international development in adoption matters, collecting information concerning adoption, negotiating with authorities and organizations in other countries and conducting information activities. The National Adoption Board also takes part in the supervision of the adoption placement agencies.

Finally, the Board makes the matches between Danish children that are given away to adoption and Danish applicants who wish to adopt a Danish child. Decisions reached by the Joint Councils may be appealed to the Danish National Board of Adoption, which is a department of the Ministry of Justice at:

Danish National Board of Adoption Stormgade 2.6 (1470) Copenhagen Tel: +45-3392 3302 Fax: +45-3927 1889 Email: an@adoptionsnaevnet.dk Web site:http://www.adoptionsnaevnet.dk.
1. **Brief description of the national adoption process (national adopting parents – national children)**

Nationally in Estonia the adoption matters are regulated mainly by:

- Family Law Act (chapter 10, Adoption);
- by Code of Civil Procedure;


Estonia has ratified and following conventions and international acts concerning matters of adoption are in force in Estonia:

- The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption (Estonia has joined with this convention on 07 November 2001);
- The European Convention for the Protection of Human Rights and Fundamental Freedoms, dated in Rome 04 November 1950 (ratified by Estonia on 16 April 1996);


a) Stages of national adoption process are:

1. **Control of suitability of possible adopting parent in County Government.**

A person wishing to adopt turns with application to County Government (Social and health care department) by presenting together with application passport (or other identification document), marriage certificate (is person is married), certificate about health condition, documentary proof that he/she is capable of raising the child and supporting the child (proof about income, place of residence etc.) and other documents/information which child protection specialist of social and health care department sees necessary, in order to find out the suitability of possible adopting
Child protection specialist of social and health care department finds out the suitability of possible adopting parent (including by making home visits etc), necessity and possibility of adoption. When the opinion of child protection specialist is positive, then the person wishing to adopt shall be registered to conforming register in County Government.

Person wishing to adopt has the possibility to take a course/training (duration approx. 2 months) about adoption matters (PRIDE-training). Taking the course is voluntary (at current practice usually all adopting parents take this training, but there is no demand in the law about it).

2. Control about suitability of adopting parent and child to be adopted between each other (matching).

Child protection specialist of social and health care department will discuss with adopting parent, which child (age etc) could be suitable to adopt by adopting parent and makes a suggestion about it.

After that there will be meetings (as many as necessary) between child and adopting parent (usually in Children’s Home, which is a social welfare institution in order to offer substitute home for orphans and other children who lack parental care) and then adopting parent can decide, whether he/she wants to adopt this child or not.

3. Decision on adoption by court.

A court decides an adoption (whether to adopt or not) only on the basis of the application of a person wishing to adopt, after suitability of adopting parent, necessity and possibility of adoption has been ascertained by child protection specialist and after child and adopting parent have met each other.

It must be noted, that according to Estonian law it is also possible to turn directly to court with adoption application without even contacting child protection specialist before it, but still child protection specialist (guardianship authority) has the possibility to give his opinion about adoption in court.

In adoption application presented to the court there will be noted data about person who adopting parent wants to adopt (name, birth date and any known data concerning such person’s parents) and data about adopting parent (including the facts which prove that he or she is capable of raising the child, caring for the child and supporting the child).

In deciding an adoption, the court shall include a guardianship authority (child protection specialist) in the proceedings for the purpose of hearing its opinion about adoption.

A guardianship authority (child protection specialist) shall, at the request of a court, collect and prepare the information necessary for deciding an adoption (incl. data about adopting parent, data about child, necessary consents for adoption etc).

In an adoption case, the court shall hear a child of at least seven years of age in the part pertaining to the adoption and the possible change of name if the child’s wishes, relations or will are relevant to the adjudication of the matter or if this is clearly necessary for clarification of circumstances.
A child who is at least ten years of age may be adopted with his or her consent.

An adoption case shall be decided by court ruling, which enters into force as of its delivery to the adopting parent. The adoptive parent may file an appeal against a ruling on refusal to accede to the adoption application.

A court shall, within one month after entry into force of an adoption judgment, send a copy of the court order to the vital statistics office where the birth registration of the child is located, in order to make necessary changes in the birth registration of an adoptive child (the adoptive parent shall be entered in the birth registration as a parent of the adopted child and also possible name change shall be made).

4. Possible consultation after adoption has decided by court (post-adoption services)

There is no control by authorities after adoption is decided by court (there is no obligation about it in the law) and also no specific services concerning adoption (consultation etc) are not available.

When problems occur, then it is only possible to turn to child protection specialist (but they generally do not offer specific post-adoption services) or to psychologist (in common terms).

b) A court decides an adoption (that means court decides the creation of adoption relationship) by ruling on the basis of the application of a person wishing to adopt, generally after suitability of adopting parent, necessity and possibility of adoption has been ascertained by child protection specialist and after child and adopting parent have met each other.

It must be noted, that according to Estonian law it is also possible to turn directly to court with adoption application without even contacting child protection specialist before it, but still child protection specialist (guardianship authority) has the possibility to give his opinion about adoption in court.

c) Person wishing to adopt has the possibility to take (before adoption) a course/training (duration approx. 2 months) about adoption matters. Taking the course is voluntary.

During adoption process adopting parent is advised by child protection specialist, who deals with concrete adoption matter.

After adoption has been decided by court, there are no specific services available concerning adoption (consultation etc). It is only possible to turn to child protection specialist (but they generally do not offer specific post-adoption services) or to psychologist (in common terms).

2. Brief description of the international adoption process (European Union (EU) parents - non-European children or European (EU) children and non-European (EU) adopting parents)

According to Family Law Act § 82 a person who does not reside in Estonia may adopt an Estonian citizen residing in Estonia only with the consent of the Minister of Social Affairs.

According to Code of Civil Procedure § 113 a matter of adoption may be adjudicated by an Estonian court if the adopting parent, one of the spouses wishing to adopt or the child is a citizen of the Republic of Estonia or the residence of the adopting parent, one
of the spouses wishing to adopt or the child is in Estonia.

A situation, when adopting parent (the citizenship is not important) does not reside in Estonia (has no residence permit and has no residence in Estonia) or adopting parent wishes to adopt children from other country (outside Estonia), is considered in Estonia as international adoption and the process is the same (there is no differences between EU adoption and other international adoption).

Cases of international adoption (adoption from foreign country or to foreign country) are arranged by Minister of Social Affairs (Social Welfare Department).

a) In case of international adoption the process and the stages are the same as in national adoption, with exception, that international adoption is arranged instead of County Government (Social and health care department) by Minister of Social Affairs (Social Welfare Department), who also must give his consent for adoption.

Also in case of international adoption, a person who wishes to adopt, must turn with his wish to Minister of Social Affairs and a person who wants to adopt a child to a foreign country (adopting parent who does not live in Estonia) can turn to Minister of Social Affairs only through authorized organizations, which are accepted by Minister of Social Affairs.

Conforming authorized organization has to do all the work, in order to find out the suitability of adopting parent and if the opinion is positive, then authorized organization will send all data/documentation about adopting parent and other necessary information together with application to adopt to Minister of Social Affairs.

According to Republic of Estonia Child Protection Act § 66 inter-country adoption shall occur primarily if it is not possible to care for the child to the necessary extent in the Republic of Estonia. It means international adoption will come into consideration only after it has been confirmed, that it is not possible to find for the child adopting parents or a guardian in Estonia.

In practice at current time from Estonia a child can be adopted only to three following countries: Finland, Sweden and USA.

b) Similarly to national adoption also in case of international adoption the adoption will be decided (creation of adoption relationship) by court (in case when Estonian court has the competence to solve the matter according to Code of Civil Procedure § 113) under the application of person who wishes to adopt, after Minister of Social Affairs has ascertained the suitability of adopting parent and necessity/possibility of adoption and after child and adopting person have met.

When international adoption shall be solved outside Estonia (adoption of child from foreign country to Estonia), then Minister of Social Affairs gives only his consent about adoption.

c) Person wishing to adopt has the possibility to take (before adoption) a course/training (duration approx. 2 months) in Estonia about adoption matters. Taking the course is voluntary.

After adoption has been decided by court, in Estonia there are no specific services available concerning adoption (consultation etc).
3. Organs and services that partake in the adoption process

The following institutions participate in the adoption process:

1. County governor through County Government social and health care department (County Government is a public institution which serves County governor and works under leadership of County governor).

Person who wishes to adopt must turn first to County Government social and health care department, which is a public institution providing social services also to persons who wish to adopt and so County Government intervenes in adoption process generally in the first stage. County Government (in practice child protection specialist from County Governments social and health care department) also gives his opinion about adoption in court.

The mission of County Government is the organisation of adoption and maintenance of a corresponding register. County Government (social and health care department) will find out the suitability of person being adopted and whether the adoption is possible, so County Government must act both in interests of a child and adopting parent.

In County Government social and health care department specialists who deal with adoption matters must generally have a social education (but there is no exact requirement on education) and generally they have passed additional trainings concerning social matters.

2. Child protection/social welfare specialists in local governments (a rural municipality or a city).

They intervene in adoption process generally in the first stage and generally fulfill the same tasks as social and health care department of County Government and they also give their opinion in court about adoption/represent the child in court.

For example in city of Tallinn adoption matters are arranged by Social Welfare and Health Care Department, which is a public institution of Tallinn in order to provide social services.

In different local governments there are also different education demands to child protection/social welfare specialists, for example in Social Welfare and Health Care Department of Tallinn persons who deal with adoption, must have higher education (preferably in field of social work or psychology).

3. Children’s Homes or so called substitute homes, which are social welfare institutions (usually under local government).

In Children’s Homes there will be meetings between adopting parent and a child to be adopted after County Government has ascertained the suitability of possible adopting parent.

Their general mission is to provide substitute home services for orphans and other children who lack parental care.

Employees of Children’s Homes must generally have vocational secondary or higher education in the field of pedagogy or social work and generally they also must have undergone additional training in social work and pedagogy.

4. Minister of Social Affairs (Social Welfare Department) in case of international
adoptions.

Ministry of Social Affairs is a government agency, which shall represent the state in the performance of its functions.

Intervenes in case of international adoption in the first stage – applications with wishes to adopt must be sent to Ministry of Social Affairs through authorized organizations and Ministry of Social Affairs ascertains (according to data sent by authorized organization) the suitability of adopting parent and possibility to adopt. Ministry of Social Affairs also gives his opinion/consent to adopt in court.

Mission of Ministry of Social Affairs (through Social Welfare Department) is the organization of adoption from and to foreign states and maintenance of a corresponding register (where is kept information about children, for whom it has not been possible to find a family in Estonia and about persons who want to adopt children to a foreign country) – so Ministry of Social Affairs provides services to possible adopting parent (international adoption) and also must look, that the interests of a child are met.

In Social Welfare Department of Ministry of Social Affairs the specialists that work with adoption matters must have higher education preferably in field of social work.

5. **Authorized organizations** (which are accepted by Minister of Social Affairs), which must have granted a right to deal with international adoption and with whom there has been concluded agreements by Ministry of Social Affairs.

In case of international adoption these authorized organizations present to Minister of Social Affairs the applications of persons who wish to adopt a child to foreign country together with necessary documentation and information (about suitability of possible adopting parent) in order that Minister of Social Affairs could start the adoption procedure.

Mission of these authorized organizations is the organization of international adoption – they must ascertain the suitability of possible adopting parent and they also must gather all necessary documentation, so they provide services to possible adopting parents.

There is no exact information about qualification/education demands that workers of these authorized organizations must have, but authorized organization must present to Minister of Social Affairs documentary proof about the fact that it has been granted the right to deal with international adoptions.

6. **A court** (decides an adoption, that means creates the adoption relationship).

Estonia has three-level court system – there are county courts (first level), courts of appeal (second level) and Supreme court (the higher court) and all these courts deal with adoption matters (courts of appeal and Supreme court will deal with adoption matters only if there has been filed an appeal against the decision of county court/court of appeal).

County courts and courts of appeal are administered by Ministry of Justice, Supreme court administers itself independently.

In Estonia adoption can be decided (creation of adoption relationship) only by court and court will make his decision only on the basis of the application of a person wishing to adopt. Generally, before sending an application to the court, there has been already
ascertained the suitability of adopting parent and a child with each other (by Social and health care department of County Government), but as mentioned earlier it is possible also to turn directly to court without turning to County Government before it.

Mission of a court is to solve the adoption application in interests of the child – court will decide whether adoption is suitable and in interests of the child or not and court will also ascertain all legal matters in order that the adoption could be possible (whether there are necessary consents given, etc.). Court will hear in the process also the opinion of County Government/ Ministry of Social Affairs.

In practice there are certain judges, who are specialized in dealing with adoption matters, but there is no obligatory training about adoption matters to these judges. In order to be a judge, it is obligatory to have a higher legal education.

7. Vital statistics office – local government institution, which will make necessary changes in the birth registration of the child (new parents, change of name) under the adoption judgement sent by court.

This institution has no active part in adoption procedure.

3. Post-adoption follow-ups

Person wishing to adopt has the possibility to take (before adoption) a course/training (duration approx. 2 months) about adoption matters. Taking the course is voluntary.

After adoption has been decided by court (adoption relationship has been created), there are no specific services available concerning adoption (consultation etc) and there is no follow-up control by authorities.

It is only possible to turn to child protection specialist (but they generally do not offer specific post-adoption services) or to psychologist (in common terms).

4. Possible differences between European adoption and international adoption

As mentioned in clause no 2 of this legal analysis, a situation, when adopting parent (the citizenship is not important and also it is not important whether person is EU national or not) does not reside in Estonia (has no residence permit and has no residence in Estonia) or adopting parent (who resides in Estonia) wishes to adopt children from other country (outside Estonia), this is considered in Estonia as international adoption (there is no differentiation between EU adoption and other international adoption) and the process is the same.

In cases on international adoption consent of Minister of Social Affairs is essential.

In case of international adoption the process and the stages are the same as in national adoption, with exception, that international adoption is arranged instead of County Government (Social and health care department) by Minister of Social Affairs (Social Welfare Department), who also must give his consent for adoption.

Also in case of international adoption, a person who wishes to adopt, must turn with his wish to Minister of Social Affairs and a person who wants to adopt a child to foreign country (adopting parent who does not live in Estonia) can turn to Minister of Social Affairs only through authorized organizations, which are accepted by Minister of Social Affairs.

According to Republic of Estonia Child Protection Act § 66 inter-country adoption shall
occur primarily, if it is not possible to care for the child to the necessary extent in the Republic of Estonia. It means international adoption will come into consideration only after it has been confirmed, that it is not possible to find to the child adopting parents or a guardian in Estonia.

In practice at current time from Estonia a child can be adopted only to three following countries: Finland, Sweden and USA.

6. Conditions to adopt (possible differences between international and national adoption)

A person at least twenty-five years of age who is capable of raising the child to be adopted, caring for the child and maintaining the child may be an adoptive parent. A court may also permit a younger adult to be an adoptive parent.

The following persons cannot be adopting parents:

1. a person who has been deprived of parental rights or from whom a child has been removed without deprivation of parental rights;

2. a person who has been relieved of the duty of guardian due to inadequate performance of duties;

3. a person with restricted active legal capacity.

The same child may be adopted only by persons who are married to each other.

Aforementioned demands concerning possible adopting parent are the same both in cases of national and international adoption.

In practice the preliminary decision, whether the adopting parent is suitable or not, is made by County Government (Social and health care department), who shall also give his opinion about adoption in court.

In case of international adoption the preliminary decision, whether the adopting parent is suitable or not, is made by authorized organization, which is accepted by Minister of Social Affairs.

In Estonia adoption can be decided (creation of adoption relationship) only by court and court will make his decision only on the basis of the application of a person wishing to adopt.

Court solves the adoption application in interests of the child – court will decide whether adoption is suitable and in interests of the child or not and court will also ascertain all legal matters in order that the adoption could be possible (whether there are necessary consents given, etc.). Court will hear in the process also the opinion of County Government/ Ministry of Social Affairs.

7. Conditions to be adopted (possible differences between international and national adoption)

A child may be adopted only in the interests of the child. An adult cannot be adopted.

A child may be adopted with the written consent of the parents. A child may be adopted
without the consent of the parents, if they have been deprived of parental rights.

A child who is at least ten years of age may be adopted with his or her consent. The wishes of a child younger than ten years of age shall also be considered if the development level of the child so permits.

A child may be adopted without his or her consent, if the child lived in the family of the adopting parent before the adoption and does not know, that the adopting parent is not his or her parent.

In practice the preliminary decision, whether the adoption is suitable or not, is made by County Government (Social and health care department).

In case of international adoption the same principles apply.

International adoption can happen only with consent of Minister of Social Affairs.

Inter-country adoption shall occur primarily, if it is not possible to care for the child to the necessary extent in the Republic of Estonia. It means international adoption will come into consideration only after it has been confirmed, that it is not possible to find to the child adopting parents or a guardian in Estonia.

8. Process in order to hear the child in adoption procedure

According to Family Law Act § 79 a child who is at least ten years of age may be adopted only with his or her consent. The wishes of a child younger than ten years of age shall also be considered if the development level of the child so permits.

A child may be adopted without his or her consent, if the child lived in the family of the adopting parent before the adoption and does not know, that the adopting parent is not his or her parent.

In an adoption case, the court shall hear a child of at least seven years of age in the part pertaining to the adoption and the possible change of name and the court shall refuse to hear a child only with good reason (the law does not note the exact meaning of a good reason).

In practice the court always hears the child of at least seven years of age.

The preliminary hearing of child will be done by Child protection specialist of Social and health care department in the stage of matching the child and adopting parent.

9. Consents necessary for adoption

1. Child who is at least ten years of age may be adopted only with his or her consent. The wishes of a child younger than ten years of age shall also be considered if the development level of the child so permits.

A child may be adopted without his or her consent, if the child lived in the family of the adopting parent before the adoption and does not know, that the adopting parent is not his or her parent.

2. A child may be adopted only with the written consent of the parents (biological parents).
A child may be adopted without the consent of the parents, if they have been deprived of parental rights.

3. A child under guardianship may be adopted only with the written consent of the guardian (who is the legal representative of the child).

4. A married person may adopt only with the written consent of his or her spouse. Adoption may be effected without consent of the other spouse, if the conjugal relations of the spouses have terminated and they live apart.

5. A person who does not reside in Estonia may adopt an Estonian citizen residing in Estonia only with the consent of the Minister of Social Affairs (in practice all cases of international adoption need the consent of Minister of Social Affairs).

6. In practice usually sisters and brothers are not divided into different adoption families.

10. The moment (after childbirth) from when the mother of child has the right to give her consent to adoption

Current legislation of Estonia does not regulate the question at which moment after childbirth is the mother is authorised to give her consent to adoption, so this consent is possible to give from the moment the child is born.

It must be noted that also consent of father of the child is needed.

In bill (it is not in force yet) of Family Law Act there is prescribed a demand, that the child must be at least 30 days old in order the parent could give his/her consent to adoption.

11. Possibility to sign a blank consent (consent although the adopting family is not yet known)

Yes, a parent may give consent (in practice the consent is certified by notary) for adoption to a guardianship authority even if the adopting parent is not identified.

In practice most of the consents also are “anonymous”.

12. Possibility to ignore the refusal of required consent

No, generally it is not possible to ignore the refusal of consent required.

Exceptions:

1. According to Family Law Act § 78 cl 3 a child may be adopted without the consent of the parents if they have been deprived of parental rights. Decision will be made by court.

2. According to Family Law Act § 79 cl 2 a child may be adopted without his or her consent if the child lived in the family of the adopting parent before the adoption and does not know that the adopting parent is not his or her parent. Decision will be made by court.

3. According to Family Law Act § 80 cl 2 adoption may be effected without consent of the other spouse if the conjugal relations of the spouses have terminated and they live apart. Decision will be made by court.
13. Existence of an association representing the parents in Estonia

In Estonia, at current time, there is no association (authorized organization – see Study clause 3, sub-clause 5), who has the right to represent the parents (possible adopting parents).

There has been established private organizations (for example: MTÜ Oma Pere, Eesti Lastefond SA, MTÜ Eesti Kasuperede Liit), from where it is possible to get information/advice concerning adoption, but they have no legal right to represent the parents (these organizations have no state authorization).

14. Obligation to act by an association representing the parents

In national adoption there is no obligation to act by an association representing the parents, as there is no such association (see clause 13 of the Study).

In international adoption, according to Estonian law, there also is no obligation to act through association representing the parents, but in practice all cases of international adoption go through authorized organization (see Study clause 3, sub-clause 5).

15. Difference about age between adopting parent and adopted child

According to Family Law Act § 75 cl 1 adopting parent must be at least 25 (twenty five) years of age, who is capable of raising the child to be adopted, caring for the child and maintaining the child. A court may also permit a younger adult (person who is at least 18-years old) to be an adoptive parent.

According to Family Law Act § 74 cl 2 an adult (person who is at least 18-years old) cannot be adopted. So, child being adopted can be of age 0-17 years.

Estonian law does not stipulate no limits to age differences between adopting parent and adopted child, it is only important, that the adopting parent is capable of raising the child to be adopted, caring for the child and maintaining the child.

16. May two homosexual married people adopt

According to Family Law Act § 1 cl 1 a marriage can be contracted only between a man and a woman.

But according to Estonian law there are no restrictions that two homosexual married people cannot adopt. From practice, according to information we have, there has been no such cases in Estonia, when a child has been adopted by two homosexual married people.

17. May two homosexuals in cohabitation adopt

According to Family Law Act § 75 cl 3 the same child may be adopted only by persons who are married to each other.

But according to Estonian law there is no restrictions, that one homosexual cannot adopt.
2.8. **FINLAND**

1. **Introduction**

In the Finnish legislation the main legal provisions applicable to both national and intercountry adoption and adoption relationship are included in the Adoption Act and in Adoption Decree. The first statute providing adoption was enacted in 1925 mainly with purpose of child welfare of the orphans after the wartime. The statute in question was based on the principle of the so called weak adoption\(^\text{160}\). The 1925 Adoption Act was reformed in 1980 and again in 1985, when the provisions relating to the conflict of laws were added in the Act. Both statutes mentioned were, and the 1985 statute still is, based on the principle of the so called strong adoption\(^\text{161}\).

The latest reform of the Adoption Act came into force 1\(^\text{st}\) June 1997. The main purpose of the reform was to enforce on national level, the provisions of the Hague Convention on Protection of Children and Cooperation in respect of the Intercountry Adoption (later The Hague Convention) of which Finland is a party. An important issue to be noted is that another reform concerning the Finnish adoption legislation is pending at the moment. In March 2008, The Ministry of Justice appointed a working group to draft a legislative proposal related to inter family adoption in registered partnerships\(^\text{162}\). Aim is to give the Government Bill to the Parliament in the autumn of 2008. Also other amendments related to adoption legislation are under discussion, mainly concerning the developing and rationalizing the national and intercountry adoption process and permission procedure\(^\text{163}\). These issues will be discussed later in this paper in different contexts.

Finland is also a party to the United Nations Convention on the Rights of the Child. The article 21 of the Convention contains provisions concerning adoption. These provisions have been considered duly in the Finnish legislation, particularly emphasizing the child’s interest in the adoption process.

Being a member state of European Union, the legislation and legal practice adopted among the European Union has naturally great significance in Finland. Despite the fact Finland is not a party to the European Convention on the Adoption of Children, coming into force in 1968, Finland has duly harmonized its legislation in accordance with the Convention in question\(^\text{164}\). Finland is also a party to the European Convention on Human Rights and so the European Court of Human Rights (ECHR) has a jurisdiction to monitor compliance of the treaty in Finland. However, resolutions where Finland is concerned and which relate to adoption, has not been given by ECHR thus far.

\(^{160}\) Meaning that the judicially relevant family tie is to be formed only between the adoptee and the adopter(s) but not with the rest of the adopter’s family (see chapter 9).

\(^{161}\) Meaning that the adopted child is to be deemed the child of the adoptive parents and not of the former parents, as regards the legal effects of a family relationship (see chapter 9).

\(^{162}\) i.e. a partnership of two persons of the same sex which is registered as provided in the Act of Registered Partnerships. According to the Finnish legislation, the legal effects of a registered partnership are principally the same as of marriage. One of the main exceptions is that provisions of the Adoption Act on the right of a spouse to adopt do not apply in a registered partnership (ibid. Section 9(2)). Neither have the partners a right to adopt a child together.


2. Outline of the national adoption process

1. Adoption counselling

In national adoption both the adopter and the adopted come from Finland. National adoption process begins with adoption counselling. According to the Adoption Act the purpose of adoption counselling is to attend to the best interests of the child in matters concerning the adoption as well as, through consultation and other appropriate measures, to assist the child, the child’s parents and the adopters before the adoption is granted by a Court and, where necessary, also thereafter (Section 16). Special attention shall be paid to the ascertainment of whether there can be created between the person being adopted and the adopter a lasting parent-child relationship which is positive to the child. The attitude of the child to the adoption should be ascertained and the stability and permanence of his/her opinions assessed (Adoption Decree, Section 1.

The counselling is obligatory and free of charge. A parent of a minor, intending to give the child into adoption, and a person intending to adopt a minor, shall request adoption counselling from the municipal welfare body of his/her residence or from an adoption agency licensed by the Ministry of Health and Welfare by the adoption act (Section 28). Adoption counselling is given by the social workers of the municipal welfare body and the Save the Children association, which is the only individual agency in Finland to have received official permission from the Social and Health Ministry. Any kind of private arrangement of adoption (defined in law as illegal adoption brokering) is punishable with a fine. Adoption Act particularly prohibits offering publicly a child for adoption or an opportunity to give a child up for adoption, as well as placing child in a private home other than a parent or legal custodian with purpose of adoption and there to be brought up (see Section 53(1.).

According to the law (Section 18) adoption counselling shall include:

- Ascertaining whether the prerequisites of adoption exist.
- Placing the child with the adopter.
- Observing whether the placement of the child proves to be successful in view to the best interests of the child and, if the placement proves a failure, undertaking the necessary measures to safeguard the interests of the child.
- Seeing to it that the adopter promptly takes the steps necessary to have the adoption granted.

In addition, the adoption agency shall obtain from the appropriate municipal welfare body a statement concerning the circumstances of the child and the adopter.

Despite provisions mentioned above, the exact contents of adoption counselling have not been regulated. Social and Health Ministry has, however, published a guide for the personnel giving adoption counselling. In practice a minimum length for the adoption counselling has been required, as well as visits with the parties often enough. Data on how the Court takes into account the contents of the adoption counselling when granting the adoption or if the practice of the Courts is consistent regarding this issue is not available. However, it has been agreed that there is no need for exact provisions of the contents of the adoption counselling when taking into account variances in individual cases.

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166 Antila, p 9.
168 Antila, p. 9.
a) Granting an adoption

Having concluded the adoption counselling, the General Court of first instance grants the adoption (Adoption Act, Section 28). A matter concerning the granting of adoption shall be instituted by a written petition made by the adopter or the adopters together. The provider of adoption counselling has a duty to assist in the submission of the petition if he/she deems this to be in the best interests of the child and the adoption is not against the will of the child or a parent (Adoption Decree Section 4(2)).

Before a matter concerning the adoption of a minor child is taken up for consideration, an applicant habitually resident in Finland shall furnish proof that adoption counselling has been given (Adoption Act Section 29). For purposes of submitting, a certificate provided by the municipal welfare body or the adoption agency which provided the adoption counselling shall be issued to the effect that adoption counselling has been provided in accordance with the Adoption Act. The certificate shall contain the information, which according to the Act is a prerequisite for the granting of adoption. The certificate in question is valid for one year from the date of issue (Adoption Decree Section 4(1)). The Court shall, on its own initiative, order that all the evidence necessary to resolve a matter concerning the granting of adoption be produced, and where necessary hear all the persons who can provide information on a matter concerning adoption (Section 30).

Current provisions lead to the fact that all the relevant steps in the adoption process, particularly placing the adopted with the adopter, have already been taken before the matter comes to the Court by a petition. This is seen as a fault both from the child’s and adopter’s perspective in cases where there is not sufficient certainty, the adoption is in child’s interest or in case the provider of the adoption counselling sees the prerequisites for adoption lacking. This issue should be reconsidered in the law reform. One option to solve the problem is to establish a separate licensing authority to grant the permission for placing the child with the adopter, as is proceeded in the inter-country adoption process (see below 3.2).

2. Right of Appeal and the decline of adoption counselling

The applicant, the child and a person that has been heard under adoption act, shall have the right of appeal against the court's decision in a matter concerning the granting of adoption by the adoption act (section 32). This is to say that the right of Appeal is wide in adoption issues, with purpose of preserving the child’s interest.

There are no provisions of the possibility for a provider of adoption counselling (municipal welfare body or an adoption agency licensed by the Ministry of Health and Welfare) to refuse or to delay to offer adoption counselling for those wishing to adopt. However, in practice there have been cases where the provider has refused to offer counselling on the grounds the prerequisites for adoption clearly do not exist. In few resolutions Administrative Court has come into the conclusion that the provider of the counselling has no right to adjourn counselling once started on the grounds prerequisites do not exist. The purpose of the valid legislation is that the court of first instance is the only competent instance to make the decision whether the prerequisites for adoption are fulfilled or not. It has been considered, however, that law should provide for the decline of adoption counselling in certain cases, e.g. when a person wishing to adopt is 70 years or found guilty of sexual abuse of a child. According to the current legislation, a person has no right of Appeal due to the decision of a provider of adoption counselling if the provider is an adoption agency licensed by the Ministry of Health and Welfare. In case the provider is a municipal welfare body, a right of Appeal

169 ibid. p. 11.
170 ibid. p. 10.
171 e.g. Resolution of Helsinki Administrative Court given 17th February 2002.
exists. If the possibility for the decline of adoption counselling would be provided, also the right of appeal and access to Court should be granted due to the decisions of a licensed adoption agency.¹⁷²

**b) Outline of the inter-country adoption process**

1. **Inter-country adoption service**

According to the Convention on the Rights of the Child (art. 21 (b)) and the practice followed in Finland, the inter-country adoption is considered only as an alternative if the child cannot be placed in a foster or an adopting family or cannot in any suitable manner be cared for in the child's country of origin. The significance of the inter-country adoption in Finland has been increased notably. This is due to the fact that there is lack of minor children in Finland mainly because of the reduction in unwanted child birth.¹⁷³

As in national adoption, the adoption process in inter-country adoption begins with adoption counselling by the social workers of the municipal welfare body or other service provider. Besides adoption counselling a person habitually resident in Finland and wishing to adopt a child under 18 years of age habitually resident abroad shall request inter-country adoption service from a service provider (Adoption Act Section 24. This is to say that inter-country adoption service is not available if the person being adopted has attained 18 years.¹⁷⁴ Inter-country adoption service shall in Finland be provided by the municipal welfare bodies and other organisations which have been licensed by the Ministry of Health and Welfare (Section 21.. Service providers at the moment are the Social office of Helsinki, Save the Children association and Interpedia association.¹⁷⁵ The aim is that the inter-country adoption will be realized in an organized form controlling that the placement does not result in improper financial gain for those involved in it and that the child’s interest will be granted as required in the Convention on the Rights of the Child.¹⁷⁶ As in national adoption, any private arrangement of adoption has been made illegal. According to the Adoption Act a person who is not a service provider and arranges an adopter from Finland for a child living abroad or a child from abroad to be adopted in Finland shall be sentenced to fine for illegal adoption brokering (Section 53(2.).

According to the Adoption Act (Section 19) the purpose of inter-country adoption service is:

1. To provide for a child under 18 years of age habitually resident abroad and in need of adopting parents an adopter habitually resident in Finland.
2. To assist the parties in taking the steps necessary to have the adoption granted.
3. To provide help and support for the child and for the adopting parents, where necessary also after the adoption has been granted.

In addition, the inter-country adoption service may provide for a child under 18 years of age habitually resident in Finland and in need of adopting parents an adopter habitually resident abroad, if such adoption is in the best interests of the child. However, this last mentioned form of adoption is rare, though possible, for example in a situation where the relationship between the adopters resident abroad and the child resident in Finland has become close and comparable to a relationship between child and a parent.¹⁷⁷

¹⁷² Antila, p. 10.
The assignments of the intercountry adoption service provider are listed in the Adoption Decree (Section 10) and include among others the duty to give information on the prerequisites for inter-country adoption, see to it that the adopter requests adoption counselling in accordance with Adoption Act (see chapter 2.1., assist the adopter in the acquisition of the documents and certificates and see to the sending of these necessary documents abroad, as well as to cooperate with foreign service providers in line with its purpose defined in Adoption Act (see Section 19).

An adopter resident in Finland has to receive inter-country adoption service from a Finnish service provider\(^\text{178}\). The Finnish service provider, for one, may co-operate only with a foreign equivalent service provider approved by the Finnish Adoption Board (Adoption Act, Section 21.. In case a person wishes to adopt from a country where the Finnish service provider has no approved co-operation partner, the only choice left to the adopter is the so called independent adoption (see below chapter 3.4.. However, neither is the independent adoption possible if the country of the habitual residence of the adopted child is a party to the Hague Convention. This matter should also be reconsidered in the law reform. One option is to provide by law a possibility for the Board to grant a special permission in individual cases for a Finnish adoption counselling service provider to cooperate with a Foreign Service provider not approved by the Board.\(^\text{179}\)

2. Permission from the Finnish Adoption Board

Before an adoption is granted in Finland or abroad, the adopter shall obtain the permission of the Finnish Adoption Board of Inter-Country Adoption Affairs (the Finnish Adoption Board) and reports to the Ministry of Social Affairs and Health. The Finnish Adoption Board acts as a special expert authority in the field. The Board acts also as the central authority referred to in Article 6(1. of the Hague Convention (Adoption Act, Section 20(2.).

Reforms concerning the authority giving permission for inter-country adoption are also under discussion. This is based on the fact that variance in individual cases requires expertise and consistent practice in the permission procedure. Proposals put forward include transferring the permission procedure to another authority (e.g. the municipal welfare body, County Administrative Board or Health Care Supervision Centre) or simply enhancing the personnel of the Board.\(^\text{180}\)

The applicant needs to fill in an official application form made by the Board. The inter-country adoption service then sends the application form with its attachments (certificate on the adoption counselling, written dossier on the adopter,\(^\text{181}\) official certificate etc.) to the Board. The Board then estimates whether the requirements of an inter-country adoption are fulfilled or not. The Board can grant a permission to adopt a child by these application papers, make a request for more information or deny the permission.\(^\text{182}\) The Board may also impose a special prerequisite or restriction on the adoption (Adoption Act Section 27(3.).

Board's permission shall be valid for a limited period, not exceeding two years. Upon application the Board may extend the validity by a maximum of two years at a time. When extending the permission the Board has a duty to examine and confirm that the

\(^{178}\) Antila, p. 11.


\(^{180}\) Antila, p. 14-18.

\(^{181}\) According to Adoption Decree Section 5, in inter-country adoption a detailed dossier shall be compiled by social workers on the adopter, containing information on his/her identity, eligibility and suitability as an adopter, background, family, health and pertinent circumstances, social environment and the reasons for adoption, including an assessment on the age of the adoptee and other characteristics. The dossier referred shall be sent directly to the inter-country service provider.

\(^{182}\) Interpedia association http://www.interpedia.fi/adoptio/lupa.html
prerequisites for adoption still exist. However, if the child has within the period of validity of the permission been placed with the adopter, the permission shall continue to be valid until the adoption has been granted. The permission shall expire if the child is removed from the adopter owing to the failure of the placement (see Section 27(4.).

Permission once given for adoption may not be cancelled by the Board. However, it has been proposed, that to grant the child’s interest canceling the permission should be provided by law, for example in situation the adopter has been found guilty of sexual abuse of a child or taken ill seriously.

3. Granting an adoption

When the Board has given its permission for the adoption, the application documents are sent to the chosen contact abroad by the inter-country adoption service. The applicants can choose the country where they want to adopt a child. Normally the decision of granting the adoption is made in child’s country of origin before the child comes to Finland, owing that the country of origin has the best possibility to examine whether the prerequisites for adoption exist. The decision shall be valid in Finland without further measures (Adoption Act Section 38). The inter-country adoption service provider informs the Board, adoption counselling service provider, the Population Register Centre and the adopters on the decision and the adopters then travel abroad to get the child. However, in some cases the adoption may also be granted in the child’s country of origin after a certain period having placed the child with adopters in Finland. Especially in these situations, the inter-country adoption service have a duty together with the provider of adoption counselling to monitor the success of the placement and send the pertinent reports to the foreign service provider. And if the placement fails, assist the municipal welfare body or the adoption agency in measures relating to the child (see Adoption Decree Section 10(1.) and Adoption Act Section 18(1.).

However, the Adoption Act also provides in inter-country adoption the jurisdiction for Finnish courts to grant the adoption if the adopters are or the person being adopted is habitually resident in Finland (Section 34(1.). Finnish courts shall also have jurisdiction if the person being adopted or either of the adopters is a Finnish citizen and the authorities of the state where the adopters are or the person being adopted is habitually resident have no jurisdiction over the matter or there is another good reason for Finnish Court to have jurisdiction (Section 34(2.). If the issue is tried in Finland procedure in a matter concerning the granting of adoption shall be governed by Finnish law, as well as the prerequisites of adoption (Section 35). It should be noted, that before granting the adoption the legal effects of adoption are non-existent and the child, for example, is not entitled to inheritance. To grant the child’s interest, the provider of adoption counselling has a duty to see to it that the adopter promptly takes the steps necessary to have the adoption granted (Section 18(1.).

4. Independent adoption

According to the Adoption Act Section 41(1.), the Helsinki Court of Appeal may confirm an adoption granted in a foreign state if, at the time of the granting of the adoption, either of the adopters or the person being adopted, by reason of habitual residence, domicile or citizenship, had such a connection with the state in which the adoption was granted that the authorities of said state can be deemed to have had sufficient cause to exercise jurisdiction over the matter. In other words adoption is realized in the country of habitual residence of the child, without Finnish inter-country adoption service and adoption counselling and without the permission from the Board. In the government

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184 Antila, p. 19.
proposal\textsuperscript{187} it was emphasized, that the Court of Appeal has a right but not a duty, according to its discretion, to examine the material prerequisites for adoption when confirming adoption. The purpose is to prevent evading the law and the permission of the Board.\textsuperscript{188}

The interest towards the independent adoption procedure has been growing among adopters.\textsuperscript{189} It has been noted, that the possibility for independent adoption without court’s legal duty to examine the material prerequisites is a risky choice and a fault in the legislation; the officials have the possibility to estimate if the adoption is in the child’s interest only afterwards, and there also exists a risk of human trafficking.\textsuperscript{190} This can also be seen as a fault in perspective of the Convention on Rights of the Child, which requires i.e. to ensure that the inter-country adoption of a child is authorized only by competent authorities and that the adoption is permissible in view of the child’s status (article 21 (a)). In any event, it has been suggested that the possibility for independent adoption should be fully prohibited or at least a legal duty for a court to examine the material prerequisites should be enacted in order to grant the child’s interest\textsuperscript{191}.

5.Right of Appeal

The decision of the Finnish Adoption Board is an administrative decision given by a Finnish authority and so subject to the right of Appeal. The appellate Court is the Administrative Court (and the Supreme Administrative Court) instead of a General Court.

In case a Finnish Court grants the intercountry adoption, the right of appeal is with the same contents as discussed in chapter 2.3. What comes to the confirmation of an adoption granted in a foreign state (so called independent adoption), the decisions of the Helsinki Court of Appeal in these matters are not subject to appeal (Section 53(2.). However, it has been noted out that this prohibition against appeal should be reconsidered taking into account the fundamental right of each person to a right of appeal, granted in the Constitution (Section 21.\textsuperscript{192})

c) Post adoption follow-ups

As mentioned before, according to the Adoption Act (Section 16) the purpose of adoption counselling is to attend the best interests of the child as well as assist the child, the child’s parents and the adopters before the adoption is granted and, where necessary, also thereafter. Also in the inter-country adoption service the purpose is to provide help and support where necessary, also after the adoption has been granted (Section 19). This is to say that adoption counselling continues both after the placing of the child with the adopter as well as after court’s granting and the service provider has a duty to observe whether the placement of the child proves to be successful in view of the child and, if resulting a failure, a duty to undertake the necessary measures to safeguard the interests of the child (Section 18).

Especially in the intercountry adoption, the officers of the child’s country of origin require reports and other information (e.g. pictures) of the child during certain period of time. Reports are drafted by social workers or the adoption counselling provider on the grounds of home visits. The duration of the follow-up and the amount of the reports depend on the child’s country of origin.\textsuperscript{193}

\textsuperscript{187} Government Bill 107/1984, p. 25.
\textsuperscript{188} Antila, p. 21.
\textsuperscript{189} Ibid., p. 21.
\textsuperscript{190} Ibid., p. 21 and 13.
\textsuperscript{191} Ibid., p. 22.
\textsuperscript{192} Ibid., p. 25.
\textsuperscript{193} Adoptioperheet association http://www.adoptioperheet.fi/tietoa_adoptiosta.html 23\textsuperscript{rd} April 2008.
In addition, it has been enacted in Adoption Act that the documents drafted or received by a municipal welfare body, an adoption agency and a service provider in connection with adoption counselling or inter-country adoption service and relating to the person being adopted, the parents and the adopters shall be archived for a minimum of 100 years (Section 49a(1.). A person being adopted, his/her custodian and the descendants of the person being adopted shall have the right of appropriately supervised access to documents. However, access to the documents may be denied, if it may be dangerous to the health or development of the person being adopted or if access would otherwise be contrary to the interest of the person being adopted or another private interest (Section 49a(3.). Above-mentioned provisions are in accordance with the Hague Convention which requires the competent authorities to ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved and that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State (Article 30).194

d) Nordic and European adoption

1. Nordic adoption

In adoptions between Nordic countries the Convention of Finland, Denmark, Iceland, Norway and Sweden on Rules of Private International Law relating to Marriage, Adoption and Guardianship195 is to be applied. Provisions of the Convention have been included in the Adoption Act.

When both the person being adopted and the adopters are citizens of Finland, Denmark, Iceland, Norway or Sweden, Finnish courts shall have jurisdiction when granting adoption only in case the domicile of either of the adopters is in Finland (Section 34(3.). This is an exception to the jurisdiction of Finnish courts provided in Sections 34(1.) and (2.) (see chapter 3.3.. An adoption or revocation of adoption granted in other Nordic country in accordance with the Convention shall be valid in Finland without further measures (Section 40). This is to say that no permission of the Board is required for the adoption.196 Until 1996 no inter-country adoption service or permission of the Board was required in Nordic adoptions. Now these provisions have been reversed in order to grant a duly adoption process in child’s interest.

A procedural issue to be noted in Nordic adoptions is that in case the person being adopted is under 18 years and has habitual residence in a country party to the Convention, before granting the adoption the court shall hear the child welfare officials of the child’s country of origin (article 12 of the Convention). In addition it can be mentioned that both the procedural and substantial (i.e. the prerequisites for adoption) legislation in Nordic countries is congruent and eases adoptions between Nordic countries.197

2. European adoption

According to the valid legislation concerning adoption, adoptions among the European countries and European Union are treated similarly as other inter-country adoptions. Finland has harmonized duly its legislation in accordance with the European Convention on the Adoption of Children, but the effects of the Convention have no separate significance in European adoption process.

196 Ottolapsineuvonta. Oпас оффолапсиневонан антапиле, p. 43.
The case apart is that among European countries there exists co-operation concerning adoption processes. To give an example, EurAdopt is an association of adoption organizations in 12 Western European countries of which the Finnish adoption organization Interpedia is a (founder) member. The purpose of the organization is to supervise its member organizations and ethics of their adoption activities.198

e) Organs and services partaking in the adoption process.

1. The Ministry of Social Affairs and Health directs and guides the development and policies of social protection, social welfare and health care. In adoption issues the general planning, supervision and control of adoption counselling and inter-country adoption service belong to the domain of the Ministry (Adoption Act Sections 17 and 20).

2. Municipal welfare bodies and adoption agencies have a social nature. Social workers of the municipal welfare body are in charge of the adoption counselling before and after the adoption. Adoption agencies (e.g. Save the Children association) are licensed by the Ministry of Social Affairs and Health to provide same services as the municipal welfare body.

3. Inter-Country Adoption Service has a social nature in the inter-country adoption process. Inter-country adoption service shall be provided by the municipal welfare bodies and other organizations (at the moment the Social office of Helsinki, Save the Children association and Interpedia association), which have been licensed by the Ministry of Health and Welfare.

4. The Finnish Board of Inter-Country Adoption Affairs (the Finnish Adoption Board) has a social and judicial nature and reports to the Ministry of Social Affairs and Health. The Board was founded in 1985 and acts as a special expert authority in the field of inter-country adoption. The Board also acts as the central authority referred to in the Hague Convention. Board’s assignments and assemblage are defined in the Decree of The Finnish Board of Inter-Country Adoption Affairs. The Board grants the permission for inter-country adoption, approves the co-operative organs abroad, gives statements as an expert and makes initiatives to improve the adoption process, among other things.

5. The Court of first instance has judicial nature. After the adoption counselling the court makes the final estimation whether the prerequisites for adoption required in law are fulfilled. If so, the court grants the adoption.

f) Prerequisites for adoption

According to the general provision on prerequisites for adoption of the Adoption Act, adoption of a child may be granted if it is deemed to be in the best interests of the child and if it has been established that the child will be well taken care of and brought up. A petition for the granting of adoption shall contain proof that the child is in the care of the adopter or that the latter is otherwise in charge of the care and upbringing of the child (Section 2..)

1. Age

To begin with, an adopter shall have attained the age of 25 years (Adoption Act Section 5(1.). However, this age limit does not apply to the following situations. Namely, adoption may be granted if the adopter has attained the age of 18 years and the person being adopted is either a child of his/her spouse or his/her own child who has

previously been adopted by someone else (Section 5(2.). Adoption can be acceptable also if there are other exceptional grounds for the adoption (Section 5(2.). As an exceptional ground may be considered a situation where a child has become an orphan and a sibling under 25 years is willing to adopt the child.

There are no provisions in the law of the minimum age difference between the adopter and the person being adopted. This issue has been left to the discretion of the court taking into account the child’s interest and does not mean that no age difference is required. Neither there are provisions on the maximum age of the adopter. In legal practice these issues have often been considered, though no consistent legal practice exists. For example in resolution 2005: 54, the Supreme Administrative Court came into the conclusion that the Board had duly denied the application on adoption on the grounds of age difference between the person being adopted and the adopters, arguing that adopter’s age should not create a risk factor before the child reaches majority and so the adoption would not be in the child’s interest as required in Adoption Act Section 2. In this case the adopters in marriage were 52 and 56 years and the person being adopted from China under 2 years old. Both the Board and the Court invoked the practice of the Board according to which the age difference between the person being adopted and the adopter should not exceed 45 years.

The Finnish Adoption Act provides also for the adoption of an adult. However, the prerequisites are that while still a minor, the person being adopted was taken care of and brought up by the adopter and that it was not possible to grant adoption while the child was a minor, or that there are other comparable exceptional grounds for the adoption (Section 2(2.). Legal practice shows us an example. In the resolution 2007:66, the Supreme Court came into the conclusion that adoption 12 years after the person being adopted had reached majority was possible owing to exceptional grounds mentioned in Section 2(2.. In this case, the person being adopted had lived since he was four years old together with his mother, who had the single custody of the child and with her new spouse, who applied for granting an adoption 12 years after the person being adopted had reached majority. Both the Court of first instance and the Court of Appeal made the decision of rejecting. The Supreme Court argued its decision of approval that while still a minor the adoption would have been difficult because of the resistance of the biological father and after reaching majority there was still reason for discretion taking into account the resistance of the biological father. In addition, there was no reasonable doubt that the adoption would be against the purpose of the Adoption Act.

2. Restrictions on adopting together

A person may always adopt alone having fulfilled prerequisites provided in law and if the main purpose of adoption, the child’s interest, is to be granted. Instead there are restrictions for adopting together. According to Section 6 of the Adoption Act, while married, spouses may adopt a child only jointly. That is to say that being married, adopting together is the main rule. However, there are two exceptions. Firstly, a spouse may alone adopt a child of the other spouse or his/her own child who has previously been adopted by someone else (Section 6(2.). Secondly, a spouse may alone adopt a child if the other spouse cannot validly express his/her will due to an illness or handicap or if the whereabouts of the other spouse are unknown (Section 6(3.).

Unmarried persons may not adopt a child jointly (Section 7). This is to say that persons just cohabiting together are not allowed to adopt together. Lawful excuse does not exist, however, for the other to adopt alone. Neither are persons in registered

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199 Generally adopting own child is prohibited. According to Section 4 no person shall adopt his/her own child. However, a person may adopt his/her own child who has previously been adopted by someone else.

200 Kangas, p. 71.

201 Ibid., p. 71.

partnership (persons of the same sex) allowed to adopt together according to the valid legislation nor have they possibility to adopt the child of the other partner. As mentioned in Chapter 1, law reform concerning this latter matter is pending at the moment. According to the government platform it should be provided by law that persons living in registered partnership are allowed to adopt the child of the other partner.

3. Ban on remuneration

According to the Adoption Act adoption shall not be granted if any remuneration for the adoption has been given or promised or if someone other than the adopter has, with a view to the adoption being granted, made or undertaken to make remunerative payments for the maintenance of the child. Any contract or commitment concerning the payment of remuneration or maintenance mentioned is void (Section 3). This is to say that, for instance, a biological parent may not underwrite to pay maintenance for the child adopted. The purpose of adoption is not to show profit of improper financial gain for those involved in it, as provided also in the Convention on the Rights of the Child and The Hague Convention.

g) Consent to the adoption

Consent to the adoption, of both the person adopted and their (biological) parents is a prerequisite for adoption. However, because of its relevant nature in the adoption process, it is convenient to discuss the issue in its own chapter.

1. Consent of the person being adopted

According to Adoption Act, adoption may not be granted without the consent of the person being adopted if he/she has attained the age of 12 years (Section 8(1)). The consent of the person being adopted is, however, not necessary if he/she cannot express his/her will due to an illness or handicap. In addition, adoption may not be granted against the will of a child who has not attained the age of 12 years if the child is so mature that his/her will can be taken into consideration (Section 12(2)).

2. Consent of the adoption subject’s parents

According to the Adoption Act the adoption of a child may not be granted unless his/her (biological) parents have consented thereto (Section 9). The fact that the parent has no custody or guardianship on the child or if between the parent and the child there is no interaction has no relevance to the matter. However, the child's custodian and guardian shall be reserved an opportunity to be heard in a matter concerning the granting of adoption (Section 31, see Chapter 9). No specific consent is required from the custodian or guardian however.

There are few exceptions to the main rule provided. Firstly, for exceptional reasons, adoption may be granted even if the consent of the parents or one of them has not been obtained or if a previous consent has been withdrawn, if it is deemed that the adoption obviously and definitely is in the best interests of the child and that the refusal or withdrawal of consent by the parent(s) is not sufficiently justified, taking into account the best interests of the child and the interaction between the child and the parent(s), their mutual relationship and its nature (Section 9(2)). Secondly, in accordance with the prerequisites provided in Section mentioned above, adoption may also be granted if a parent cannot validly express his/her will due to an illness or handicap or if the whereabouts of the parent are unknown (Section 9(3)).

203 Act of Registered Partnerships, Section 9.
204 Resolution by Ministry of Justice on appointing a working group to draft provisions on inter-family adoption in registered partnership, dated 10 March 2008.
205 Kangas, p. 74.
206 Gottberg, p. 253.
It is noticeable, that the interaction and relationship between a child and a parent carry a lot of weight. In legal practice, adoption has been granted without parent’s consent and despite parent’s resistance only in cases where the relationship between the child and the parent has totally broken\textsuperscript{207}. In resolution 1981.II-1985 the Supreme Court considered that there were no premises for adoption without the father’s consent and despite his resistance in the circumstances where two boys in the age of 14 and 15 had given their own consent to the adoption. The biological father still had a good relationship with his children and they were regularly seeing each other. The fact that the stepfather willing to adopt had been largely taking care of the children was not seen as an exceptional reason weighty enough.

In resolution 1987:41, the Supreme Court considered, likewise the lower courts, that an exceptional reason to grant adoption existed despite the biological mother’s resistance. The situation was that the mother had been discharged from the child custody and the child had lived for years in a foster family, which now applied, for the adoption. The Supreme Court argued that the adoption was clearly in the child’s interest, especially taking into account the relationship between the child and biological mother. As mentioned earlier, the European Court of Human Rights has not given thus far any resolutions where Finland is concerned and which relate to adoption. However, it is worth mentioning ECHR resolution Per Söderbäck v. Sweden 28/10/1998, which may be analogically considered in Finland as well. In its resolution the ECHR came into the unanimous conclusion that the Swedish court having granted adoption against father’s will and despite his resistance had not violated the article 8 on protection of family life of the European Convention on Human Rights. ECHR pointed out that the child had been living since his birth alone with his mother who had single custody on the child and since the child was eight months old together with his mother and his new adopter father. Biological father who appealed against the decision to ECHR hardly had interaction with the child. ECHR argued that taking into account the purpose of the adoption and the child’s interest the consequences of the adoption for the appellant were not disproportionate.

The third exception on the prerequisite of the adoption subject’s parents' consent of is that if the parents’ consent to the granting of adoption has not been obtained because the institution of adoption is not legally regulated in the state in which the consent should be given, the adoption may be granted if it obviously corresponds to the will of the parents (Section 36(2.).

3. Blank consent

According to the Finnish legislation, a blank consent (consent in blanco), a consent before the potential adopter is forthcoming, is possible, as far as the other prerequisites for receiving the consent are fulfilled (see below chapter 8.4.).

4. Receiving the consent

Before the consent is given, a consultation shall be arranged with the parent and the purpose, prerequisites and legal consequences of adoption explained to them, as well as the social services and financial benefits which are available to the parent and the child shall be explained to (Section 10(2.). The consent of the child’s mother shall not be accepted before she has sufficiently recovered from the delivery and in any case no earlier than eight weeks after the birth of the child (Section 10(3.).

Any consent to adoption shall be recorded in a document, which shall be dated and signed by the person who has given the consent (Adoption Act Section 11.). This is to

\textsuperscript{207} ibid., p. 254.
say that the consent shall be in written. The consent of the parent to adoption shall be
given personally to the official who provides adoption counselling in the municipality
(municipal welfare body) or to the appropriate employee of an adoption agency
providing adoption counselling (Adoption Act Section 10 and Adoption Decree Section
2.).

Abroad, the consent shall be given to an official who is competent to act as a notary
public (Adoption Act Section 10). Alternatively, the consent may be given in
accordance with the formalities and procedure stipulated by the law of their state
(Adoption Act Section 36(1.).

h) Hearing of the parties in the adoption process

A significant procedural principle, a principle for the right to be heard\(^\text{208}\), is essential
also in the adoption process. As mentioned before, according to the Adoption Act the
court has a duty, on its own initiative, to hear all the persons who can provide
information on a matter concerning adoption (see Section 30(2.). In addition, it has
been particularly provisioned that certain persons shall always be reserved an
opportunity to be heard. Firstly, the parents of a minor child as well as the child’s
custodian and guardian shall be reserved an opportunity to be heard in a matter
concerning the granting of adoption (Section 31(1.). Secondly, if the child’s parent is a
minor or has been declared legally incompetent or if the adopter (the applicant) has
been declared legally incompetent, also the custodian and guardian of the parent and
the adopter shall be reserved an opportunity to be heard (Section 31(2.).

Exceptionally, however, a hearing of the child’s parents and the child’s custodian and
guardian is not necessary if the summons cannot be served on the person to be heard
or the opinion of the person to be heard has already earlier been reliably ascertained or
if hearing him/her is otherwise to be deemed unnecessary for resolving the matter
(Section 32.. In the legislative materials it has been emphasized that hearing in the
court should be exceptional if the adopted is a minor owing that this might be a scary
experience. Also in situation where a parent has given a blank consent hearing is not
necessary owing that a parent would loose the anonymity intended in blank consent\(^\text{209}\).

i) Legal effects of adoption in the Finnish legislation

Legal effects of the adoption come into being after the court has granted the adoption.
The Adoption Acts have no retroactive effect. This is to say that the legal effects vary
slightly depending on if the adoption has been granted before the year 1980 when the
law applicable is the 1925 Adoption Act, or during the time from 1\(^{st}\) January 1980 to 1\(^{st}\)
May 1985 when the law applicable is the 1980 Adoption Act, or after 1\(^{st}\) May 1985
when the law applicable is the 1985 Adoption Act. The main significance of the above
mentioned prohibition of retroactive effect is the application of different provisions of
inheritance\(^\text{210}\).

1. Right of inheritance

The Adoption Act in force (as well as the 1980 Adoption Act) is based on the principle
of the so called strong adoption, which means that the person adopted shall be
deemed the child of the adopting parents and not of the former parents, as regards the
legal effects of a family or in-law relationship, unless otherwise expressly provided by
law or unless otherwise follows from the nature of the adoption relationship (Section
12(1.). This is to say that if the adoption has been granted in 1\(^{st}\) January 1980 or after,
the adopted child and the child of the adopted is legally comparable to a biological child
in the adopter family and entitled to inheritance after the adopter as a direct

\(^\text{208}\) Also known as the contradictory principle.
\(^\text{209}\) Kangas, p. 78.
\(^\text{210}\) Kangas, p. 78-79.
descendant provided in the Code of Inheritance in force\textsuperscript{211}, as well as the adopter family is entitled to inheritance after the adopted child\textsuperscript{212}.

However, if a court has granted an adoption before 1st January 1980 the adopted child's right of inheritance and the right to inherit the adopted child shall be governed by the law then in force (Section 57(1.). In this so called weak adoption, the family tie has been formed only with the person being adopted and the adopter(s) but not with the rest of the adopter's family. This is to say that the person being adopted is entitled to inheritance only from the adopter(s). The relationship with regard to the family law has not been broken with the biological family of the person being adopted and so the person being adopted is also entitled to inheritance from the biological family.\textsuperscript{213}

However, the law applicable to the adoption relationship may be changed in case the adoption has been granted before 1\textsuperscript{st} January 1980. According to the Adoption Act the court shall, upon petition of the adoptive parent, confirm that the adoption relationship is governed by the provisions of the Adoption Act in force (Section 56(3.). Changing the law applicable requires the consent of the child with the same contents as consent to adoption (see Section 56(3. and chapter 7).

It has been noted out that the existence of the different statues with different legal effects regarding inheritance causes problems in the distribution of inheritance. In the law reform under discussion has been emphasized that derogation of these transition provision discussed above is needed and the legal effects of adoptions granted in different dates to be harmonized at last.\textsuperscript{214}

2. Child custody and guardianship

Since 1984 the custody and guardianship of the child has been treated separately in Finnish legislation. The notion of child custody is primary to the notion of guardianship.\textsuperscript{215} According to the Child Custody and Right of Access Act the purpose of child custody is to grant the child a balanced development and well-being taking into account the individual needs and wishes of the child (see Section 1.). Child custody includes all the most significant issues concerning child's person. Instead, according to the Guardianship Services Act, the purpose of guardianship is to look after the financial rights and interests of persons who cannot themselves take care of their financial affairs owing to e.g. incompetency (Section 1(1.). An incompetent person is defined as a person under 18 years of age or a person who has attained the age of 18 years but who has been declared incompetent (Section 2.).

Despite this separation, however, the child custody and guardianship are rarely in different hands. According to the Child Custody and Right of Access Act child custody belongs primarily to the parent(s) of the child and secondarily to persons specifically entrusted with the custody of the child. Child custody shall end when the child attains 18 years or earlier if the child gets married (see Section 3.). According to the Guardianship Services Act the custodians of a minor shall also be his/her guardians, unless otherwise provided. However, a court may dismiss a custodian from his/her task as guardian and, where necessary, appoint another person as the guardian of the minor (Section 4).

On the account that the adopted child is fully deemed to be the child of the adoptive parents and not of the former parents, the adoptive parents become custodians and

\textsuperscript{211} According to the Code of Inheritance Each child shall receive an equal share of the inheritance. If a child has died, his or her descendants shall take his or her place and each branch shall receive an equal share (Section 1.).
\textsuperscript{212} If the decedent is not survived by any direct descendants, his or her father and mother shall each receive one half of the inheritance (Code of Inheritance Section 2.).
\textsuperscript{213} Antila, p. 22
\textsuperscript{214} Ibid, p. 22.23
\textsuperscript{215} Gottberg, p. 162.
guardians of the minor by the law itself and so the custody and guardianship of the former parents ends without further measures\textsuperscript{216}.

3. Obligation to provide maintenance

According to the Child Maintenance Act the parents of the child shall have the obligation to maintain the child in accordance to one’s ability (Section 2.). The fact that a parent may have been discharged from custody and/or guardianship of the child has no relevance to the matter. The obligation belongs only and merely to the child’s biological parents\textsuperscript{217}. Every child has a subjective right for maintenance until having reached his/her majority (18 years) (See section 3.). If a parent is not participating in the maintenance of the child, the parent may be obligated to pay maintenance by an affirmed agreement of the parties or by the decision of the court (Section 4).

However, after an adoption relationship has been created, the child's former parents are discharged from their obligation to maintain the child (Adoption Act Section 14(1.). This is to say that the obligation to maintain the adopted child is passed fully to the adoptive parents. As discussed in Chapter 7.3, the Adoption Act specifically prohibits any kind of remunerative payments (e.g. from the biological parent) for the maintenance of the child, this being an obstacle for granting adoption.

If the child’s former parent has contractually agreed, or been judicially ordered, to pay maintenance for the child in accordance with the Child Maintenance Act, that parent shall be discharged from the obligation to make the payments that fall due after the adoption. If the maintenance has been fixed to be paid in a lump sum, and the payment has not been made before the adoption, the parent shall be discharged from the obligation to make the payment (Section 14(2.).

4. Surname of the person adopted

The surname of a person adopted is subject to the provisions of the Names Act (Adoption Act Section 13.). According to the Names Act after granting the adoption the adopted child shall have the surname of the adopter or the common surname of the adopters (Section 3(1.). These provisions are peremptory and so the parties are not allowed to agree otherwise. In case the adopters have no common surname the adopted child shall have the surname of either adopter notified to the court granting the adoption. However, in case the adopters already have one minor child in common custody, the adopted child shall have the same surname as the prior minor, in other words the new sibling of the adopted child, has. This is due to the so-called first-born rule\textsuperscript{218}, according to which full siblings with the same parents and custodians shall always have the same surname (Names Act Section 2(2.).

Exceptionally, the court may decide that the adopted child may keep his/her own surname if this is considered to be in the child’s interest when taking into account child’s age, the wishes of the adopter(s) and other relevant circumstances (Section 3(2.). However, in case the adopted child has kept his/her own personal surname, the surname shall not be passed to his/her new siblings on the grounds of the so-called first-born rule (Section 3(2.).

It must be emphasized that provisions described above are not applicable when adopting a person who has attained 18 years. In adoption of an adult, the adopted person keeps his/her own original surname without exceptions\textsuperscript{219}. A case apart is that adopted adult may change his own surname to be the same as the adopter’s in accordance with the Names Act Chapter 4.

\textsuperscript{216} Kangas, p. 83.
\textsuperscript{217} Gottberg, p. 195.
\textsuperscript{218} Gottberg, p. 245 and 247.
\textsuperscript{219} Government Bill 236/1984, p. 22.
5. Religion of the adopted person

The decision of the court in a matter granting adoption has no direct effect on the religion of the adopted child. Despite granting adoption the religious status of the child stays the same as before the decision.220 However, according to the Act on the Freedom of Religion custodians of a child decide together on the religious status of a child (Section 3.. However, if the child has attained 12 years he/she may be declared to join or resign a religious community only with his/her own consent. In addition, a child himself having attained 15 years may with a written consent of his/her custodians join or resign a religious community.

6. Citizenship of the adopted person

According to the Nationality Act, coming into force 1st June 2003, adopted child under 12 years of age at least one of whose adoptive parents is a Finnish citizen acquires Finnish citizenship through adoption as of the date the adoption is valid in Finland (Section 10). This is to say that adoption process must be concluded until the child acquires the citizenship. In intercountry adoption it is possible to proceed in two phases: Child custody may be entrusted to the adopter(s) while waiting for the decision of the child’s country of origin in the matter of granting adoption. Purpose of this provision is that acquiring citizenship by the law itself approximates the legal status of adopted child to status of a biological child and so enhances legal equality between the children.221

If the adopted child has reached the age of 12 years before adoption, he/she may acquire Finnish citizenship by a declaration if at least one of the adoptive parents is a Finnish citizen and the adoption is valid in Finland (Section 27). This provision enables acquiring a dual nationality for the adopted child if in the child’s country of origin dual nationality is allowed222.

An adopted child who is under 12 years of age will acquire Finnish citizenship by declaration if the decision on adoption was made before the entry into force of Nationality Act, thus 1st June 2003. It is also required that at least one of the adoptive parents is a Finnish citizen and that the adoption is valid in Finland. A declaration shall be made within five years of the entry into force of Nationality Act (Section 59). Accordingly, the declaration in the last mentioned situation shall be made at the latest 1st June 2008.

In addition, it must be emphasized that an adopted child who has reached the age of 15 years cannot acquire Finnish citizenship on declaration if he/she has stated objection to being granted citizenship. However, the declaration can be approved in spite of objections if this is deemed to be the best interest of the child (Nationality Act Section 5(2.).

7. Marriage between the adopter and the adopted person

According to the Finnish legislation a person shall not marry or register a partnership with his/her direct ascendants or direct descendants, nor with siblings or half-siblings (Marriage Act Section 7 and Act of Registered Partnership Section 2.. Despite the fact strong adoption breaks all judicial family ties to the biological family, an adopted child shall not, however, marry or register a partnership with his/her biological family member after the adoption.223 An adoptive parent and an adopted child shall not intermarry either. An adoption relationship is not, however, an absolute marriage or registered partnership impediment. Namely, the Ministry of Justice may for especially

220 Kangas, p. 70-71.
222 Ibid.
223 Kangas, p. 70.
weighty reasons grant a dispensation for an adoption parent and an adopted child to marry (Marriage Act Section 8, Act of Registered Partnership Section 2.)

In case the adopter and the adopted person marry each other the legal effects of adoption terminate. However, the termination of the adoption relationship shall not create a legal relationship between the adopted person and his/her former parents or their relatives (Adoption Act Section 15).

j) Revocation of adoption

According to the Adoption Act in force, the adoption relationship is irrevocable. Adoption Act 1925 allowed revocation. The main exception to the prohibition of the retroactive effect of the Adoption Act discussed in Chapter 10 is the prohibition to revoke adoption. This is to say that an adoption relationship created before the entry into force of the Adoption Act 1985 cannot be revoked by judicial decision (Section 56(2.). Retroactive effect of the principle of irrevocability of adoption was based on arguments that the irrevocability is one of the most significant principles of the new legislation, there were only low number of revocations during the period of validity of the Act 1925 and that preventing the possibility for adopters to disinherit the adopted person has a great importance. It is common, that insulting behaviour of the adopted child results in adopter(s) interest disinheriting the adopted.

However, the irrevocability is not unexceptional. Firstly, as mentioned in chapter 10.6, the Ministry of Justice may for especially weighty reasons grant a dispensation for an adoptive parent and an adopted person to marry or register a partnership. This causes the termination of the adoption and its legal effects. Secondly, re-adoption of an adopted terminates the prior adoption and adoption relationship by the law itself.

k) Recognition of foreign adoptions

1. Recognition of granting adoption

A general provision of the Adoption Act provides that decision or other judicial act in a foreign state may be deemed to constitute the granting of adoption if its essential purpose is to create a relationship of child and parent even if the legal effects of the decision or act in the said state do not correspond to the legal effects of adoption under Finnish law (Section 37(2.).

As mentioned in this paper earlier (especially in Chapter 3.3. an inter-country adoption granted in a foreign state for which a permission of the Finnish Adoption Board has been duly granted shall be valid in Finland without further measures (see Section 38(2.).

Also an adoption granted in a foreign state shall be valid in Finland without further measures if, at the time of the granting of the adoption, both adopters were either habitually resident or domiciled in the said state or were citizens of that state, or if the adoption is valid in the state in which the adopters were habitually resident or domiciled at the time of the granting of the adoption (Section 38(1.). However, the requirements required in Section 38(1. do not apply to an adoption granted in a contracting state of the Hague Convention and certified there as having been made in accordance with the Hague Convention (Section 38(3.). These decisions are also valid in Finland without further measures. This provision is in accordance with the article 23(1. of the Hague Convention. If an adoption granted in a foreign state does not fulfill the requirements mentioned above, it shall be valid in Finland only if it is confirmed by the Helsinki Court of Appeal (Section 38(4.).

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224 Kangas, p. 79.
225 Ibid., p. 70.
2. Recognition of revocation of adoption

Despite the fact Finnish legislation is forbidding towards the revocation of adoption, Finland does recognize revocation of adoption granted in a foreign state in certain situations. The requirements are, however, stricter than in recognition of granting an adoption\textsuperscript{226}. A revocation granted in a foreign state shall be valid in Finland without special confirmation if, at the time of the revocation, the adopted person and both adoptive parents were either domiciled in the said state or were citizens of that state or if the revocation is valid in the states in which, at the time of the revocation, the adopted person and the adoptive parents were domiciled (Section 39(1.). Both the adopted person and both adoptive parents shall have been domiciled in the said state or citizens of the state in question, habitually resident does not fulfill the requirement. Any other revocation of adoption granted in a foreign state shall be valid in Finland only if it is confirmed by the Helsinki Court of Appeal (Section 39(2.).

Notwithstanding the above mentioned provisions adoption or its revocation granted in a Nordic state shall be valid in Finland without further measures (see Chapter 5.1).

2.9. FRANCE

1- Foreword

It is to be noted that the legislation in force concerning adoption in France was made the subject of a parliamentary report ordered by the president of the Republic on March 19\textsuperscript{th}, 2008.

This report notes a reduction of 24\% in international adoptions in France since 2005. The parliamentary report underlines the weak mobilization of the diplomatic network and the absence of co-operative funding, which could support humanitarian action sufficient to support adoption requests. According to this report, these failings would penalize France.

The report recommends a two year governmental action plan concerning:

- The introduction of a maximum variation of 45 years between the age of the child and the age of the youngest adopting person. This rule finds inspiration in the specifications of several original countries.

- The procedure of trial of new certification. This would be made up of four collective preparation sessions for the adopting families before their evaluation.

The installation of a central authority in charge of coordinating the actions of the French Agency for adoption (AFA), the organizations authorized for adoption (OAA) and the co-operation management funds with an aim of supporting the requests coming from the original countries.

Moreover, two multilateral conventions concerning international adoption were ratified by France and have an impact on French Law on international adoption:

- The convention of the United Nations on the rights of the child of November 20th, 1989: This is not only focused on adoption but it has also a more general scope. Concerning the children who have lost their familiar environment, this Convention obliges Member States to set up replacement measures. In addition, adoption is treated by the Convention as an alternative solution, whilst not being imposed. Thus, the Member States do not have the obligation to envisage a system of adoption.

- The Hague Convention of May 29th, 1993 on the children protection and on the co-operation on international adoption applying in France since October 1st, 1998, whose ratification by France was authorized by the law n° 98-147 of March 9th, 1998 (Official Journal March 10th, 1998).

This convention envisages for Member States the obligation to set up a central authority for international adoption. In France, this obligation was satisfied by the decree n° 98-863 on September 23rd, 1998 (Official Journal September 26th, 1998). The composition of this central authority was widened by the law n° 2001.111 of February 6, 2001, which provides that the representatives of the organizations authorized for adoption and representatives of associations of adopting families have an advisory task.

The mission for international adoption (MAI) was finally instituted by the decree of December 2nd, 1998 (Official Journal December 3rd, 1998). It is charged with supporting the secretariat of the central authority and exerting the functions previously reserved to the Minister of Foreign Affairs (by the decree n° 98-863 of September 23rd, 1998).

The Hague Convention stays as an inter State instrument of co-operation, which envisages minimal guarantees for the Member States and it allows Member States to rule on any conflict of laws arising. The Convention does not, however, determine the criteria for adoption.

2- The national adoption procedure (national adopting parents - national children).

There are two types of adoption in France: On one hand, the Civil Code presents plenary adoption as the adoption of common law (Civil Code, Articles 343 to 359). This type of adoption seems to meet the expectations of adopting parties since it is practiced the most.

Plenary adoption is reserved to children younger than fifteen years old and it anticipates that the child subject to adoption will be equivalent to a legitimate child once adopted. On the other hand, it extinguishes any link between the child and his/her original family. Thus, plenary adoption institutes an exclusive link between the child and his/her adopting family.

Otherwise, some articles of the Civil Code (articles 360 to 370-2) are devoted to simple adoption, little used in comparison with plenary adoption. This type of adoption concerns minors or persons of full age who remain in their family of origin and preserve all their rights (article 364 of the Civil Code). Parental authority is exercised by the
applicants, exclusively or jointly if this last is the father or the mother of the person subject to adoption (article 365 of the Civil Code).

However, the adoption bond establishes only one filiation, which is added to the first one already established. Moreover the filiations established by the simple adoption can be revoked if there are “serious reasons” at the request of the applicants for adoption, the subject of adoption or when this last is a minor.

3- The international adoption procedure (parents of European nationality (EU) – non-European children or European children (EU) and non-European adopting parents.

The adoption of a child coming from a foreign country takes place in two phases: the administrative phase and the legal phase.

a) Administrative phase

A distinction must be drawn according to whether the child is or is not coming from a country having ratified The Hague Convention of May 29th, 1993.

1. Within the framework of The Hague Convention.

The objective of The Hague Convention is the installation of a system of co-operation in international adoption matter in order to fight against the removal or the sale of children.

The Article 2, 1° of the Convention defines the international adoption as the adoption implying the movement of a child from one State to another. Consequently, adoption in one of the Member States of a child already present on the territory does not engage the provisions of the Convention.

The Convention envisages the installation of a central authority whose object is to guarantee the regularity of the procedure. This procedure can be delegated to authorize organizations.

If the child is originating from a country, which ratified The Hague Convention, the process of adoption can be carried out only via the central authorities in charge of the whole procedure of adoption. They will decide the qualifications of the applicants for the adoption and the aptitude to be adopted.

All the individual steps are prohibited, any contact between the future adopting parents and the child’s biological parents or the people having guardianship is prohibited until the central authority of the country of origin has determined if the child is an adoptable one and the consent has been given.

2. The making of a report.

The central authority of the Reception State checks that the applicant parents to the adoption are ready to adopt, after having obtained an approval (article 15 of Convention). A report is prepared by the central authority or by an authorized organization and contains the following elements:

- Identity
- Legal capacity to adopt
  - The personal, family and medical situation
This function is practiced in France by the international adoption mission (MAI) or by the authorized organizations (OA) especially authorized for international adoption of children coming from States party to the convention (A. Dec 2nd 1998 concerning a mission for the international adoption of the Ministry of Foreign Affairs: Official Journal December 3rd, 1998).

The list of the authorized organizations for internal adoption and those authorized for international adoption can be obtained from:

The European office of international law in civil and commercial matters of the service of the European affairs of the Ministry of Justice, communicates the list of the entitled organizations authorized for internal adoption.

3. The dealings with the central authority of the State of origin.

This report is transmitted to the central authority of the child’s country of origin. This central authority of the State of origin of the child subject to adoption checks whether or not the child is adoptable. It draws up a report containing information on:

- The identity;
- The adoptability;
- The personal and family evolution;
- The medical history and his/her family and the particular needs.

In addition, it takes into account his/her conditions of education and ethnic, religious and cultural origin.

4. The agreement of the central authorities of the two States and the future adopting parents.

The Central authorities, or the expert organizations, exchange the collected information. If the future adopting parents give their consent and if the central authorities of the two States agree to continue the procedure, the adoption can be carried out in the State of origin of the adoption subject or in that of the applicants. The two central authorities make sure that the movement of the child is carried out completely safely.

5. Exclusiveness in the procedure set up by the Convention.

If the child is originating from a country, which ratified The Hague Convention, the adoption can take place only by accord of the central authorities installed by the Convention.


a) Without the Hague Convention framework.

Adoptions outside the framework of The Hague Convention are described as international because of the foreign nationality of the applicants or of the adoption subject. The procedure for international adoption can be pursued in a foreign jurisdiction or in a French jurisdiction. These hypotheses are contained in articles 370-3 to 370-5 of the Civil Code introduced by the law n°2001.111 of February 6th, 2001.
7. Approval

Article 353-1 of the Civil Code states that the applicants must firstly obtain approval for the adoption of a foreign child who is not the child of a spouse as stated in Article 63 of the Code of the Family and the Social Assistance. Furthermore, this principle for foreign children is confirmed in article 100-3 of the Code of the Family and the Social Assistance. The procedure for obtaining such an approval is envisaged by the decree n°98-771 of September 1st, 1998.

The potential adopting parties must lodge an application with the president of the General Council for their place of residence, who in the two months provides them the necessary information as well as the conditions for the adoption. In order to make up the file, the potential adopting parties must provide a birth certificate, possibly a family document evidencing marital status, a medical certificate not older than three months, a criminal record, a document proving their resources and a completed questionnaire on the wishes and choices of the candidates.

Articles 9 to 11 of the decree provide that a selection committee carries out various investigations.

The L.223-1 article of the Code of the Social Action and the Families provides that the applicant can be assisted during these investigations. They must be informed of this right, or the decision taken on the basis of the opinion of this committee would be rendered null and void. Indeed, the selection committee gives a written opinion on the basis of which the president of the General Council gives a reasoned decision, which applies to all the French territory.

The refusal of consent is an individual administrative act, which can be the subject of appeal to administrative jurisdictions pursued by applicants who have seen their consent refused or by the departmental services that dispute a judgment nullifying their refusal of consent.

If the consent is refused or it is not provided within the legal time limit, article 353-1 of the Civil Code provides that the Court can, however, pronounce the adoption, if it considers that the applicants possess the necessary qualities and that the adoption is in the child’s best interests. Once provided, the consent is valid for 5 years and it is renewable.

8. Looking for a child to adopt

The adoptable child of foreign nationality will be most often being sought abroad where the hopes of finding a child assume greater significance.

The approval obtained in France as well as the “note” is sent to the country of origin. The “note” is a separate document from the approval. This document, introduced by the law of July 4, 2005, contains the parental plan. It, thus, specifies the age of the desired children as well as their origin.

Certain difficulties were raised by the report on adoption - entrusted by the president of the Republic and the Prime Minister to Jean-Marie Colombani - concerning the French procedure for approval. Indeed, the fact that the approval is given by the president of the General Council involves, simultaneously, a different proportion of approvals given compared to requests. Thus, the mission in charge of the report could note the disparity of the evaluation reports in their form as well as in their contents and this not only as between departments but also within the same department. This heterogeneity
was elsewhere underlined by a national survey carried out by the Cœur Forum of adoption.

The report underlined the fact that the heterogeneity of the French evaluations posed problems with certain countries of origin, even though approvals and notes were harmonized in 2006. Therefore, Thailand issued reserves on French approvals.

Moreover, the report notes that the number of approvals for adoption granted in 2005 varies considerably from one department to another. This is explained according to the report not only by the variable intensity of annual requests, but also by the more or less great severity exercised by the General Councils in examination of the applications. In 2005, the rate of refusal was established as 9% an average throughout France but it varied from 62% to 0% as between the departments.

9. Judicial phase

1. In the context of the Hague Convention.

The Hague Convention establishes a mode of recognition for the judgments of adoption given in contracting States, which are subject to full recognition.

Article 24 of the Convention states: “The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.” The State's expert authority, which gave the decision and facilitates the recognition, provides a certificate of compliance.

Article 26-2 of Convention states: « (2) In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognized, rights equivalent to those resulting from adoptions having this effect in each such State.» Thus, in France, if the adoption extinguishes a pre-existing bond of filiations, this is comparable to a plenary adoption even if it is revocable.

2. Without the Hague Convention framework

Qualified judge

In application of Articles 14 and 15 of the Civil Code, the French jurisdictions are qualified to pronounce an adoption when the person being adopted or the applicants remain in France or when either has French nationality. Article 1166 of the Civil Procedure Code anticipates:

“The application for purposes of adoption is brought before the Court of First Instance.
The Court having jurisdiction is:
- The court of the place where the applicant resides whether or not he/she is a French resident;
- The court of the place where the person, whose adoption is required, resides when the applicant resides abroad;
- The court chosen in France by the applicant when they and the person, whose adoption is required, reside abroad.”

It is necessary to note that the last sub-paragraph envisages the case of a French applicant residing abroad or of a foreign applicant wanting to adopt a French child when the two parties are usually residing abroad. By contrast, if none of the parties are a French citizen, the French court has no jurisdiction.
Concerning the rules of procedure rules, French law applies if the applicants are French citizens. By contrast, if the applicants are foreign, the formalities prescribed by the foreign law must apply in order to determine the necessary procedure for the adoption. However, French law will intervene in matters concerning implementation.

Articles 1166 and following determine the due course of the action. Thus, subparagraph 1 of Article 1171 affirms: “The court checks if the legal conditions of the adoption are met within a six months deadline starting either from the lodging of the application, or from its transmission in the case envisaged by the second subparagraph of Article 1168…”

Hence, the conditions of procedure envisaged by the law for the internal adoption will have to be observed for the international adoption. Moreover, Articles 353 and 353-1 of the Civil Code determine the use of a doctor charged to carry out any necessary examination, the Public Prosecutor’s opinion and the evaluation of the adoption subject’s adoptability. The evaluation of adoptability is related to checks on the adoption’s appropriateness.

Nevertheless, the judge is bound to check the legal conditions of the adoption procedure envisaged by French or any applicable foreign law. The applicable law must be determined on this way.

Applicable law

A doubtful decision on this point compelled the legislature to prescribe a solution to the conflicts of laws problem, as dictated by Law on February 6th, 2001, Articles 370-3 and 370-4 of the Civil Code.

3. Rules applicable to the adoption application made before a French judge


Article 370-3 of the Civil Code provides that the conditions for international adoption are subjected to the law of the applicants for adoption: “They are governed by the national law of the adoption applicant or, in the event of adoption by two spouses, by the law which governs the effects of their union. The adoption cannot, however, be pronounced where the national law of either spouse prohibits it”.

Consequently, the applicable law is the law that applies to the effects of the marriage. The law does not contemplate anything on this point, which was eventually settled by the Supreme Court of Appeal in a decision of February 19th, 1963. This affirmed the law applicable to the effects of the marriage (and thus to the international adoption) is the common national law, or, failing this, that of the common residence of the spouses, or the forum law (Case. 1st civil, February 19th, 1963, JCP 1963, II, 13112).

Article 370-3 of the Civil Code provides in addition that “the adoption cannot, however, be pronounced if the national law of either of the spouses prohibits it». Thus, pursuant to Article 370-3 of the Civil Code, two spouses whose common national law prohibits the adoption, for example two Algerian spouses cannot adopt in France.

It was seen above that, in the absence of common nationality, the law of the residence applies. However, this is inapplicable when the national law of each spouse prohibits adoption. Such is the case where a marriage is formed by an Algerian and a Moroccan woman.
By contrast, when only one spouse’s national law prohibits adoption, the law of residence is then applicable and allows adoption by the two spouses of different nationality.

Moreover, Article 370-3 of the Civil Code declares in subparagraph 2: “[a]doption of a foreign minor may not be invoked where his/her domestic law prohibits this institution, except if the minor was born and resides in France”. Consequently, the adoption of a child is prohibited when his/her domestic law prohibits it.

In this case, the national law of the child must simply be consulted in order to determine if it does not prohibit the adoption. The child is, thus, adoptable even if his/her national law does not provide for adoption, but does not prohibit it.

4. Recognition of the adoption pronounced abroad

The principle case law according to which decisions pronounced by a foreign judge and affecting the people benefit from full recognition in France applies to adoption as long as their international regularity is not disputed before a French court (Munzer decision of January 7th, 1964, Civil Case on February 14th, 1990, Case Ploughshare November 16th, 1967).

However, this principle does not exclude the possibility of a foreign judgment becoming the object of a request for recognition or _exequatur_ before a French judge. Moreover, the Public Prosecutor competent to do so can also check this point. In these cases, the conformity of the judgment to the fundamental principles of French law is controlled. This remedy should not be obtained following any fraud.

Moreover, it is advisable to determine the scope of the foreign decisions. In effect, the foreign decisions cannot have a wider scope than that resulting from the scope of the applicable foreign law. Thus, the judge must determine at the time of the _exequatur_, to which form of French adoption (plenary or simple) the foreign judgment can be compared.

Article 370-5 of the Civil Code introduced by the Law n° 2001.111 of February 6th, 2001 follows the case law and states on this subject: “A judgment on adoption properly obtained abroad produces in France the effects of a plenary adoption if it breaks in a complete and irrevocable way the pre-existing bond of filiations. Failing this, it produces the effects of a simple adoption”. It is to be noted that the text refers to the complete and irrevocable character of the rupture of the bond of filiations and not to the adoption itself.

Article 370-5 of the Civil Code lies down in conclusion: « It could be converted into a plenary adoption if the necessary consents were given expressly with full knowledge of the facts. » This decision, thus, expressly contemplates that the simple foreign adoption can be converted into plenary adoption if the necessary consents are given in full knowledge of the facts. This provision widens the solution provided for by The Hague Convention of not entering into the merit of foreign adoptions.

Lastly, the obtaining by the child of a visa for stay in the French territory pre-supposes the regularity of the procedure followed abroad. By contrast, the absence of a visa pre-supposes the irregularity of the procedure. The French Consulate of the country of origin receives instructions concerning the grant a long stay visa for the mission of international adoption.

4- The different bodies or services taking part in the adoption process.
a) Intermediaries in international adoption.

1. Bodies of control

Central authority

A central authority was established by The Hague Convention ratification act. Indeed, Article 6 of the Convention emphasizes an obligation on the Member States to set up such a structure. In France, this requirement was satisfied by the decree n° 98-863 of September 23rd, 1998 (Official Journal September 26th, 1998).

This institution was, then, legalized by the law n° 2002.93 of January 22nd, 2002, which envisages: "There is instituted by the Prime Minister a central authority for adoption charged to manage and coordinate the action of the administrative bodies and the competent authorities regarding international adoption".

The composition: Article 1, Decree of September 23rd, 1998 relates to the composition of the Central Authority. The decree provides for the appointment of a President nominated from amongst its members by decree of the Minister of Foreign Affairs, by the Minister of Justice and by the Minister in charge of the family, for a term in office of three years.

The composition has been enlarged with the addition of two representatives from the organizations authorised for adoption and by two representatives from the associations of adoption families thanks to the decree n°2002.1052 of August 6th, 2002, redefined by the Decree of September 8th, 2006 modifying the R-148-4 Article of the Code of Social Action and families. The central authority is from now on made up of 8 people:

- Two representatives of the Minister for Foreign Affairs;
- Two representatives of the Minister for Justice;
- Two representatives of the Minister in charge of the family;
- Two representatives from the General Councils.

Furthermore, the R-148-4 Article of the Code of Social Action provides for appointment of the members of the central authority and the terms of their mandate.

All the members are nominated for a term of three years. Their mandate is renewable, after each renewal for representatives from the General Councils.

The representatives of each Minister are named among the agents concerned with this authority whose functions relate to the development and the implementation of policy on international adoption. The assembly of French departments designates the representatives of the General Councils as well as their delegates.

The representatives of the Ministers cease to sit within the central Authority for international adoption when they no longer exercise the functions with which they were conferred. The members of the central Authority exercise their functions on a purely ex gratia basis.

Operation: The central Authority in France is neither a directorate of the administration nor an agency but is a non-permanent authority. The central authority meets at least twice a year. Moreover, it can meet for additional meetings on the instigation of its president or at the request of three of its members. The decree of September 8th, 2006
added the Minister for Foreign Affairs to the list of people, whom the central Authority can meet with.

A general secretary nominated by the Minister of the Foreign Affairs prepares the work of the central Authority for international adoption. The general secretary attends meetings and files case summaries. He/she follows the implementation of his/her opinions and recommendations. For this reason he/she reports regarding all work done to the central Authority for international adoption. The sub-manager in charge of international co-operation exercises this function regarding the family for the Ministry for European and Foreign Affairs (decree of August, 2007).

The role and competences of the central Authority are defined by Articles 4 and 5 of the decree n° 98-863 of September 23rd, 1998.

Competences: Competences of the central Authority are multiple and have been modified by the decree of September 8, 2006.

This specifies the tasks of the authority delegated: “to direct and coordinate the action of the administrative bodies and the competent authorities regarding international adoption”. On the one hand, the R-148-8 Article of the Code of Social Action and the families provides that the central Authority makes recommendations to the Minister for Foreign Affairs:

“The central Authority for international adoption examines the questions coming under his/her responsibility and can make recommendations to the Minister for Foreign Affairs, in particular on:

1° the application of The Hague Convention of May 29, 1993 by France or conditions for its application in any other Member State party to the aforementioned Convention;

2° the application of bilateral conventions between France and a third country relating to international adoption;

3° the conditions of international adoption in the various countries of origin, in particular taking into consideration respect for the rights of the children;

4° the establishment and functions in the various countries of origin of authorized organizations for the international adoption pursuant to the Article L. 225-12;

5° international co-operation in adoption or child welfare;

6° the harmonization of the administrative bodies’ programs for international adoption;

7° the other matters dedicated to the French policy on international adoption.

The central Authority for international adoption can make a reference to the higher Council for adoption mentioned in the Article L. 148-1 of any question relating to international adoption. It receives communication of the opinions and proposals of this council.”

On the other hand, the advisory function of the central Authority is provided for by the R-148-9 Article of the Code of Social Action and the families:
The central Authority for international adoption gives opinions at the request of the Minister for the Foreign Affairs on:

“1° the empowering of the private organizations authorized for international adoption under Article L. 225-12, without overruling the provisions of Article R. 225-34;

2° the empowering of the French Agency for adoption in States not party to The Hague Convention of May 29, 1993 in accordance with the provisions of the Article L. 225-15;

3° If necessary, the suspension or the renewal of the activity of the French Agency for adoption in States party to the Hague Convention of May 29, 1993 under the conditions envisaged by the Article L. 225-15;

4° the suspension or renewal of adoptions according to the circumstances and the guarantees covered by the procedures brought into effect in the countries of origin of the children.”

Lastly, the R-148-7 Article of the Code for the Social Action and the families provides that the central Authority for the international adoption implies the respect of France to The Hague Convention of May 29th, 1993. This article expresses that France practices the competences and functions envisaged by Articles 7 to 9 and Article 33 of the mentioned Convention.

The MAI was previously managed by the secretariat of the central Authority. Nowadays, the central Authority has been placed directly under the Ministry for Foreign Affairs by a decree of September 8th, 2006. This brought about a change in the MAI in that the secretariat does not have “the functions of operator any more”, while in certain cases the secretariat used to deal with the taking of evidence in individual proceedings for adoption. The secretariat delegate’s attendance at some meetings usually instigated by the central Authority and the functions of the Ministry for Foreign Affairs directly related to the monitoring and the “management” of adoption.

Mission for international adoption

A decree of December 2nd, 1998 instituted the mission for international adoption (MAI as per the French acronym). The MAI was created for the benefit of French citizens living abroad and of foreigners in France.

However, the creation by the law of July 4th, 2005 of the AFA changes the organization of the mission for international adoption by establishing the sub directorate of international family co-operation within the Ministry for European and Foreign Affairs, which previously managed the personal files of the applicants for adoption, in particular within the context of The Hague Convention. The reorganization resulted from a ministerial decree of August 8th, 2007.

Public Prosecutor

The Public Prosecutor intervenes in the transcription of the adoption decision. This formality consists in entering the act in the public register of marital status. For plenary adoptions, when the judgment was pronounced in France, the plenary decision is transcribed in fifteen days in the public registers of marital status for the place of birth of the person adopted at the exclusive request of the public prosecutor for the place where the judgment was given.

For the adopted child born abroad, the Public Prosecutor of Nantes has jurisdiction.
For judgments in adoption pronounced in France, the plenary adoption is transcribed within 15 days in the registers of marital status (in the registers of Nantes if the child was born abroad).

The public prosecutor of Nantes might appeal against foreign judgments of simple or plenary adoption when the child was born abroad. This purpose is to meet the requirements of applicants for checking the regularity and the effects of the adoption decision.

Firstly, the Public Prosecutor of Nantes evaluates *in concreto* the regularity of the decision of the foreign adoption. He/she checks in particular its final character and the existence of a legal and professional consent. Secondly, the Public Prosecutor checks the effects of the decision pronounced abroad. If the Public Prosecutor considers that the effects of the adoption are identical to a plenary adoption, he/she orders the transcript.

Judgments in simple adoption declared to be effective in France are transcribed in the public registers of marital status at the request of the Public Prosecutor for the place where the decision was made.

2. Intermediaries

Organizations authorized for adoption

Definition: The authorized organizations for adoption (OAA) were created by the law n° 96-604 of July 5th, 1996, following the ratification of the Hague Convention. Because a report on intermediaries written in 2001 by the Deputy Minister for the family underlined unequal distribution on French territory and the small percentage of adoptions carried out by intermediaries, the authorized organizations were the subject of a decree on April 18th, 2002. (Decree n°2002.575).

The authorized organizations for the adoption are legal entities that have fulfilled all the judicial requirements and have as their goal intermediating in the adoption of a minor then fifteen years of age or younger.

The OAA must be authorized by the president of the General Council of the department for the location of their registered office (L.225-11 Article of the Code the Social Action and families), which applies the necessary regulations. These regulations relate to the competence of the people intervening in the procedure and the "monitoring" of the placements. Thus, to obtain approval, the organization must prove that it is able to manage the following activities:

1° assistance with the preparation of the adoption plan and recommendations for the making up of the file;

2° information on the technical and legal aspects of the procedure of adoption;

3° following-up with the family after the arrival of the child under the conditions set by the new Article L. 225-18 (D. n° 2005-1135, Sept. 7. 2005)."

Moreover, the OAA must be licensed by the Ministry for European and Foreign Affairs, which seeks accreditation of the country following the opinion of the central Authority (Article 225-12 of the Code of Social Action and the family). The OAA must provide certain information making it possible to guarantee their transparency and their professionalism.
The ministry can withdraw the authority when the OAA has not achieved any adoption in the country being the subject of an authority for three years or if the OAA does not respect the provisions of The Hague Convention. In 2007, the OAA accomplished 41.8% of the international adoptions in France.

Competences: In the context of The Hague Convention, the intervention of the OAA is not compulsory in the process of international adoption in France. On the other hand, within the context of The Hague Convention, the applicants for an international adoption can take the first step towards adoption either by applying to the central Authority or by having recourse to an OAA.

The OAA transmits to a central Authority or to a foreign authorized organization the reports envisaged in Articles 15 and 16 of the Convention, and also seek the agreement of a central Authority or a foreign authorized organization to enable them to continue the procedure. The OAA has a coordinating, support and regulatory role. When it receives a file, the OAA checks that the people contributing to it have previously obtained the approval envisaged by Article 353-1 of Civil Code and by Articles L. 225-2 and L. 225-15 of the Code of Social Action and families.

Furthermore, the organization checks its jurisdiction *ratione loci* because it can only deal with the applicants having obtained an approval from the president of the General Council of the department for their place of residence or of the department where the organization is authorized or the department where a statement of activity is made. Lastly, the organization has the role of checking whether the children proposed for adoption to families by the intermediary are judicially adoptable.

Therefore, it establishes with the potential applicants a plan to which the child may be compared, thus determining the country of origin and the age of the children who could be entrusted to them. The country of origin prepares this plan according to the requirements. The organization then plays a role in following up and transmits to the president of the General Council a report in the 6 months following the arrival of the child in the French territory. The report relates the marital status and the development of the child.

The organization also practices a role of follow-up in relation to the country of origin. The duration of this task varies according to the legislation of the country of origin, which can be more constraining than the French legislation. In addition, the organization informs the president of the General Council without delay of any judgments pronouncing adoption or of transcripts of foreign judgments. The organization then has the task of ensuring that the movement of the children from their country of origin to France is achieved with maximum safety, under suitable conditions and, if possible, in the company of the parent applicants for adoption. If the adoption parents have no opportunity of accompanying the child during his/her movement by his/her country of origin to France, they can ask a member of the organization to accompany the child.

In case of any change in the child’s placement or if it considers it is unlikely to carry out the intended plan, the organization must within three days inform the concerned president of the General Council. If the placement occurs following a foreign decision, the organization also has an obligation to inform the Ministry for Foreign Affairs within the same time limit.

Moreover, the organization has the task of transmitting a copy of the preliminary draft and report on marital status to the applicants. The files concerning the applicants can be consulted by the president of the General Council and by the Minister for the Foreign Affairs.
The Articles R.225-40 to R.225-45 of the Code of Social Action and the family provide that these files can also be communicated to the Public Prosecutor and to the Court at the time of the adoption procedure on their request.

b) The French adoption Agency

The composition and operation: The law of on the July 4th, 2005 on the reform of adoption provides that “the State, the departments and the legal entities of private law constitute for this purpose a group of public interest”.

The French adoption agency is, thus, a group of public interest under supervision of the State who’s General Councils is members and partners and has the legal status of intermediary in adoption. This is equipped with a board of directors, composed of representatives from several ministries, of general councils and authorized organizations for the adoption.

Furthermore, Article 225-16 of the Code of Social Action and the family provides that apart from the means placed at the disposal of the agency by the legal entities that are members, the State and the departments also make provision for their own assumption of financial responsibility in accordance with the methods defined by law.

Competence: Its role is to inform, to advise and to be used as intermediary for the adoption of foreign minors of at least fifteen years old.

Article 225-15 of the Code of Social Action and the families provides that the French agency for adoption is entitled to intervene as intermediary in the adoption arranged by any department as with adoption in States party to The Hague Convention of May 29, 1993.

Thus, the French agency for adoption was delegated to manage the personal files when the applications have not emanated from an authorized organization dedicated to adoption.

The minister in charge of Foreign Affairs can, in accordance with the opinion of the central Authority, ask the French Agency for adoption to suspend its activity in one of the States party to the Convention when the conditions contemplated by them are not met anymore and to resuscitate their activities when these conditions are met again.

Article 225-15 of the Code of Social Action and the family provides that for carrying out its activity in the States of origin, which are not party to The Hague Convention, the French agency for adoption must obtain the licence of the Minister for Foreign Affairs. The French agency for adoption must, in addition, obtain the accreditation of the country of origin.

Finally, the French agency for adoption was conferred with the task of providing information and advice, which previously fell to the international mission for adoption.

C) The High Council for adoption

The High Council for adoption is envisaged by Article L.148-1 of the Code of Social Action and the families, modified by the decree of June 14, 2005.

Operation: The Article L148-1 of the Code of Social Action and the families provides that the High Council for adoption complies with the requests of its president, of the Minister of Justice, of the Minister in charge of the family, of the Minister for Foreign Affairs or of the majority of its members, and at least once every six-month.

Article D148-1 places the Council under the Minister in charge of the family. This Article provides that the High Council for adoption should be composed of 30 members:

- A senator appointed by the President of the Senate;
- A deputy appointed by the President of the French National Assembly;
- Two presidents of General Councils designated by the Parliament of the departments of France;
- Two representatives of the Minister of Justice;
- A representative of the Minister in charge of the family;
- A representative of the Minister of Public Health;
- Two representatives of the Minister for Foreign Affairs, one of which is a representative of the mission of international adoption;
- Three magistrates appointed by the Minister of Justice;
- Two departmental directors of the medical and social services appointed by the Minister in charge of the family;
- Two representatives from the services of social action and health from the departments appointed by the Minister in charge of the family;
- Two representatives from associations of adopting families at national level;
- A representative from the associations of people adopted at national level; a representative from associations of pupils and old representative pupils of the State at national level;
- A representative from the social service for the welfare of immigrants;
- Two representatives from authorized adoption organisations;
- Six experts, who by reason of their qualifications or work, contribute to expertise in adoption, appointed by decree of the Minister for Justice, by the Minister in charge of the family and by the Minister for Foreign Affairs;

The representatives are designated by decree of the Minister for Justice, of the Minister in charge of the family and the Minister for the Foreign Affairs. In addition, the people designated under the terms of the points 3°, 4° and 5° are engaged for three years. Their mandate can be renewed twice.

Competence: The High Council for adoption has, mainly, an advisory role.

The Article L148-1 of the Code of Social Action and families provides that the High Council for the adoption gives opinions and formulates all useful proposals relating to the adoption in general and to the international adoption in particular. This Article also provides that the High Council for adoption is consulted for the legislative and judicial measures in this field.
The Article R148-8 of the above stated Code enacts that the High Council for adoption shall give opinions and recommendations when the central Authority instructs it on any question relating to international adoption.

Nevertheless, under Article R-148-10, the High Council for the adoption receives the annual reports transmitted by the central Authority.

5. Post-adoption follow-up.

It is necessary to determine two types of follow-up. On the one hand, follow-up is carried out by the authorized adoption organizations, which are under the Ministry for Foreign Affairs. On the other hand, support is provided to parents with the task of:

a) Follow-up with the authorized adoption organizations

As previously stated, the authorized adoption organizations are entrusted with the task of follow-up. Thus, the organization plays a part in follow-up and transmits to the president of the General Council a report within 6 months following the arrival of the child in French territory. The report relates to the applicants’ marital status and the development of the child. The organization also plays a role in follow-up with the country of origin. The duration of this task varies according to the legislation of the country of origin, which can be more constraining than the French legislation.

The organization informs the president of the General Council without delay about judgments pronouncing adoption or transcripts of foreign judgments. The organization then has the task of ensuring that the movement of the children from their country of origin to France is carried out in the safest manner, under suitable conditions and, if possible, in the company of the applicants or potential adopting parents.

If the adoption parents have no opportunity of accompanying the child during his/her movement from his/her country of origin to France, they can ask that a member of the organization accompany the child. In the case of a new child placement or where it becomes impossible to carry out the intended plan, the organization must within three days inform the concerned presidents of the General Councils. If the placement took place following a foreign decision, the organization also has the obligation of informing the Ministry of the Foreign Affairs within the same time limit.

b) Follow-up with the parents

The Coca network: It was observed, in Mr. Colombani’s report, that parents seldom pose difficulties immediately after the adoption because they are concerned to be “normal parents”.

The departmental services, which offer follow-up with the adoptive parents, have observed that adoptive parents only seldom become applicants again within a short space of time. However, the adoptive parents sometimes require help when the adopted children face specific health problems.

To meet this demand, a network of consultation, guidance and councils for adoption (Coca) was created with the help of voluntary specialists and doctors.

The French association of adoption listed 14 initiatives of this type in 12 French cities. It brought together the members of the network in order to work out a schedule of terms, to evaluate needs and means of raising the necessary finance. It seems that this schedule of conditions has not yet been finalized by the AFA.
c) Follow-up with the adoption

Some centres for reception of children by the parents (LACP) were set up with the help
of local financial assistance (Caisse Nationale desAllocations Familiales). The last
survey in 2003 disclosed 536 places, while in 1998 it had listed 328 of them.

These centres can also be used as places for exchanges between applicants for
adoption. In effect, certain departments have created “adoption houses” in
 collaboration with certain family associations.

These adoption houses provide the same services as the LACP, as well as grouping
together adoption services, a representative of the family associations or of a
departmental representative of the French association for adoption.

d) Follow-up with education

An investigation carried out by the association Childhood, Family and Adoption (EFA)
in 2004-2005 concerning 595 families showed that adopted children attained normal
achievements in education but they obtained results lower than the biological children
of the families who were interviewed.

The investigation proposed the need for longer periods of adaptation for adopted
children and underlined problems of concentration as well as difficulties of memorizing.
According to three quarters’ of the parents, these difficulties decreased with the help of
constant support.

Further, in this study the EFA published a guide to be used by the Mayor of Paris for
setting up a course of continuous training for teachers. Regarding assistance with the
adopted children, this mainly emanates from private initiatives of adopted children’s
associations.

6-Case of European adoption, treatment, procedure & etc.

Article 11 of the Civil Code affirms:

“The foreigner will enjoy in France the same civil rights which are or will be granted to
the French citizen by the treaties of the nation to which this foreigner belongs.”

The Supreme High Court (Cour de Cassation) judged on this subject on February 25\textsuperscript{th},
1981 affirming that foreigners enjoy in France all the private rights, which are not
refused to them by a provision expressed by law. Thus, when the applicant parents for
adoption are foreigners, adoption pronounced in France becomes international.

It does not seem that there are any special provisions concerning other citizens of the
European Union on this point. Consequently, these have identical rights to those of the
nationals of third countries wishing to adopt in France. Adoption in France of a child by
a citizen of a European Union country will thus be regarded as an international
adoption.

7-The conditions to adopt: difference between national and international
adoption

The conditions for being able to adopt are identical for the plenary adoption and the
simple adoption. A specific factor in international adoption is that the applicants must
obtain approval from the social services. However, this constraint also exists for the
people who wish to adopt a war orphan or a child placed in custody. The conditions for
being able to adopt are enacted in Articles 343 et seq. of the Civil Code.

Article 343 of the Civil Code declares: «The adoption could have been applied for by
two non separated spouses, married for more than two years or older than twenty-eight
years and under Article 343-1 of the same Code”. The condition of age is not, however,
applicable in the case of the adoption of the child of a spouse, as provided for by Article
343-2 of the Civil Code.

Thus adoption was extended by the Law of July 5, 1966 to single persons. The law did
not impose any particular condition save for age. Nevertheless, it is necessary to draw
a distinction between ‘basic’ adoptions and those where the applicants seek the
adoption of the orphans, children placed in custody, or foreign children.

In effect, people wishing to adopt a child coming within one of these categories must
obtain an approval by the social services (see above). In this case, the conditions
imposed are generally stricter than the legal conditions themselves. Even if a single
person does not appear to have impediments envisaged by the legislation, there may
in reality still be a true obstacle in the obtaining of an approval by the social services.
However, the social services have the obligation of justifying the refusal of approval
and they cannot rest their decision solely on the fact that the candidate is
unmarried (decision of the Court of Appeal of Bordeaux on June 24th, 1997).
Nonetheless, it is not difficult to find objections based on the higher interest of the child
(State Council, February 18th, 1994).

Concerning homosexuality, the Civil Code does present any obstacle to a homosexual
person making an application for adoption. However, when adoption is subjected to a
preliminary administrative approval, the State Council generally endorses a refusal
when the homosexuality of the applicant was revealed during the social enquiry
(decision of the State Council on October 9, 1996).

The European Court of the Human Rights ruled on this point in a decision of January
22nd, 2008. The European Court considers that French legislation grants to single
people the right to require an approval where adoption of a child falling within one of
these special categories is in prospect.

For the purpose of the European Court of the Human Rights, French legislation grants
to single people the right to require an approval in order to adopt a child. Thus, the
Court considers that the administration cannot base the refusal of approval only on the
sexual orientation of the applicant. It considers that it is legitimate for the administration
to require that all the guarantees for adoption are in place by examining the
composition of the family, an examination that is not inconsistent with any
consideration of sexual orientation. However, the fact that it is considered that the
absence of a paternal model has a determining importance in the decision for the grant
of approval constitutes a difference in treatment that is discriminatory within the
meaning of Article 14 of the Convention. Thus, the Court considers that the
administration must provide very serious reasons to justify interference with the right to
respect for private and family life. To justify its position, the administration must
establish particularly serious and convincing reasons to justify a discriminatory
interference in the exercise of the right to respect for private and family life. The Court
considered that such reasons were not established because French law authorizes the
adoption of a child by a single person and does not exclude homosexual unmarried
people for this reason.
French law prohibits multiple adoptions, which means that nobody can be adopted by several persons, if they are not spouses (Article 346 subparagraph 1 of the Civil Code). An exception arises, however, with the death of one or both the applicants. French legislation does not allow the adoption of a child by an unmarried couple, save in the case of assisted procreation (which is permitted to a couple provided they prove at least two years cohabitation). Lastly, when the person wishing to adopt does not have French nationality, the conditions to adopt will be determined by their national law.

Subparagraph 1 of Article 370-3 of the Civil Code declares: “The conditions of adoption are subjected to the national law of the applicants or, in case of adoption by two spouses, by the law which governs their union. The adoption cannot, however, be pronounced if the national law of one or the other spouse prohibits it”. Thus, the applicant whose national law prohibits adoption will not be able to adopt in France. The case law of the Supreme High Court applied this solution.

8-The conditions to be adopted, difference between national and international adoption.

a) In the event of international adoption

If subparagraph 1 of Article 370-3 provides that the conditions of the adoption are subjected to the law of the applicants, subparagraph 2 of the aforesaid Article sets out a principle according to which the adoption of a foreign minor cannot be affirmed if his/her domestic law prohibits this institution except if the minor was born and still resides in France.

Such is the case in particular under Algerian and Moroccan law.

Moreover, subparagraph 3 of Article 370-3 of the Civil Code recites that despite the applicable law, the agreement of the child’s legal representative is deemed necessary.

Judicial case law declared that the law applicable to the consent of the child is that of his/her country of origin. When the applicant is French, the conditions applying to the child being adopted will be those of French law (see below).

b) In the event of national adoption

Article 345 of the Civil Code provides that only children younger than fifteen years old can be the subject of a plenary adoption. Article 360 of the aforesaid Code establishes the rule does not apply to a simple adoption, which is thus possible when the person being adopted is a minor.

In addition, Article 345 provides that the child must have been accommodated with the potential adoption family for at least six months. The categories of children who are able to be adopted are the same in simple adoption as for plenary adoption:

- The children in respect of whom the father and mother or the foster family validly consented to the adoption;
- Orphans;
- Children declared abandoned in the circumstances envisaged by Article 350;

9-The child hearing
Article 345 of the Civil Code provides the child older than 13 years must personally consent to his/her adoption.

The consent to the adoption is received by the clerk in chief of the magistrates' Court for the child's place of residence, by a French or foreign notary or by the diplomatic agents or a French consul. It can also be received by the children's social welfare service where this has been given the guardianship of the child.

10-The consent to the adoption

It is interesting to note that consent to the adoption may be the subject of second thoughts within a period of two months (Article 348-3 of the Civil Code).

Whether or not the consent has been retracted by the expiry of this time, the parents can always ask for the return of the child if they are not placed for the adoption. If this is the case and the person who collected the child refuses to return him/her, the parents can make application to the Court, which makes an assessment whether, taking into account the interests of the child, it is necessary to order their return.

The subject of adoption: As previously stated, the consent of the person being adopted is necessary when he/she is more than 13 years of age.

Legal parents (entitled to parental authority). The third subparagraph of Article 370-3 specifies the content of the consent of the child's legal representative: "Whatever the applicable law, adoption requires the consent of the child's legal representative. The agreement must be free, and be obtained without constraint after the childbirth and the legal representative must be informed of the consequences of the adoption. In particular, if it is given for a plenary adoption, of the complete and irrevocable character of the severance of the preexisting bond of filiations".

A consent given for the complete and irrevocable break with the family of origin makes it possible to pronounce a plenary adoption even if the law of the person being adopted does not allow this form of adoption.

Biological parents (who are judicially not the parents). The right to consent to the adoption of a minor arises from the exceptional prerogatives of parental authority, which are attributed to the characteristics of the child. Article 377-3 of the Civil Code provides as follows: "The right to consent to the adoption of a minor is never delegated". When the biological parents are under supervision, the judge can authorize them to consent to or to withhold consent to the adoption of their child - with the assistance of their guardian.

Other (s) member (s) of the family?
In certain cases, the foster family is required to consent to the adoption. Article 348-2 of the Civil Code enumerates the four cases in which its intervention is required:

- When the father and the mother of the child are deceased;
- when they are both unable to express their wishes;

When they have both lost their rights of parental authority without the child being registered as an orphan (in accordance with Article 380 Civil Code);
When the filiations of the child are not established.

11- The moment, after the childbirth, when the mother is authorized to give her consent to the adoption

French legislation provides in Article 348-5 of the Civil Code: “Except when there exists a family bond to the sixth degree between the applicants for adoption and the subject of the adoption, consent to the adoption of the children younger than two years of age is valid only if the child is actually given to the service of the social assistance to youth or to an authorized adoption organization.”

This rule renders a nullity any consent to the adoption given before the child reaches the two years age.

12- The possibility of giving a blank consent.

As previously considered, Article 348-3 of the Civil Code establishes a two months limit within which it is possible for the parents to withdraw consent.

With the expiry of this deadline the consent may no longer be retracted. The parents can always ask for the return of the child, if the child was not placed for the adoption. In this case, if the person who collected the child refuses to return him/her, the parents can apply to the Court, which assesses, taking into account the interest of the child, whether it is appropriate for the child to return.

13- The existence of failure to assess refusal of the necessary consent.

Consent to adoption by biological parents is surrounded by many guarantees. When parents do not have the capacity to give their consent, there exist other possibilities. The foster family must give the required consent. The legislation does not provide for the impossibility of the child giving his/her own agreement. Where this is proposed, judges sometimes appoint a legal administrator.
2.10. **GERMANY**

1. Description and analysis of the law on adoptions of children

a) General rule on the permission of adoptions, section 1741 (1. 1 Civil Code

The provisions on adoptions are set out in the German Civil Code. The most important rule is laid down in section 1741 (1. 1 Civil Code. It states that the adoption is only permitted if it serves the well-being of the child and if it is to be expected that a parent-child-relationship will be established.

1. Well-being of the child

Section 1741 (2. 1 Civil Code states that a person who is not married may only adopt a child by his own. This means that two persons which are not married are not entitled to adopt a child together. On the other hand a married couple may only adopt a child together. An exception applies if one spouse wishes to adopt the child of the other one. He is then entitled to do so even if the other spouse would not be able to adopt the child due to the non-attainment of the age of 21 or due to a lack of legal capacity.

The well-being of the child is the guideline for adoptions. The judge has to evaluate in each case whether this criterion is met. The judge has to assess whether the child will have an environment which is well adapted for his future needs (objective function) and whether the situation will be better with or without the adoption. (comparing function)

The evaluation shall also include psychological aspects. In essence it is considered that such non material circumstances are to be taken into account even in such cases where the environment is to the benefit of the child.

The common practice of judges is that they also hear the child’s opinion. The judges have, however, a tendency to discuss the adoption with the child alone (to the exclusion of the parents) only if the child is at least three or four years old. The judges I spoke with told me that they experienced that only starting from that age a child is able to communicate his own ideas and to express what will be the best for his future. Of course also the judges interview the future parents.

2. Parent-child-relationship

The purpose of the adoption is also to establish a parent-child-relationship. Today it is necessary that the judge is of the opinion that such ties will be established. Regarding national adoptions this rule is of essential relevance when the child is still in contact with his/her mother. E.g. the grandparents apply for the adoption of the child and the child maintains the contact with his/her mother. In such cases, there exist a multitude of decisions where adoptions have been refused.

b) The special rule of section 1741 (1. 2 Civil Code

A further rule which limits illegal behaviours in the context of adoptions is set down in section 1741 (1. 2 Civil Code. It states that if someone has participated in an unlawful or immoral trading or disposal of a child for the purpose of making adoption possible or, if someone has instructed a third person to do so or has paid any remuneration in this respect, they shall only be entitled to adopt a child if this is necessary for the benefit of the child.

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227 See: Rainer Frank, Staudinger, 2007, sec. 1741 marg. 16.

228 See: Oldenburg Court of Appeal, NJW-RR 1996, 709; Hamm Court of Appeal FamRZ 1968, 110; Celle Court of Appeal ZBlJugR 1967, 257.
This rule shall obstruct trading in children and other practices in a preventive way. The law makes it more difficult for a person involved in the trading of the child to adopt him/her once “delivered” to Germany. It is then not anymore sufficient that the adoption serves the well-being of the child. It is then required that an adoption by the person involved in the unlawful or immoral trading shall be necessary for the benefit of the child. However, in such cases an adoption is not hindered if these criteria are fulfilled.

An adoption is unlawful if actions by any intermediary were not performed by an authorised body. Even an adoption which is lawful may be considered as being immoral. E.g. if one parent admits that he is the father, without being the father in his home country, to make possible adoption by the stepmother in Germany.

The stricter rules only apply if the person who wishes to adopt the child participated actively in the process of transferring the child in an illegal or immoral way. The same applies if the person wishing to adopt the child has remunerated or instructed a third person in this respect, provided that the adoption is either illegal or immoral.

If the adoption takes place in a foreign country, then the question of whether or not the adoption is illegal or immoral will also be assessed according to the law of the each country. In such cases the relevant criteria are also those laid down in section 1741 (1.2 Civil Code and not in section 1741 (1.1 Civil Code.

A further issue which arises is the adoption of a child, which has been born by a surrogate mother. Also adoptions, under such circumstances, are only permitted under the stricter rules of section 1741 (1.2 Civil Code.

c) Minimum age requirements, section 1743 Civil Code

According to section 1743 Civil Code the person accepting the child as his/her own must be at least 25 years old. If one parent adopts the child of his/her spouse, he must be at least 21 years old. Thus, the threshold is lower as the German law-maker considers such adoptions to be generally favourable for the child. If a married couple adopts a child one of the accepting parents must be at least 25 years old, the other 21 years old.

There is no requirement for a minimum time interval between the age of the adopting persons and the child. Neither is there a requirement for a maximum time interval.

d) Probation period

A further requirement is that the child has been looked after for a certain time period before the adoption. The duration is not fixed by law. The common practice is that the time depends on the age of the child. A general rule is that it is easier for a younger child to become familiar with the new circumstances/environment than for an older child. The recommendation of the youth welfare offices is that, at least, a time period of one year is required.

The adopting parents need to be suitable for the child and his/her needs. The guideline set by the declarations of the government in the Draft of the Law on the Procuration of Adoption (RegE zum AdoptVermG 1976) makes very clear that the selection of the right parents for adoption has to take place before the probation period and not afterwards. This also corresponds to the general practice.

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231 BT-Drucks 7/3421,21
The general impression of the interviewed persons is that the selection procedure is very effective and the criticism often encountered during the interviews was that to prevent all kinds of misuse of adoptions, the procedure takes too long and is too bureaucratic.

e) Prohibition of the adoption

An adoption of a child shall not be adjudicated if this would conflict with the prevailing interests of the accepting person’s children or of the children of the person to be adopted or if the interests of the child to be adopted might be endangered by the children of the adopting person(s). Financial aspects shall not be decisive.

f) Consent of the child to be adopted

The child must consent to the adoption. For a child who is less than 14 years old or who is prevented from giving his/her consent due to legal incapacity, only his/her legal representative may act. Otherwise, the child may only consent by its own, though the legal representative’s agreement is in addition required.

If the person wishing to adopt the child and the child are not of the same nationality the adoption requires also the consent of the guardianship court; this does not apply if the adoption of the child is subject to German law.

A child over 14 years old may revoke his/her consent until the adoption is adjudicated.

g) Consent of the parents of the child

For the adoption of a child the consent of the parents is required. The consent may only be declared if the child is at least 8 weeks old. Such declaration is also valid if the parents do not know the person who is going to adopt the child and that that person has already been decided upon.

If the parents are not married and no custody declaration has been issued by the unmarried father, then

- the father may also give his consent before the birth of the child;
- in case the father has applied for the transfer of custody the decision on the adoption shall only take place after the ruling on the custody application;
- the father is free to renounce the right to the transfer of custody according to section 1672 (1. Civil Code. The waiver needs to be notarised.

The consent of a parent is not required if their legal incapacity is not just a temporary status or on a permanent basis, it is not possible to find out where the parents are. Normally, the period during which requests for their location have to be placed at the Public Order Office is 6 months232.

h) Dispensation with the consent of one of the parents

The guardianship court may, on request of the child, dispense with the consent of one of the parents based on section 1748 Civil Code. This requires that the respective parent has persistently and grossly breached its obligations with regard to the child. Alternatively, such application is justified if the parent has made clear that he/she is indifferent towards the child and if the refusal to permit the adoption would have disproportionate disadvantages for the child. Lastly, the consent may be dispensed

with if the breach is not ongoing but it has been extremely severe and that the parent will not be normally entrusted with the child’s care in the future.

Dispensation with consent often poses considerable problems to judges. Parents who did not care about their children often try to prevent the adoption or to make their consent dependent on the payment of money.

i) Declaration of the consent, section 1750 Civil Code

The declaration needs to be notarised. It is necessary to hand the declaration in to the guardianship court. The consent may not be limited in time or be conditional. The consent of the parents loses its validity if the child is not adopted within a three year period.

j) Obligation to pay maintenance

The obligation to pay maintenance is on hold after the declaration of the consent. The person is no longer entitled to contact the child. The youth welfare office becomes the legal guardian of the child.

k) Decision of the guardianship court

The adoption is adjudicated by a decision of the guardianship court on request of the adopting parents. The application must be notarised, section 1753 Civil Code.

l) Effect of the adoption, section 1754 Civil Code

The effect of the adoption is that the child will be considered from a legal standpoint as a child of the adoptive parents.

m) Expiration of the existing ties to the former relatives, section 1755 Civil Code

With the adoption all legal ties to the existing relatives expire.

n) Name of the child, section 1757 Civil Code

With the adoption the child obtains as its birth name the name of the adoptive parents.

o) Prohibition of disclosure

Facts which could disclose the adoption or the circumstances of the adoption shall not be revealed without the consent of the adoptive parents and the child, except if there exist extraordinary reasons of public interest in this respect.

p) Cancellation of the adoption, section 1760 Civil Code

The adoption may only be cancelled upon application in the guardianship court if the adoption took place without the application of the adopting parents, without the consent of the child or without the necessary consent of one of the parents.

q) Barriers to the cancellation of the adoption, section 1761 Civil Code.

The adoption may not be cancelled by reason of the absence of consent if the consent could have been dispensed with at the time of the adjudication of the adoption or at the time the court has to decide on the application for the cancellation of the adoption.

r) Cancellation of the adoption ex officio, section 1763 Civil Code.
The guardianship court is entitled to cancel the adoption provided that the child has not yet become adult and that the cancellation is justified on substantial grounds for the benefit of the well being of the child. The purpose of the cancellation must be to make a new adoption possible.

If the child was adopted by a married couple, it is also possible to cancel the adoption of one of the adoptive parents and to keep the other one valid. In that case it needs to be secured that the remaining adoptive parent or one of the biological parents is ready to care for the child and that this will not be against the well being of the child.

2. Adoption of adults

The German law also permits the adoption of adults. The adoption of an adults requires moral reasons as a ground of justification, such as that the parent-child relationship is already established between the adopting parents and the person being adopted, section 1767 Civil Code. The provisions on the adoption of children are applicable by analogy in the absence of any rules in respect to the adoption of adults, which have priority.

The adoption of an adult is not possible, if predominant interests of the children of the person to be adopted or of the adopting parents would conflict with the adoption. The adoption of adults does not create a connection between the relatives of the adopting parents and the person to be adopted, section 1770 Civil Code.

3. German law rules with regard to international adoption

The Hague Convention was enacted in Germany on March 1, 2002. The specific aspects to implement the Convention are regulated in the Law for the Regulation of legal questions related to International Adoptions and the Development of the law on Procuration of Adoptions of November 5, 2001.

The application of the Convention requires that the child and the applicant for adopting the child have their living place in different countries and that the adoption requires a change of domicile for the child. It is not of relevance whether the adoption takes place in the country of origin or in the host country. It is criticised that the Convention is also applicable for the adoption of stepchildren and of relatives.

In the following will be summarised the main provisions of the Law for the Regulation of legal questions related to International Adoptions and the Development of the law on Procuration of Adoptions:

a) Section 1: Definitions

The central authorities according to art. 6 of the Convention is on one hand the general attorney at the German Federal Court as the Federal Central Authority (Bundeszentralstelle) and on the other hand the central adoption authorities of the Regional Youth Welfare Service (Landesjugendamt).

Other State authorities in the meaning of art. 9 and art. 22 (1. of the Convention are the Youth Welfare Services (Jugendamt), as far as they are entitled according to section 2a (3. no. 2 of the Law on the Procuration of Adoptions to international adoptions with regard to contractual States of the Convention.

233 Gesetz zur Regelung von Rechtsfragen auf dem Gebiet der internationalen Adoption und zur Weiterentwicklung des Adoptionsvermittlungsrechts vom 05.11.2001, BGBl. I 2950.

234 Rainer Frank, pream. to sec. 1741 marg. 18.
Permitted Organisations in the sense of art. 9 and art. 22 (1. of the Convention are the Recognised Adoption Agencies (anerkannte Adoptionsvermittlungsstellen), insofar as they are accredited to procure international adoptions with regard to the contractual State of the Convention.

Foreign Adoption Agencies (Auslandsvermittlungsstellen) are the central adoption authorities, the Youth Welfare Services and the Recognised Adoption Agencies.

The central authorities of the state of origin (Art. 2 (1. of the Convention) are those authorities, which are responsible according to the law of that State to fulfil the duties of the central authorities.

Remark:
Apparently, a major problem is that for some countries/territories such as Siberia (Russia) it is not always clear which authorities are to be considered as central authorities. Therefore, some organisations have stopped their activities with regard to the adoption of children from such countries where adoptions encounter too many problems. During the interviews I was for example informed that adoption procedures were stopped even though the adoptions were considered beneficial for the well being of the children by the local director of the local youth centre due to the fact that the Convention created a state of legal insecurity.

b) Section 2: Responsibility

The Recognised Adoption Agencies are only acting if the child has its normal residence of living in a foreign State and that the applicant has his domicile in Germany.

c) Section 3: Procedure

The Recognised Adoption Agencies as well as the Federal Central Authority are entitled to communicate with all other authorities in Germany or in foreign States. The Adoption Agency Law (Adoptionsvermittlungsgesetz) applies to their acting. Furthermore, the tenth chapter of the Social Security Code (SGB) applies.

The authorities are entitled to ask the applicant to provide them with satisfactory supporting documents and certified translations.

d) Section 4: Application for the adoption

The persons with their domicile in Germany shall hand in their application either to the central adoption authority, to the responsible local youth welfare office where they have their normal place of residence or to a Recognised Adoption Agency.

The applicant has:

- to indicate the country of origin the child has to come from;
- to participate to the adoption procedure in a way that the authorities are enabled to draft the report;
- has to affirm that no other application for the procurement of a child from a foreign country has been submitted.

The Recognised Adoption Agencies advise the applicants. They also inform the applicants on data protection in the country of origin.

The Recognised Adoption Agencies are entitled to do their own inquiries and after consultation with the relevant local authority of the applicant they may draft a report of their own.
If the Adoption Agency has satisfied itself that the applicant is qualified for the adoption then they will send the necessary application documents including a report according to art. 15 of the Convention to the central authority of the State of origin. On request the Federal Central Authority gets involved in the procedure to transmit the documents.

e) Section 5: Admittance

The proposal of the central authority of the State of origin needs the approval of the Foreign Adoption Agencies. The Foreign Adoption Agencies have to make their approval dependent in particular on the following:

- whether the adoption will serve the benefit of the child;
- whether it is to expect that the child will be lawfully adopted in Germany;
- where the adoption shall take place in the country of origin: Whether or not the adoption will have the effect that taking into consideration the wellbeing of the child the adoption would conflict with essential principles of the German law, especially with Constitutional Rights.

The Foreign Adoption Agencies may enter into an exchange of opinions with the authority responsible in the State of origin. This discussion as well as the reasons for the refusal or approval of the proposal have to be documented in the files.

After having approved a proposal, the Foreign Adoption Agency, has to inform the applicant on the received data about a given child from the authorities of the State of origin. The Foreign Adoption Agency shall advise the applicant on the acceptance of the adoption (Adoptionsannahme). The identity and location of the child and its parents as well as the identity of other persons entrusted with the care for the child shall only be disclosed before the consent according to art. 17c of the Convention if the central authority of the State of origin approves the disclosure.

Once the advice is given, the Foreign Adoption Agency asks the applicant to hand in a declaration according to section 7 (1.. If it is evidenced that the declaration has been issued the Foreign Adoption Agency is entitled to make the declarations according to art. 17 b) and c) of the Convention.

The Foreign Adoption Agency shall contact the local Adoption Agency.

f) Section 6 - Entry and residence

To establish and uphold a familiar relationship between the applicant and the child the provisions on the subsequent immigration are applicable, by analogy, before the adoption,

- once the Foreign Adoption Agency has approved the proposal of the central authority of the State of origin and
- the applicant has declared its consent with the proposal according to section 7 (1.;

On request of the Foreign Adoption Agency the Foreign Office approves the issuance of a visa, if the above mentioned conditions are fulfilled and no provisions of the foreign state would hinder this procedure.

Where the reason for the child to come to Germany no longer exists then the child will be entitled to stay in Germany for a limited period of time based on its own right, if the conditions for an unlimited stay are not fulfilled or the authority of the State of origin according to art. 21 (1. c of the Convention requests the return of the child to the State
of origin. If a residence permit (Aufenthaltserlaubnis) or a stay permit (Aufenthaltsgenehmigung) was issued to the child then the residence permit will be prolonged on the basis of the requirements mentioned section 6 (3).

g) Section 7 - Declaration of consent regarding the adoption; responsibility for a child to be adopted

The declaration regarding the consent to the adoption needs to be handed in to the Youth Welfare office where the applicant has its regular domicile. The declaration needs to be notarised. The Youth Welfare Office transmits a certified copy to the Foreign Adoption Agency. Starting with that declaration, the applicant has to bear all costs incurred by the State for a time period of six years for the upkeep of the child. The costs encompass *inter alia* the accommodation, the education, medical care and the fosterage. This does not apply if such costs have been incurred during the time the child was lawfully hosted by the applicants and on condition that such costs would also have been incurred if the adoption had already been adjudicated at that point of time.

h) Section 8 - confirmation on the execution of an adoption which took place in Germany or conversion of a relationship created by the acceptance

If the central adoption authority has issued a confirmation according to art. 17 c of the Convention, then this office also executes, on request, the confirmation according to art. 27 (2. of the Convention). If a Youth Welfare Office or a Recognised Adoption Authority has issued the consent declaration then the central adoption authority responsible is that where the Youth Welfare Office or the Recognised Adoption Authority has its seat.

i) Section 9 - verification of a certification issued by a foreign authority on the adoption or the conversion of an adoption relationship

On demand of someone who has a legal interest the Federal Central Authority verifies

- the authenticity of a certification of an adoption which took place in a foreign State or on a conversion of an adoption,
- the conformity of its content with art. 23 or art. 27 (2. of the Convention and
- the competence of the authority which has decided on the application.

The confirmation is a valid proof of the above mentioned circumstances; but it is possible to submit proof of incorrectness.

4. Other laws

There are other important laws which I could not include yet within the timeframe. I will incorporate these laws as well as a more detailed analysis in the final report.

5. Statistical material

Attached please find the official statistical material on adoptions in Germany. The figures for 2007 have not been published yet.

In the year 2006 a total of 4,748 children were adopted. The figure was about the same as the one in 2005 (4,762). Thus the “negative” trend of the last years has come to an end. In the years between 1993 and 2005 the number of adoptions decreased by 45%.

According to the interviews I had and the publications, this effect was essentially caused by the Convention.
The 40% of the children adopted in 2006 were below 6 years old, 30% between 6 and 11 years and 30% 12 years and older.

The 1,388 (29%) of the children did not possess the German nationality.

The number of children “earmarked” for adoptions increased significantly in 2006. At the end of 2006 a total of 889 children were “earmarked” for being adopted; an increase of 15% compared to 2005.

2.11. GREECE

1. Preamble

Before presenting the answers to the questionnaire to you, following our study of the legislative and institutional framework of the subject of the adoption, we wish to mention some characteristics of the Hellenic legislation in the aforementioned field.

The adoption is a legal act by which the adoptive child benefits from all the advantages and of the rights of a biological child and the family has the same obligations towards him as if he were their biological child. The results of the adoption of the minors can be summarized in 2 sentences: a) Total integration of the adoptive child in the family of the adoptive relative i.e. is created a family tie with all the consequences which result from this between the adoptee (and his descendants) and the adopting relative like with all the parents of this last, and b) total break with the biological family except for disabilities of marriage which remain in force (article 1561 C.C).

Greece governs the field of the adoption by a new law 2447/1996 (Adoption, Supervision and Sponsorship of minor, legal supervision, legal authority etc FEK 278/1996) who brought deep reforms compared to the preceding legislation. The interest of the child to adopt is the central point of the new Law, all the conditions and the purpose of the forecasts of the new law are which the adoption is allowed only in the interest of the child.

The paramount innovation of the new law consists in the fact that the adoption of a person of full age is from now on the exception to the rule. Indeed, the adoption of a person of full age is not possible that whenever the person of full age is the child of the husband of the adopter or if he is related up to the 4th degree by blood or alliance. (article 1579 D.C.)

The second important remark before returning to the main one on this subject is that the Hellenic legislation does not make true distinction between the national adoptions and the international adoptions and the same concerning the adoptions being able to be entitled “Community” (meaning one of the parties is a member state community citizen). New Law 2447/1996 comprises references to the international adoption in its articles 3 to 6. There is not another reference to the international and/or Community adoptions.

The distinction which still exists under the scope of the new law is that of adoptions entitled “private” meaning those which are done by the direct contact of the interested people without the intermediary of a service or social welfare, and adoptions known as

235 FEK: Official Gazette of the Government where are published the laws, decrees, ministerial decisions.
“public” meaning granted by way of the social institutions or approved organizations where are placed children who however must “be free to be adopted” (meaning that the parents agree so that their child is adopted whereupon it is placed in a centre for child). The questionnaire which was submitted to us will be answered according to these two known distinctions.

Another great innovation of the legislation which governs the institutional framework of the adoption is the social research which is laid down by article 1557 of the D.C. The decree of Law 226/1999 (FEK A’ 190/1999) envisages the social services thus that approved organizations having to carry out social research, and this, whether the aforementioned children to be adopted are under their protection or not. This decree calls upon too the case of the international adoption, which is provided for by the Greek legislation when one of the parties to the adoption has its usual residence abroad or if it is of foreign nationality, by envisaging the social services and approved organizations to carry out social research in the cases where the child to be adopted or the adoptive parents candidates has their usual residence abroad (articles: 1,4,5,6 et7).

It is to be stressed that we encountered many difficulties of finding people willing to answer the questionnaire and to give us their opinion. Even the police showed a certain unwillingness to answer and emit an opinion on the subject. This can be explained by the decency which exists in the Mediterranean countries in the subjects of family and also by the fact why even if the new law is more rigorous and puts at the centre of its provisions the interest of the child, as that already exists in International Conventions for the protection of the rights of the child, the adoption, remains a subject taboo in Greece. This observation - of reserve to answer the questionnaire- should be the subject of another distinct study and which could explain why the subject matter of adoption instead of being harmonized and thus achieving a universally recognized goal which is that of the interest of the child, often remains complicated and diverted from its final goal. Indeed, there were adoptive parents who answered the questionnaire but by asking that their anonymity be preserved.

1. The National procedure relating to the adoption (adopting parents Greek - Greek children).

a) The different steps

The procedure shortly relates to the adoptions of minors (which are private or public):

The couple which wants to adopt a child addresses to one of the centres or approved organizations which function under the every and the supervision of the Ministry for Health and Social Solidarity, by depositing a request of adoption.

A request is deposited by the people wishing to adopt; a Request of Adoption in front of the first instance Court of the district of their residence. Their request is registered with the role and is meant with the prosecutor.

The request is judged according to the gracious procedure.

The Court examines the contribution of the conditions and the lacks of obstacles and decides in its function.

The parents candidates must provide to the Court other necessary documents: criminal records, proof of no debts, proof of significance to the Prosecutor of the request of adoption, the medical certificates of the interested parties, Act of Marital status of the child to be adopted, the
deposited request to one of the centres or approved organizations, the written agreement of the biological parents of the child.

The decision is marked and the child is registered within the family card of the Prefecture of the new parents, once the decision became final.

OBSERVATION: For the "private" adoptions, those that are carried out without the intermediary of an institution or approved organizations by the State, where the future adoptive relative finds only a child that wishes to adopt after having received the agreement of the biological parents of the child, the point 1.1 does not relate to them. In these cases, the request is addressed to the qualified service of the prefectures of the country in order to carry out social research such as this one is envisaged in article 7 of L.2447/1996.

For the adoptions of persons of full age the steps are shorter.

There is no maximum age limit for adopting parents, nor of difference in age maximum between the adoptee and adopting it.

The adoptive child of full age is not completely insert in the adoptive family, in the sense that a family bond is not created between the adoptive child and the biological parents of the adoptive parents. The family bond created is limited between the adoptive child (and of his descendants, which will be born after the adoption) and the adoptive relative (articles 1584,1585 C.Civ).

The adoption does not stop the family bond with the other biological relative (who is the husband of the adopting), the same with his biological parents (article 1584 C.Civ.). Indeed, according to the article 1581 C.C.: « The adoption of a person of full age is decided by the court after the common request of that who adopt and that who is adopted. If the adoptee is unable to contract, the relative request is subjected by its legal representative. »

The Article 1583 D.C.: “The married person of full age cannot be adopted without the assent of their partner, which must be given by personal declaration to the court. »

b) The steps where intervene the legal decisions and which are their objects (capacity to adopt, confirmation of the preparation of the adoption, creation of the relation of adoption...)?

The Court having jurisdiction which ratifies the decision for the adoption of a minor is the Court placed within the territory where they have their usual residence the adoptive child or the adopted parents (article 800 § 1 C.Proc.Civ.). Therefore, the adoption is carried out and completed by the legal decision.

The Court announces the adoption when are present the conditions of the law, age limits of the candidates adoptive parents between 30 year old and 60 year old, and regarding the adoptee between 18 year old and not 50 years.

The biological parents consent or the legal representative’s assent in front of the Court (article 1550 D.C.). Prohibition of the biological parent’s assent before the 3 months starting from the birth of the child (article 1551 D.C.). Well healthy, social and economic situation of the candidate adoptive parents. Any other element proving the adoption is done in the interest of the adopted minor.

The Ministry of Health § Social Solidarity by the way of its Social services is only implied in the adoptions carried out by the execution of the Social research envisaged
by the Law (article 7 L. 2447/1996) which is taken to the Court if the adoption to be carried out is advantageous to the minor.

c) The Possibilities of recourses and the time they are presented.

According to the article 800 C.Proc.Civ. § 3 and 4 the recourse against a decision which pronounces an adoption are:

The delay to appeal, in cassation or revision against a decision which declares an adoption is, if the decision were not founded, one year and start in all the cases starting from the publication of the decision.

The delay of the opposed third party towards the decision which carries out the adoption is 6 months since the notification of the adoption decision and of 3 years since the moment when the decision became a final one. The biological relative who, because of the application of the provisions of the fundamental rights, does not grant the adoption of his child, has the right in order to exert his third party opposition against the legal decision, to be informed of the elements of the aforesaid the decision by the qualified social service or the organization which was implied in the realization of the adoption.

Moreover articles of the Civil code lay down:

Article 1569: « The adoption can be attacked by the resources envisaged against the legal decision, if the conditions of the law do not contribute or if the assent of one of the people who in accordance with the law, are qualified to authorize to cancel for any unspecified reason or were given under the influence of an error relating to the identity of the person of the adoptive relative or the adoptive child, relative error on essential cases or under the illegal or illicit threat. »

Article 1570: “Have the right to attack the adoption decision for one of the reasons of the preceding article, if there were parts with the business, by the way of recourse in appeal and differently by cassation: 1. in the cases of no conditions of the law were attained, whoever having legal interest or the legal prosecutor. 2. in the cases of valid lack of assent as well as this one is the product of error, fraud or threat, whose valid assent missed or whose error or fraud were threatened, but not its heirs. »

2. The international Procedure of adoption (parents from the U.E. - foreign children from outside of the U.E. or children from U.E. and/or adoptive parents from outside U.E.).

a) The different steps.

The Hellenic legislation does not envisage particular provisions for the international adoptions (which under is understood by that Ci when one of the parties to the adoption its usual residence has abroad or if it is of foreign nationality). The references to the international adoptions are as follows:

1. Articles 3 to 6 of L 2447/96:

the article 3: Children from abroad who were abandoned in Greece and for whom nobody expressed, at least for six months, interest to get protection to them, are adopted in accordance with the Hellenic law.
The article 4: When the relative adoptive candidate or the minor candidate to be adopted has his usual residence abroad, is required a report/ratio of the social service, even if the applicable foreign law does not envisage this one. At this case, the report/ratio is written by the qualified Hellenic social service or the social organization, which was recognized like specializing in the transnational adoptions in collaboration with the qualified social service from abroad.

The article 5: In the cases of the preceding article, the agreement of the candidates adoptive parents is always declared in front of the qualified Hellenic Court which decides about the adoption. All the agreements, which are necessary for the execution of the adoption, are given, if that which gives its agreement has its usual residence in Greece, in front of the qualified Hellenic Court which carries out the adoption, in accordance with the provisions of the second paragraph of article 800 of the Code of Civil procedure and, if it has its usual residence abroad, in front of the proper Hellenic consular authority or the proper authority of the place of its usual residence.

The article 6: By the President decree edited by the proposition of the Minister of Justice and the minister of Health and Care are envisaged: a) the services and organizations recognized as specialized in the adoptions under the application of article 1557 of the Civil code and the realization of adoptions of minors being under their protection inside and b) those recognized as particularly specialized in the transnational adoptions, by the application of article 4 of the present and the realization of the transnational adoptions of minors being under their protection.

With the President decree of the preceding paragraph or by other presidents decrees, published in the same way with proposal of the same ministers, are envisaged in details: a) the procedure of preparation and realization, by the services or organization indicated to the point a) of the preceding paragraph, the minor's adoptions being under their protection, b) the procedure of preparation and of realization of the transnational adoptions of article 4, concerning the minors whom the services and qualified organizations have under their protection or are done by their intermediary, as well as the relative ones with collaboration of the aforesaid services and organizations with the foreign social services and c) the procedure of maintenance of the statistical elements for the adoptions carried out in Greece as well as the transnational adoptions of minors carried out abroad which had before the execution of the adoption decision their usual residence in Greece.

b) The president decree 226/1999 appeal also the international adoption in connection with the social research which must be carried out and by which authorities this one must be carried out:

the article 4: In the cases of transnational adoptions, after the request deposition by the adoptive parents candidates for the adoption of child who has his usual residence abroad and vice versa, by adoptive parents candidates who reside usually abroad for the adoption of child who has his usual residence in Greece, follows an stage of collaboration between the services or organizations recognized in the second paragraph of the 1st article of present and services or respective organizations of the foreign country, and according also to the case of consular Hellenic authorities or helleno- orthodox or communities Hellenic local ones envisaging the meeting of the required elements for the execution of the social research and the completion of file of adoption, which will be deposited by afterwards with the report envisaged in the article 4 of the Law 2447/1996 to the qualified authorities of the country where will be carried out the adoption, that this one was either Greece or a foreign country.

When adoptive parents candidates, who have their usual residence in Greece deposit a request in a foreign country for the adoption of child who has his usual residence in
this country; the file is sent by the service or the qualified social welfare, with the documents translated to the language of the foreign country, to the qualified service of this last country, which is officially elected by its legislation to be occupied about businesses of adoptions. For the faster realization of the procedure, the adoptive parents' candidates have the right to carry out them even the official translation in the foreign language of the documents of the file, which relate to them. For the same reason the sending, by after file by the Hellenic service abroad is done, if the interested party asks it, by mail express train with expenditure of the interested parties. If the foreign service does not answer at the request of the Hellenic service for the sending of the elements which concerns the child who will be adopted, especially its social or medical history and thus the research of the Hellenic service remains incomplete, the report carried out of this one is obligatorily negative. The social assistant responsible for the service or Hellenic social welfare informs the adoptive parents candidates for the stages which will have to be made until the achievement of the adoption.

The Article 5: The minors who have their usual residence in Greece and who are protected by structures or social welfare intern can be promoted with being adopted abroad, since their adoption was not proven possible in Greece. For this goal, is required that social research for the adoptive parents is preceded candidates by a service or recognized social welfare, which is sent with the organization of protection of the qualified child, if it will promote or not the procedure of the adoption after the achievement of social research by registering the relative report of article 4 of Law 2447/1996.

The adoptive parents candidates having their usual residence abroad, Greeks or foreigners, have the obligation after the completion of social research and the agreement of the promotion of the adoption by the service or qualified Hellenic organization, to come to Greece for the procedure from their adaptation with the child and to come to the qualified Greek Court, in order to declare with this one their agreement in accordance with article 5 of Law 2447/1996 and to be present by after, with the judgement for the execution of the adoption. The departure abroad of the child protected by a Hellenic social service, is not allowed before the edition of the relative legal decision.

If a minor's adoption case, having his usual residence in Greece but not being protected by a service or Hellenic social welfare, envisaged to be realized in a foreign country where have their usual residence the adoptive parents candidates, the qualified Hellenic service or social welfare which contribute in accordance with article 4 of the Law 2447/1996, with the qualified respective foreign service for social research, owes its attention so being informed by this one or other sources for possible cancellation of the adoption abroad and taking care about the collaboration with the foreign service for the return of the child in Greece and its later family rehabilitation.

The provisions of the preceding paragraph are valid also in cases where Hellenic minors are adopted in accordance with the first two paragraphs, abroad and by after, following to their transport towards the foreign country, is not to carry out their adoption or/and are given up by the adoptive parents.

The Article 7: Whenever were concluded with foreign countries from bilateral conventions for subjects from adoption, the procedures laid down in the aforementioned conventions are applied.

We can also invoke bilateral convention between Greece and Romania signed in Bucharest on May 13th, 1998 (ratified by the Law 2699/1999 FEK A' 67/1999)\textsuperscript{236} which

\textsuperscript{236} The Rumanian authorities continuously change the legislative framework concerning the adoptions known as international and the new law instituted into force since January 1,
envisages the collaboration of the two States as regards adoption which is not any more application and which envisages the procedure to follow if one of the parties and mainly if the child to be adopted were of Rumanian nationality.

There are also consular conventions between Greece and certain countries, which provides that the consular authorities “have the obligation to accept any relative declaration towards the adoption in the measure that was compatible with the respective legislation of each of the 2 States” 237.

Hellenic jurisprudence made possible emphasizing implementing rules as regards international adoption (adoption of the child having another nationality that of the applicant of Greek nationality)

According to the forecast of the article 23§ 1 D.C. such as this one was reformed by article 2 of the Law 2447/30.12.96, the fundamental conditions for the creation and the resolution of the adoption are regulated by the law of the nationality of each party.

The correlation of the fundamental conditions of the adoption are regulated partly by the law of the nationality of each party. To know about adopting by the law of its nationality and towards the adoptee by the law of his own nationality (Case. 1787/88).

In the cases where the provided law for the adoption envisages a condition which is not foreseen by the Hellenic law. It is necessary to examine whether the under condition is against the internal public order according to article 23 D.C. constituting a fundamental rule for the private international law.

By consequent no rule of the foreign law can be applied to the forum if previously its application was not tested to measurements of the public order of the judge whom is adapted and conforms with this one.

Therefore the reason of the public order law its separately controls with each case of application by the foreign forecast, to judge at anytime aforementioned forecast is adapted or not within the vital general rhythm of the forum. The fundamental conditions for the adoption comprising foreign elements are regulated by the law of the nationality of each party since the applicable forecasts of the foreign right are not contrary to the usual uses or the public law order.

If there is an obstacle for one of the parties, according to the law of their nationality, to carry out an adoption, is without effect that there is a possibility to the other party from its national law to establish a relation of adoption 238.

d) In the last place, it is important to mention that Greece did still not ratify The Hague International Convention of 1993 relating to the protection of the children and collaboration relating to the international adoptions. It should be noted that in the report of ONG (and other institutions) pursuant to the International Convention of the N.U. on

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237 a) Law 2456/1997: Consular convention Greece - Georgia (FEK A' 12/14.02.97) article 34 item 3 I); b) Law 2760/1999: Consular convention with Moldavie (FEK A’ 257/19.11.99) article 34 point H; c) Law 2795/2000: Consular convention with Ouzbékistan (FEK A’ 35/25.02.00) article 34 item 3 I).

the Rights of the Child (ratified by Greece in 1992 by Law 2101., states in its article 21 about adoptions the following injunctions:

In the Unit “Adoption”, the page 54 of the National Report, must be mentioned that the Law relating to the Adoption, the Sponsorship and Subjects of Infantile Protection were revised in 1996 (Order in Council 2447/278/30.12.1996). The law, even being compatible with a great degree with the current framework of Infantile Protection, envisages private adoptions - a subject which the public institutions in charge themselves oppose by excellence.

Injunctions: it is required a better coordination in order to avoid possible delays in the adoption’s proceedings. It is necessary to create the valid institutions in the services of care with assistants validly trained and sensitized, aiming to train the adoptive family’s candidates.

Greece must quickly sign and ratified The Hague international Convention of 1993 relating to the International adoptions, as well as concluding bilateral convention on a national and international level. Because as an article with the daily newspaper large-circulation “Kathimerini” underlines, an additional window for the illegal adoptions remains open as long as the ratification of the Convention of The Hague 1993 is delayed which allows the adoption of a child from a country to another under the condition of the respect of the legislation in force for the aforementioned procedure. In any case the aforementioned ratification does not influence the national legislation, each State has the right to preserve its national law to ensure the best possible conditions favourable both the child the foster adopting family. In Greece, because of this non-ratification, due to the bureaucracy and administrative slowness, only allow the adoption coming from Bulgaria, and this without any clearness within the procedures, nor of means of protection but especially with a great economic cost. Many adopting parents candidates because of the slowness of the procedure and the great bureaucracy are ready to pay up to 20.000 Euros with an aim of obtaining a child, like says it an interested party to the newspaper.

3 The different bodies or agencies and services taking part in the adoption’s procedure.

a) The bodies or agencies

The Article 1557 D.C. envisages: Before the adoption were not granted it is envisaged by the social service or another service or social institution recognized and specialized in the field of the adoptions, a social research pointed, whose conclusions are deposited on time to the court in accordance with what is envisaged by the law, and which according to the elements which result from this if the adoption in question is in the interest or not of the adoptee.

The law decree 226/1999 envisages the execution of the social research which must be carried out as well as the report which its results and which must be deposited with the Court so that this one can give its judgement by taking into account the interest of the child to adopt.

Its Article 1 states more particularly:

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239 Window about the illegal adoption: the non ratification of The Hague, Kathimerini Newspaper 18-09-2008.

240 Adoptions that from Bulgaria: the non ratification of the International Convention relating these excludes the Greeks from the children from other countries, K.Onisensko, Journal Kathimerini 18-09-2008.
While recognizing as specialized to carry out the social research envisaged by article 1557 of the Civil code in the adoptions of minors being carried out at the interior of the country, like interfering for the realization of minors’ adoptions being under the protection of the following services and organizations:

a) Directions of Social Health, or according to the case, Sectors of Health of the Directions of Health and Care of the Prefectures, for the adoption of particular minors after the deposition of request by adoptive parent’s candidates.

b) The National Organization of Social Care (previously PIKPA E.O.P and Centre of Children “MITERA”).

c) The Centre of Child of the Thessalonique’s city hall “Stylianos Agios”.

The organizations of the items b) and c) are qualified, even for social research, only for the minors under their protection and then there does not exist for them a legal obstacle to be subject to the adoption.

To carry out the social research envisaged with article 4 of Law 2447/1996 in the case of the minors’ adoption either them or the adoptive parents candidates having their usual residence abroad (adoptions transnational) thus for the interference about the aforesaid adoption realization when they are minors under their protection, are recognized like services and specialized organizations:

Social Health directions of the 4 fields of the Athens’s Prefecture for the Athens area of, except Pirée’s prefecture and the areas of Continental Greece and Thessaly.
The Social Care direction of the Pirée Prefecture for the Pirée area and the North and the South Egée peripheries areas.
The Social Care direction of the Thessalonique Prefecture for the Central Macedonia, West and East Macedonia and Thrace areas.
The Social Care direction of the Axaia Prefecture for West Greece areas, Peloponnese and Ionian islands.
The Social Care direction of the Iraklion Prefecture for the Crete periphery areas.
The Social Care direction of the Ioanninna Prefecture for the Epire periphery areas.
The Hellenic Branch of the International Social Service with Athens head office.
The National Organization of Social Care and the Centre of Children of the Thessalonique city town hall of “Stylianos Agios” which carries out a social research that for the children under their protection.

The Law 2447/1996 in its article 7 foresees:

The social research, which states article 1557 of the Civil code and the article 4 of the present, will have to relate to each subject having an importance for the adoption decision and particularly for the personality or the health of the interested parties, the incentives and the financial standing of the adoptive relative candidate, correlative capacity adaptation of the adopting parents and the adopted child as well as any other element by which can be indicated if the adoption will be in the interest of the minor.\textsuperscript{241}

\textsuperscript{241} We attach in appendix II, the examples of documents in proof requested by the qualified services and which must be joined to the report at the time of the deposit of them within the Court.
Regarding the adoption of the minor, the natural parents or the tutor directly agree with the adoptive parents candidates without the intermediary of the service or the social organization, those are obliged as well as the adoptive parents candidates before the child is given or within a logical time from this one, to announce their will relating to the qualified social service.

The Social research is carried out afterwards request of the relative adoptive candidate. Immediately after the deposit of the request the service or the organization social determines the certificates which it considers necessary for the execution of research and submits its report directly to the court within a six months delay starting from the deposit or significance of the relative request for the aforementioned child independently if the necessary details were deposited. The delay may be lengthened by justified decision of the Minister of Health and Cares still three months more. After the flow of the time without deposit of report, the Court judges without this one. According to social research, it will be necessary according to the maturity of the child and always the achievement from his 12\textsuperscript{th} year old, is also required his opinion which will have to be called upon in the relative report.

The 6 months delay time, envisaged by the preceding paragraph for the deposit of the report of the social service relates to the only cases where such either the adoptive child candidate or the adoptive parents candidates have their usual residence in the country. For the transnational adoptions cases of the article 4, the aforementioned time can be prolonged by exception, to the maximum twice after justified decision of the Minister of Health and Care.

b) The procedures steps where the bodies intervened.

The social bodies which intervene within the framework of the adoption procedure- and which are described above intervene before the Court does not pronounce its judgement and for this reason those must carry out a report which they must submit within 6 month starting from the deposit of the request to adopt.

c) The bodies’ missions.

Their mission is to determine if the entourage in which the adopted child will be inserted, is suitable and in the interest of the child. This implies that a series of certificates and acts are necessary as well as direct contacts with the biological parents, the future adopting parents (relations between spouses, and with the possible children, their economic situation, etc). By after, these social services are obliged to carry out a social research (entourage, visit of the place of residence etc) and they write a report, which they present -with the necessary certificates- to the Court having jurisdiction and which is taken into account before this last one does not pronounce its decision relating to the approval or the rejection of the adoption of the child by the candidates adopting parents.

d) The composition of these bodies or services.

Welfare officers, psychologists, pediatrists.....

e) Existence of social speakers.

The Article 51 of the law 2447/96 states:

1- For the composition of the Sectors of Minors of the Social services is made up, in block for all, a particular body of employees with the title “Body of Assistants of Committees of Minors”. The aforementioned body is made up welfare officers with a recognized diploma of a Higher or University School of Social Work of the
country or abroad and the licence of exercise of employment, by pedagogues, psychologists and child psychiatrists or psychiatrists, who are appointed, according to their typical qualities, at the level of entered of their respective branch, after the vacancy of the station and successfully with the contest of the particular branch conforming to the forecasts of the 3ème paragraph of article 52.

2- For the covering of the vacant organic stations or needs because of the lack of the organic stations of a particular speciality, can be used, with the speciality of the external collaborator, the respective scientists (particularly psychological and child psychiatrists or psychiatrists) of the local public services or other organizations of the public sector.

3- For the exercise of competences of the article 50, 3ème paragraph, 1er point are used special employees or external collaborators who have the training of lawyers. The external collaborators, coming from scientific branches correlatives or professions, are also used for the assistance of the Social services in the achievement of their work. The Social services also collaborate with the qualified prosecutors especially for the application of article 50, 3ème paragraph, the second point and with other authorities and organizations especially services of the Ministry for Health and Prefecture and with the organizations under their supervision each time there are minors under their protection.

Moreover are carried out seminars, annual national and international conferences in which take part the various social speakers who are organized by the Ministry, by the association of each profession.

4. The follow-up after the adoption.

The Article 3 of the law decree 226/1999 states a follow-up after the output of the decision of court which ratifies the adoption:

"After the final decision envisaging the adoption, the service or social welfare which contributed to its execution is obliged to continue its collaboration with the adoptive family during three years visiting them for at least once a year, aiming to follow the adaptation of the child to his new entourage and to counsel the relative parents. This service is obliged to offer, when the interested parties ask it, its contribution for the search of roots under the conditions permitted by the law.

In the practice however, this article is not followed in the right way and it may be only one year visit carried out after the date of the judgement. »

5. Differences on treatment between the Community Adoption and the international Adoption.

Actually nothing foreseen for the particular adoption cases known as "Community ones". We must refer to jurisprudence; each party is governed by its national Law and it is necessary that this one is not contrary with the Greece public order.

According to the forecast of the article 23§ 1 D.C. such as this one was reformed by article 2 of the Law 2447/30.12.96, the fundamental conditions for the creation of the resolution of the adoption are regulated by the right of the nationalities of each party.

The correlation of the fundamental conditions of the adoption are regulated partly by the nationality law of each party. To know towards adopting parents by the law of his nationality and towards the adoptee parents by the law of his own nationality (Case. 1787/88).
There is even cases of adoption where no visit was carried out by the qualified services what could pose problem for adopting and/or the members of their family or the adoptees who are not able to adapt to a new reality and the changes that can implied the aforementioned institution.

We announce at this stage, which the majority of questioned emitted their disappointment by the fact that this post - follow-up is not carried out because the most of the times they do not know how to react vis-a-vis certain difficulties and certain reactions of their adoptive child. All of them required a psychological support "post - adoptive" which is non-existent and which would be possibly an occasion of avoidance of problems.

In cases regarding the different treatment of Community adoption cases face to the international Adoption (simple procedure). Nothing is actually envisaged for the particular case adoptions known as “Community cases”.

We must refer to jurisprudence where the observed rule applying is that each one of the parties is governed by its National Law and the need that this one were not contrary to the public order of Greece. According to the forecast of the article 23§ 1 D.C. such as this one was reformed by article 2 of Law 2447/30.12.96, the fundamental conditions to grant and to a resolutions of the adoption are regulated by the right of the nationality of each party.

The correlation of the fundamental conditions of the adoption are regulated partly by the right of the nationality of each party. To know towards adopting by the right of its nationality and towards the adoptee by the right of his own nationality (Case. 1787/88). The certificates and documents required by the foreign law must be translated into the language of the procedure and to have the Apostille of The Hague Convention to be valid.

In the cases where the adoptive child is from a foreign nationality or that its residence is out of Greece, it is the Court of his national country which pronounces the judgement and in Greece the only procedure which is carried out is the exequatur, i.e. of the recognition of the foreign judgement and its application and execution in Greece

6. The conditions to adopt, distinction between the international adoption and the national adoption.

Briefly we can present the conditions for the adoption as follows:

a) The adoption is pronounced by the Court who takes into account 3 essential elements:

   The assent of the biological parents ;

   The assent of the adopting parents ;

   The social research report

b) The age of adopting (for submission of adoption should not be beyond of sixtieth (60ème) year (1543 D.C.) The critical moment is the depot of the relative request. Possible delays with the procedure, which are not due to adopting, cannot exclude the adoption. And moreover, which adopts must exceed the adoptee at least 18 years, but also in accordance with the new provision (article 1544 D.C.) not to overtake 50 years old. And for this condition, the critical moment is the time of deposition of the request for the adoption.)
c) Adoption by several: it is prohibited that the same child were adopted by several except if they are spouses.

d) Marriage of adopting: The adopting parents do not need to be married but it is important to know if it is a man or a woman.

e) The existence of other children in or except marriage does not prevent somebody from adopting.

f) The economic situation of the adoptive parents: THERE is not an element of the private economic situation, which constitutes a condition to be able to adopt. Simply, there is a research of the economic situation of the adoptive relative to check that there is possibility to offering to the child the living conditions.

g) Criteria of suitability of the adoptive parents: it is the basic research which is directed towards psychic and body health, the economic situation as well as the behaviour of the adoptive parents from an ethical and social point of view so judging if the adoption is really beneficial for the child who will be adopted = social research who is carried out by the administration of social care and is qualified for the area where reside the adoptive parents.

The Civil code envisages in its articles 1543 and following the conditions allowing the adoption:

The article 1543: Who adopts a minor must have the capacity to contract, to have reached the thirty years and not to exceed the sixty years.

Article 1544: Adopting must be older than the adoptee at least 18 years but not beyond fifty years old. This restriction of the age does not exist when a person adopts the biological child of his spouse or the child already adoptive by his spouse before. In the case of a spousal child adoption and if incurs in a serious reason, the court can authorize the adoption even if there is a smaller difference of age, but not less than 15 years.

Article 1546: The married person cannot adopt without the assent of his spouse, which is granted personally by a declaration in front of the court. If the married person has his usual residence abroad, his assent can be given by declaration in front of a notary. The court can though allow the adoption even without this approval, if this one is impossible for legal or real reasons or if there exists outstanding between the spouses a divorce proceeding.

Article 1547: It is allowed that the same person adopts several minors by separate act or successively.

Article 1549: The adoption takes place by legal decision, after request of the adoptive relative candidate. Who is adopted must personally give its assent in front of the court.

Article 1556: When adopting has already children, the court, according to their degree of maturity, must also listen their opinion.

Article 1557: Before the adoption were granted is envisaged by the social service or another service or social institution recognized and specialized in the field of the adoptions, a social research pointed, which conclusions were deposited on time to the court in accordance with that envisaged by the law, and according to the elements resulting from this if the adoption in question is in the interest or not of the adoptee.
Article 1558: The court declares the adoption if the conditions envisaged by the law exists and were noted, by taking account either to the rapport conclusions of the preceding article, to the sight of the personality, of the health and the marital status and economic of adopting and the adoptee, or their mutual capacity of adaptation, the adoption is in favour of the adoptee.

Article 1559: The adoption of minor is kept secret. In the cases of paragraph 2 of article 1550, as well as article 1552, the secrecy is valid also towards the biological parents. The adoptive child has, after his majority, the right to be fully informed by his adoptive parents and any proper authority of the details of his biological parents.

Article 1560: The effects of the legal decision for the adoption start, when this one becomes final.

Article 1561: By the adoption, any bond of the minor with his biological family is cut except the exception of the provisions relating to the preventions of marriage of articles 1356 and 1357, and the minor is to insert fully in the family of the adoptive parents. Towards the adoptive relative and the members of the family of this one, the minor has all the rights and obligations of a child born within the marriage. In the case of a simultaneous or successive adoption of several, is formed between them a family ties identical as exists between brothers and sisters.

Article 1563: The adoptive child takes the name of the adoptive relative parent. He has however the right when he becomes major to add his name before the adoption. If this last one or the adoptive relative name is composed of two names, it will be used for the formation of the synthetic name of the adoptive child the first of them.

Article 1564: In the case of a common adoption by spouses or of the adoption by one of the husbands of the child of the other, it is also valid for the adoptive child the possible declaration the spouses relatively made for the name of their child in accordance with the provisions of the first two paragraphs of the article 1505. If such a declaration were not carried out, it can be made in front of the civil registrar officer simultaneously with the registration of the adoption to the Civil register office.

Article 1566: Once the adoption act recorded, the parental authority of the biological parents or the supervision under which was eventually subjected the adoptive child, are automatically replaced by the parental authority of the adoptive parents. The biological parents do not have any right of communication with the adoptive child. If one of the spouses adopts the child of the other, the parental authority is common to both parents.

OBSERVATION: For the adoptions known as international, it is necessary that the foreign law which governs the adopting party or the adoptee party were not contrary with the internal public order law.

7. Conditions to be adopted; Distinction between the international adoption and the national adoption.

a) The Civil code envisages the conditions that a child can be adopted. If these last are not attained, the adoption cannot take place.

Article 1545 D.C.: It is prohibited that a person were adopted at the same time by two people safe in the case where those are married. In the same way, is not allowed the adoption of a person already adopted, as long as the adoption takes effect, except if it acts of a successive adoption in the same way adopted by the husband of that which adopted in first.
In the case of the adoption by the two husbands, the conditions envisaged by articles 1543-1544 must exist that for one of them.

Article 1549: The adoption takes place by legal decision, after request of the adoptive relative candidate. That which is adopted must personally give its assent in front of the court.

Article 1550: So that a minor is adopted, it is necessary that his/her parents give their assent in front of the court or at least the approval of the one of them if other were deposed of its parental authority right according to the article 1537 or if its assent is impossible because it is placed under legal supervision which includes also the incapacity to give its assent for the adoption of his/her child. If the minor does not have parents, is given the assent of his tutor in front of the court, after the permission of the guardianship Council.

The assent envisaged in the preceding paragraph is, if the minor is protected by a qualified social service or institution, valid even when who gives his assent does not know the person of the candidate adoptive relative.

Article 1551: The approval of the parents for the adoption cannot be granted before fell three months starting from the birth of the child.

Article 1552: The approval of the parents for the adoption of their child is replaced by the decision of the court:

a) if the parents are unknown or the child is exposed;

b) if the two parents were deprived of their parental authority or if they find under private legal supervision also the capacity to give their assent for the adoption of their child is removed;

c) if the parents are of unknown residence;

d) if the child is protected by a specialized social service, that the parental authority their was dispossessed according to articles 1532 and 1533 and that those wrongly refuse to give their assent;

e) if the child was given with the assent of his parents to a foster family to be raised and subjected to its care aiming to a further adoption and that he was accustomed to this family throughout one year at least, and the parents refuse by after wrongly giving their assent.

By decision of the court the assent of the tutor/curator for the adoption of the minor is also filled, if this last is protected by a specialized social institution and the tutor refuses his assent wrongly.

Article 1553: In the cases under element b) to d) with of the first paragraph, like in the case of the second paragraph of the preceding article, the Court decides, after having subjected to hearing the parents of the close family, if their audience is possible.

Article 1554: Subject to the provisions of the three preceding articles, the parents or the curator can give, by declaration in front of the court, with the specialized social service or the specialized social institution having the guard of the minor, the general power to begin the procedure of the future adoption of the minor with a person or by a married couple which will be freely selected by the social service or the institution. This procuration can be revoked by the parents or by the tutor, in the same way by
declaration in front of the court, which will have to be meant at the institution or the service until the deposit by those to the court, of the request of adoption.

Article 1555: In front of the Court, the personal assent of the minor who will be adopted is necessary if this one is over 12 years old, unless he find in a psychic situation or a mental disturbance which limits the operation of its assent.

In all the cases, the court according to the maturity of the minor must also hear his opinion.

**OBSERVATIONS:**

The conditions provided are valid either if it is about the private adoptions or public ones, i.e. children who are placed in an organization or institution approved by the State. In the last case it needs moreover the child were “free with being to adopt” i.e. the biological parents grant that their child were adopted.

For the adoptions known as international, it is necessary the foreign law which governs the adopting party or adopted one were not contrary with the internal public law order.

In a second place we mention here the forecasts of the civil code, which have the necessary conditions for the adoption of major which is from now the exception of the rule.

Article 1579: “The adoption of major is allowed only when the adoptee is relative until the fourth degree by blood or alliance with that which adopts. »

Article 1580: “In the major’s adoption, a respective application of the provisions in force regarding the minor's adoptions if no other regulation according to the provisions is envisaged. »

Article 1581: “The adoption of major is decided by the court after the common request of whom adopt and is adopted. If the adoptee is unable to contract, the relative request is subjected by hi legal representative. »

Article 1583: "The major married cannot be adopted without the assent of his spouse, who is given by personal declaration to the court. The 2nd point of article 1546 applies respectively. »

We would like to notice at this stage that social research for the adoption of major is not a basic obligatory condition so that the adoption can be carried out such as this one is planned for the adoption of minor.

8. The process for the child's audience.

In all the forms of adoption, the candidates adopting parents as well as the biological parents can address to a lawyer to be represented during all the procedure.

According to article 1555 D.C. : “In front of the Court, the personal assent of the minor who will be adopted is necessary if this one is 12 years old completed, unless he was in a psychic situation of mental disturbance which limits the operation of its assent.

In all the cases, the court according to the maturity of the minor must also hear his opinion. »
In all the cases of adoption, the adopting parents candidates as well as the biological parents can address to a lawyer to be represented during all the procedure. In practice, the adoptions known as "private" are made in their great majority by the lawyer representation, (who is often the intermediary, which puts in contact the future adoptive parents with the couple, which wants to give his/her child to be adopted). It is one of criticisms done to the “private” adoption and where the intermediary of lawyers can give place to economics exchanges - often presented like “gifts” at the biological family and thus return to a kind of “trade” of the adoptive children.

9. The assent for the adoption.

a) According to article 1555 D.C.: “In front of the Court, the personal assent of the minor who will be adopted is necessary if this one is 12 years old completed, unless he was in a psychic situation of mental disturbance which limits the operation of its assent.

In all the cases, the court according to the maturity of the minor must also hear his opinion.”

Article 800 of the Proceedings civil code confirm this precision in its point 5th: “Minors having reached the 12ème year of their age personally have the capacity to be present at the court at the time of the execution of the adoption and to exert the grounds for appeal against the relative decision, independently of the respective right of their legal representative.”

b) Legal parents (having the parental authority ); However, in all the cases article 1550 D.C. envisages “For a minor adoption it is necessary that his/her parents give their assent in front of the court or at least the approval of one of them, if the other were deposed of his right of parental authority according to article 1537 or if his assent is impossible because he’s placed under legal supervision which includes also the incapacity to give his assent for the adoption of his/her child. If the minor does not have parents, is given the assent of his tutor in front of the court, after the permission of the guardianship Council.

The assent envisaged in the preceding paragraph is, if the minor is protected by a qualified social service or institution, valid even when who gives his assent does not know the person of the adoptive relative candidate.”

We mention also the particular case envisaged by article 1552: « The approval of the parents for the adoption of their child is replaced by decision of the court:

a) if the parents are unknown or the child is exposed;

b) if the two parents were deposed of their parental authority or if they are under legal private supervision which removes also the capacity to give their assent for the adoption of their child;

c) if the parents are of unknown residence;

d) if the child is protected by a specialized social service, and they were dispossessed of parental authority according to articles 1532.1533 and that those wrongly refuse to give their assent;

e) if the child was given with the assent of the parents to a foster family to be raised and subjected to their care aiming of a further adoption and that it was accustomed to this one throughout one year at least, and the parents refuse by after wrongly giving their assent.
By decision of the court the assent of the tutor/curator for the adoption of the minor is also filled, if this last is protected by a specialized social institution and the tutor refuses his assent wrongly. »

c) Biological parents (are not the legal parents). However, in all the cases article 1550 D.C. envisages “For a minor’s adoption, it is necessary that his/her parents give their assent in front of the court or at least the approval of one of them if the other was deposed of his right of parental authority according to article 1537 or if his assent is impossible because it is placed under legal supervision which includes also the incapacity to give his assent for the adoption of his/her child. If the minor does not have parents, the assent of his tutor is given in front of the court, after the permission of the guardianship Council.

The assent envisaged in the preceding paragraph is, if the minor is protected by a qualified social service or institution, valid even when that which gives its assent does not know the person of the candidate adoptive relative. »

We mention also the particular case envisaged by article the 1552 “the parent’s approval for the adoption of their child is replaced by decision of the court: a) if the parents are unknown or the child is exposed, b) if both parents were deposed of their parental authority or if they are under legal private supervision which their remove also the capacity to give their assent for the adoption of their child, c) if the parents have unknown residence, d) if the child is protected by a specialized social service, and the parental authority their have been dispossessed according to articles 1532.1533 and that those wrongly refuse to give their assent, d) if the child was given with the assent of the parents to a foster family to be raised and subjected to his care aiming a further adoption and that it was accustomed to this one throughout one year at least, and which the parents refuse by after wrongly giving their assent.

By decision of the court the assent of the tutor/curator for the adoption of the minor is also filled, if this last is protected by a specialized social institution and that the tutor refuses his assent wrongly. »

d) Other members of the family: article 1553 C.C: “In the cases under element B’ with of the first paragraph, like in the case of the second paragraph of the preceding article, the court decides, after having subjected to hearing the parents of the close family, if their audience is possible. »

If the adoptive parents have biological or adoptive descendants, the assent of them and the assent of the spouse in the case of the major child’s adoption is need. This is envisaged by article 1556: “When adopting has already children, the court, according to their degree of maturity, must also listen their opinion”.

10. The assent given by the mother.

The Article 1551 D.C. “the approval of the parents for the adoption envisages cannot be granted before fell three months starting from the birth of the child”.

Any time in the case of the private adoptions, maybe - and in practice this is rather current, that the biological mother (often of foreign nationality) gives his child to be adopted immediately after the childbirth if she is already in contact with a couple who wishes to adopt.

11. The possibility of assent in white.

It is possible the parent or the curator give his assent in white to the organization or to the approved institution having under its protection the child, where this one is adopted.
This is also envisaged by article 1554 C.C. “Subject to the provisions of the three preceding articles, the parents or the curator can give, by declaration in front of the court, with the specialized social service or the specialized social institution which have the guard of the minor, the general power to begin the procedure of the future adoption of the minor with a person or by a married couple which will be freely selected by the social service or the institution. This procuration can be revoked by the parents or the curator, in the same way by declaration in front of the court, which will have to be meant at the institution or the service upon the time of the deposit by the last with the court, of the adoption’s request”.

However, it is to be announced that the biological parents and/or the curator have obligatorily to confirm again their assent in front of the court when the affair is carried in judgement. The assents required for the adoption are given by the personal presence in front of the court and particularly in front of the member of composition of the court which carries out the adoption (article 1549 C.Civ., new article 800 § 2 C. Proc. Civ.). The assents are given in a particular office without publicity.

12. The Possibility of refusal of necessary assent.

The possibility of not taking into account the refusal of assent can exist when this refusal is abusive. The Civil code envisages 2 articles which have of the conditions and the procedure to be followed.

The Article 1570 C.C. : “Have the right to attack the adoption for one of the reasons of the preceding article, if there were parts within the affair, by the ground for appeal in call and differently by the appeal in cassation: 1. in the cases of non competition of the conditions of the law, whoever has legal interest or the Procurator. 2. In the cases of valid lack of assent as when this one is the product of error, fraud or threat, Who missed the valid assent or was in error or fraud or was threatened, but not his successors.»

The Article 1546 D.C. “The married person cannot adopt without the assent of his spouse, which is granted personally by a declaration in front of the court. If the spouse has his usual residence abroad, his assent can be given by declaration in front of notary. The court can however allow the adoption even without his approval, if this one is impossible for legal or real reasons or if there exists outstanding between the couple a divorce instance procedure.»

We announce at this stage that a project of law revising certain conditions applying to the adoption is in process: Article 1552 D.C. is revised as follows: “The legal substitution of the assent: The assent of the parents for the adoption of their child is replaced by decision of the Court: a) if the parents are unknown or if the child is exposed, b) if the two parents were deposed parental authority or find in a situation of lack of supervision legal who their remove also the capacity to grant the adoption of their child, c) if the parents are of unknown residence or became of unknown residence after having given the mandate general of article 1554 D.C., D) if the child is protected by an approved social institution, the parents were deposed exercise of the authority in accordance with articles 1532 and 1533 and the latter wrongly refuse to agree, e) if the child were placed with the agreement of the parents in a family to receive care and an education with an aim of adoption and that it is inserted in this one for one duration of at least a year, and the aforementioned parents by after wrongly refuse to agree.

If the cases a) to e) of the above paragraph contribute to the person of only one of the parents, the decision of the Court replaces only the assent of this last one.
By decision of the Court the assent of the tutor for the adoption of minor is also replaced, since this last is protected by an approved social institution and that the tutor wrongly refuses to agree."

This reform will thus make possible to limit the abusive cases being able to exist regarding the refusal of assent of the parent/s giving their child to be adopted and thus an effort is carried out to limit the remaining number of children in reception centres or approved institution and to enable them to enjoy a cordial entourage as it is of right and obvious for any child. Always it is that according to different the interviews from people specialized in the field of the adoption such as lawyers, psychologists, welfare officers, all of them are in agreement to affirm that the reform of the law, which is still not voted so far, is limited still too much and it should go further.

If they judge that the substitution of the assent from the biological parents by the court having jurisdiction is a step on the matter by thus limiting the cases where the children grow in centres, it would have been necessary also to envisage the possibility of sponsorship institution, which would have made possible to regulate this institution which is in a precarious state in Greece and would be a solution for the good being of many children.
2.12. **HUNGARY**

1. **Fundamental rules on adoption**

Basically adoption in Hungarian law is governed in the Family Act (Act IV of 1952). Article VI in that act defines the purpose, conditions, legal consequences of adoption as well as its becoming null and void, and disruption and dissolution of adoption; in addition it regulates the legal statements pertaining to adoption.

Hence Hungarian law embedded adoption into the act on marriage, family, and guardianship indicating that this legal institution is linked to the family itself, which is the smallest cell in the society.

The purpose of adoption as quoted from the act: 'to establish family relationship between the adopting parent and his or her relatives on one hand and the adoptee on the other hand to ensure that infants whose parents are not alive or unable to bring them up properly are raised in family'.

Governmental decree no.149/1997.(IX.10.) is entitled to rule on guardianship authorities and on procedures in child protection and guardianship matters; article VI in that decree discusses matters related to adoption and disruption or dissolution of adoption.

This is the very legal rule that regulates adoption procedure and the procedure preceding adoption in details and it discusses disruption or dissolution of adoption as well. In the referred article there is a separate entry covering the provisions applicable to adopting parents of foreign nationality as well as to adoption of children of foreign nationality.

The provision set forth in the article shall govern the central authorities’ duties defined in the Hague Adoption Convention.


The Government Decree no. 127/2002.(V.21.) regulates the licensing activities and operation of private organizations that facilitate adoption. The act determines the activities organizations of public use may perform in Hungary so as to further open adoption. It stipulates the conditions and content of issuing relevant licences, controls the organizations performing under the decree, and determines a legal framework to observe in the course of rendering services. The legal rule sets conditions for organizations promoting adoption to fulfil to obtain operation licence from the authorities and issuance of such licences as well as follow-up controls ensure such organizations are properly registered.


Chapter XX on Actions for Judicial Revision of an Administrative Decision in the Act III of 1952 on the Code of Civil Procedure. Such actions include actions instituted against administrative decisions made by the authorities (as such decisions shall also qualify administrative decisions).
This chapter, among other ones, in the code of civil procedure states that a state administrative organ that has otherwise no contentious disposing capacity may also act as contesting party in such an action. Therefore in case of decisions made in the course of adoption procedure are brought to court for judicial revision the guardianship authority may be a contesting party even if otherwise would not have contentious disposing capacity.

In addition to general principles the same chapter XX covers the particular procedural rules to follow also in case of actions related to procedures under our title.

Government Decree no. 235/1997. (XII.17.) on personal data handled by guardianship authorities, regional child protection special services, child welfare services, and organizations and persons providing personal care.

After several modifications this legal rule determines the scope of registries the concerned organs may keep in line with the latest principles of data protection and in the supplements it provides uniform templates mandatory to use.

In addition to the above discussed the contesting authorities and other organs, organizations, persons in the procedure can refer to other legal rules in the Hungarian law that may be relevant considering the special conditions of the case if found necessary or deemed useful to complete.

2. Summary of statutory regulations

Adopting parent shall be a person of full age having full disposing capacity who has successfully passed the preparatory course and consultancy preceding adoption and whose personality and living conditions enable him or her to adopt a child and is older by at least 15 but not more than 45 years than the child being adopted. (The severe criteria may be dispensed with in case of adoption by spouse or by relatives). Persons prohibited from public affairs by Court or under the legal consequence of judgement cancelling parental control.

3. Only infants shall be adopted

4. Adoption shall be permitted by the guardianship authority.

To start permission proceedings the parties (the adopting parent and the adopted infant to be or his or her legal representative) shall make consentient mutual application. In addition to the parties’ consentient statement an approval from the child’s parents and from the spouse of the adopting parent shall also be required for granting a permission. As principle the child’s parent shall not be entitled to revoke his or her approval (exceptions are listed later). Another precondition to adoption is that the adopting parent shall take care for the child for at least one month. Permission for adoption shall be granted only after such period has elapsed.

5. The parent may also give consent to adoption without knowing the person and personal data of the adopting parent (secret adoption).

If the parent gives consent to a person known by the parent shall adopt the child, then it is called open adoption.

If the parent makes statement before the child is born, then he or she may revoke the consent for adoption until the child turns 6 weeks old.

The parent’s right to control in this case as well as when the statement was made on a child not older than 6 weeks shall come to an end when the child turns 6 weeks old; in case of the statement is made later, then at the very moment when such statement is
made. The guardianship authority shall issue an administrative decision on cancelling the parent’s right to control.

If the child has turned 6 weeks old or has impaired health, then the guardianship authority’s approval shall be required to make the parent’s consent valid.

6. In certain cases the parent’s or the spouse of the adopting parent assent shall not be required.

A child can be adopted without the parent’s assent if the guardianship authority has declared the child raised in foster home suitable for adoption or is under the force of final and absolute judicial decision that cancelled parent’s right to control. A child who has been accommodated in a health institution without the parent’s disclosure of his or her own identity can also be adopted without bearing the parent’s assent provided the parent does not apply for the child within 6 weeks. Parent staying at an unknown location or having no disposing capacity shall also not be required for adoption.

Consent from the spouse of the adopting parent may be dispensed with if the life community has come to an end or the spouse stays at an unknown place or has no disposing capacity.

7. The guardianship authority shall declare the child adopted in the following cases:

8. Through a fault of his own the parent has not contacted the child taken in temporary foster for over a year and the parent fails to alter his or her lifestyle or condition during that period and hence temporary raising in foster home cannot stop (the authority’s administrative decision on ordering raising in foster home draws the parent’s attention to that very legal consequence);

9. The parent changes place of residence and place of stay without leaving the new address behind and the efforts and measures to find out the new address fail to succeed within six months;

10. The parent does not keep contact in any form with the child.

According to the Hungarian law the guardianship authority, for the sake of the child, shall give priority to adoption by adopting parents living in marriage

An adoption shall qualify as secret if the parent has given consent before or after the child is born and if no consent is required from the parent in cases under the law (Interpretation as to the Sect. 6 of the 48.§ of the Law IV.of 1952. The main point in secret adoption is that the parent is not disclosed on adoption and is not eligible to bring any action neither by appeal nor by any other means against the relevant administrative decision.

Simultaneously with declaring a child suitable for adoption the guardianship authority may restrict or interrupt the parent’s right to keep relation with the child.

No adoption shall be permitted if it were against the infant’s interests or harmed public interest or would be of any source of profit to the parties or other persons or organs contributing to the procedure.

Adoption to abroad shall be permitted only if

a) the child has been raised in foster home or in care by the state and has been declared suitable for adoption, and

b) the child has not been adopted at home since there has been no such
attempt for adoption or the efforts with the aim to adopt that child have failed.

Adoption shall come into force simultaneously upon the permitting administrative decision becoming final (except for the case when the adopting parent dies in the course of the procedure, because the legal consequences of adoption in that case shall become valid upon the death of the adopting parent).

Legal consequence of adoption: the adopted person shall enter the legal status of the child of the adopting parent, against the adopting parent and his or her blood relations. A person adopted by both spouses shall be deemed as common child of the spouses. Adoption shall have effect on the child’s descendants as well.

Adoption shall cause the rights and duties to control and support deriving from legal status of family in blood relation to stop (the only exemption is if either spouse has adopted the child of the other spouse).

The adopted child shall bear the name of the adopting parent (in exceptional cases the continued use of the former family name of the adopted person may be permitted). The first name may be changed with the approval of the guardianship authority.

The adopted person may ask for information on the personal data of his or her blood parents. The parties shall be informed on this possibility in the course of adoption procedure. No information shall be provided on the personal data of the blood parents if it is against the interests of an adopted minor (e.g. the court has stopped parental right of control on account of jeopardy of infant).

Disruption or dissolution of adoption: it is possible based upon the mutual application by the contesting parties, by the guardianship authority, or by the Court.

The guardianship authority shall dissolve adoption if it is for the sake of the infant’s interest and offends no public interest. In the course of dissolution the guardianship authority shall hear the blood parents as well.

In case of dissolution adoption shall enter legal consequence with the coming into final force of the guardianship authority’s administrative decision.

At either party’s request the court shall dissolve adoption if the other party has conducted in a way that has made adoption impossible to sustain or it has become impossible to implement the aim of adoption. In case of death of the adopting parent the Court may also dissolve adoption also with the very aim for the adopted person to reclaim his or her legal status in family of blood relation. The followings are entitled to bring action to court in such matters: the adopting parent, the adopted person, and also the guardianship authority and public prosecutor in the interest of the latter one.

In case of judicial proceedings adoption shall cease upon the coming into final force of the dissolving judicial decision.

Subsequent to dissolution the adopted person shall not be entitled to bear the family and first name taken upon by adoption; however, the guardianship authority and the court may decide otherwise.

Legal statements relevant to adoption shall be made in person only. Exception: a party having no deposing capacity and having a legal representative making such declarations.

The approval of the legal representative shall be required for any legal statements connected to adoption by a person of full age having restricted deposing capacities.

Declaration on suitability for adoption: the guardianship authority shall proceed out of turn in the matter either ex officio or on request. Such request may be initiated by the guardian of child in temporary care or children’s right representative; may be proposed by the child protection special service, the foster home, or the representative operating foster parents' network.

Prior to declaration on suitability for adoption the guardianship authority obtains personal opinions, statements as well as expertise from stakeholder persons, organizations familiar with the matter. Such positions discuss the child’s parents’ conditions, experience in family care, change in parent-child relation, etc.

If the child is raised in children’s home or at foster parent, then positions from the representative operating the network as well as from the child’s guardian shall also be required.

The governmental decree on the rules of procedure discusses precisely the sorts of statements and position that are required in the course of declaration on suitability for adoption depending on which party requested the procedure.

At the same time with declaration on suitability for adoption the guardianship authority may, in the interest of the child, restrict or interrupt the parent’s right to keep contact.

Declaration on suitability for adoption shall manifest in administrative decision.

In the procedure preceding adoption: the purpose of this procedure is to establish whether the personality and conditions allow the adopting parent-to-be to adopt a child.

To start procedure preceding adoption a request shall be lodged to the competent child protection special service. The application shall be lodged to the child protection special service having jurisdiction over the place of residence of the adopting parent-to-be. The special service shall act as an authority.

The person intending to adopt a child shall declare on the following:

- reason for intention to adopt a child;
- ideas, thoughts regarding the child, the number of children to adopt, are brothers/sisters welcome for adoption;
- age of child to adopt, possibility of adopting children with impaired health;
- whether gives a consent or not that in case of declaration on suitability his or her personal data shall be recorded in the national registry of persons intending to adopt;
- acknowledges that passing a preparative training and consulting is a precondition for declaration of suitability;
- shall declare on the outcome(s) of any adoption procedure(s) instituted beforehand.

Within not later than 15 days subsequent to submission of application, the child protection special service shall inform the person intending to adopt a child, on the condition for adoption required by law as well as on the fact that, to establish suitability,
the applicant shall take aptitude test, participate in preparative training course and consulting, and family and living conditions would be examined in situ.

After the completion of the above-mentioned the child protection special services shall inform the person intending to adopt the child on the results of aptitude test within 60 days after the submission of application.

The special service shall send the partial results of the aptitude test and the applicant’s request to the guardianship authority. Based on the documents received from the special service, proofs of income, means study, assessment of situation, and hearing the person and his or her spouse intending to adopt a child the guardianship authority shall issue an administrative decision on suitability. The administrative decision on suitability shall order in the following matters:

- the number and age(s) of children the person intending to adopt a child can adopt;
- the person intending to adopt a child can adopt brothers/sisters or child with impaired health status;
- informs whether the person intending to adopt a child shall notify the competent child protection special service in the event there is any change in his or her condition or ideas or thoughts regarding adoption

When the administrative decision becomes final and absolute, the child protection special service shall enter the applicant into its own registry and in possession of the relevant approval it forwards the personal data of the applicant to the national registry.

In the event the administrative decision establishes unsuitability for adoption and such decision becomes final and absolute, then no new proceedings to establish suitability shall be instituted within one year after such decision became non-appealable.

The administrative decision establishing suitability shall be effective for a period of two years. The validity of the decision may be extended by a maximum of one year if no adoption has taken place and there have been no changes in the applicant’s condition for two years. If there is an adoption proceeding in progress upon the expiry of validity, then the validity of decision establishing suitability for adoption shall be extended to the non-appealable end the other proceedings. In the event the condition of the applicant changes during validity, then the child protection special service shall inform the guardianship authority that has established suitability.

In the cases of Review suitability: In the event the condition of the applicant changes during validity, then the guardianship authority shall immediately revise applicant’s suitability for adoption. In the course of revision the authority shall consider making a new means study or conducting a new aptitude test as necessary.

Accordingly, the authority shall make an administrative decision either to sustain or cancel the applicant’s suitability. At the same time with establishing unsuitability for adoption the child protection special service and the national registry deletes the personal data of the person intending to adopt a child from their registries.

The second phase of adoption procedure is the procedure to permit adoption.

Such procedure shall start on the mutual and consentient request of the adoptive parent-to-be and the adopted -person-to-be or his or her legal representative.

Usually in the course of adoption procedure a curator ad hoc shall represent the interests of a child under protection unless a guardian has been appointed to
represent. The guardianship authority shall ex officio order curator ad hoc for the adoption procedure.

The guardianship authority shall decide on granting permission to adoption within 60 days from the submission of relevant request. The period granted for decision may be extended if the ordered care period exceeds one month. In that case the decision shall be made within 30 days after the end of care period.

Upon submission of application for permission the person intending to adopt a child shall attach the following documents:

- final decision of the guardianship authority on suitability for adoption;
- in case of adoption by spouse or relative of the parent the person intending to adopt a child shall declare on the existence of relationship, attach the documents verifying he or she has passed the preparative training course preceding adoption, psychologist's report, health aptitude certificate from the family doctor.

After the request has been submitted the guardianship authority shall examine the difference between the ages of the adopting parent-to-be and the adopted-person-to-be (see the legally binding provisions as discussed above).

Adoption procedure continues with placement the child into care. Before placement, however, the guardianship authority shall

- carry out means test at the person intending to adopt a child;
- obtains medical certificates and possible diseases on the child's health status from the family doctor and specialists; in addition, expertise on the child's character is also obtained in case of children over 3 years old;
- obtains operational licence of any non-governmental organization(s) involved in mediating the child's adoption

Special rules shall apply if the person intending to adopt a child has been raising the child at his own household in possession of the child's parent's assent for more than a year or if the person intending to adopt a child is the spouse of the blood-parent.

Prior to granting permission to adoption the guardianship authority obtains certificate of birth of the child to be adopted, the final and absolute judicial decision on the end of parental control, and any other documents that may affect the parent's rights over the child. The authority may request medical certificate from the family doctor and specialist repeatedly on the health status of the person intending to adopt a child.

Prior to granting permission to adoption the guardianship authority hears

- the person intending to adopt a child;
- the infant over 14 years of age;
- the infant below 14 years of age and bearing full judgement;
- the parent of the child if his or her right to control has not been stopped by the court or the guardianship has not declared the child finally suitable for adoption and if the parent has not given consent to secret adoption beforehand.

In addition the authority shall hear the legal representative, the curator ad hoc and the spouse living in life community with the adopting person.
In case of open adoption the authority shall hear the adopting person, the child to be adopted and having restricted deposing capacity and blood-parent together at the same time in form of proceedings.

At the hearing the person intending to adopt a child shall declare on the following:

- is aware and acknowledges the legal consequences of adoption;
- requests that the child is to be placed out in care;
- whether requests to be registered in the birth registry as blood-parent;
- declares he or she is not under the legal power of non-appealable judicial decision prohibiting exercise of public affairs or has been deprived of the parental right of control;
- he or she would benefit materially from adoption

At the hearing the child’s blood parent shall declare on giving consent to placing out the child in care. Such assent shall not be required if the person intending to adopt a child has been raising the child at his own household for more than one year.

In the course of hearing the person intending to adopt a child shall declare on the name and place of origin of the child that shall exist following to adoption. A single person intending to adopt may place the personal data of an imaginary parent on records. If the adopting parent-to-be is married but wishes to adopt alone, then the spouse’s assent shall be disclosed at the hearing.

There shall be no conditions stipulated to the above statements declared in the guardianship authority’s procedure.

If the parent wishes to make statement without being aware of the person and personal data of the adopting parent, then he or she may do so at any guardianship authority.

If the parent gives assent to adoption in a statement, then upon making such statement the guardianship authority shall inform him in writing on the legal consequences as well as the rights due to the guardianship authority regarding the approval of such assent. The parent shall not be entitled to revoke his or her consentient statement and shall be particularly warned.

The guardianship authority may not approve the parent’s consentient statement if the child to be adopted has turned 6 or has impaired health.

In this sphere impaired health shall be established on the basis of expertise issued by a specialist working in competent special health institution. The guardianship authority may refuse to approve the parent’s consentient statement if adoption is most unlikely to take place on account of the child’s age or other condition.

Based on the documents attached and statements made in the course of procedure and on the recommendation of the child protection special service and on the request submitted by the curator ad hoc the guardianship authority shall decide on placing out the child within 15 days.

In its administrative decision the guardianship authority shall order on mandatory placing out the child into care. The decision shall specify the period of care and determines interruption of parental control in case of open adoption.

No administrative decision shall be required on mandatory care in the cases stated below:
• if adopting parent and blood-parent are married, or
• if adopting parent has been raising the child in his own household for more than one year in possession of assent received from the child's blood parent
• the child is in foster care and the person intending to adopt a child is his or her spouse and fosterer provided those persons have been raising the child properly for more than one year, or
• the person intending to adopt a child has been raising the child not older than 6 weeks in his own household for more than one month and such care was temporarily ordered by the guardianship authority

Having placed out in care the guardianship authority with the help of the child protection special service shall assure that placing out the child in care has delivered the intended results and shall understand that the child has settled in the new family. If any new facts or conditions contradicting previous expertise reports and questioning aptitude have been revealed during that phase or at any time during adoption, then the guardianship authority shall revise suitability for adoption.

During care the person intending to adopt a child shall take care for the child at his or her own expense.

After the mandatory care period ended the guardianship authority shall make the person intending to adopt a child declare on sustaining his or her intention and shall inform him on the medical documents determining the child’s family status and representation.

The guardianship authority shall issue administrative decision and judge the request for adoption following to the above mentioned procedures have been completed. The decision on adoption shall be an administrative decision giving orders on the following in addition to the general content:

• it shall determine the personal identity of the adopting parent and the child to be adopted;
• it shall determine the name the child shall bear after adoption;
• it shall establish the personal data required for re-entering the child into the birth registry;
• it shall establish the data on the child’s place of origin;
• it shall give administration order on trusteeship;
• in case of single adopting person-to-be it shall establish the personal data of the imaginary parent to be recorded as the other parent;
• it shall order on the question of registering blood parents;
• it shall establish whether the mandatory care period has been successful or not;
• it shall cease the child’s temporary or permanent care that has existed so far;
• it shall establish the legal consequences of succession;
• it shall contact the registrar in order to re-enter the child into the birth
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registry;

- it shall establish the place of residence of the adopting parent at the child’s birth.

The guardianship authority shall give detailed explanation either on approving or rejecting the request for adoption.

The guardianship authority shall send a copy of the final and absolute administrative decision to the child protection special service keeping registry of the concerned adopting parent.

There is a special case, however, when there is no positive approval in the decision giving permission for adoption, yet adoption shall be deemed realized. This case is the following:

If request for adoption has been submitted in with all necessary supplements at least 60 days prior to the child reaches its majority, in the course of procedure the hearings as mentioned in section 30 above have been completed and those entitled, to make statements have made their statements in accordance with section 30 above and the child has attained its majority during the procedure due to lack of final and absolute decision, in that case, if the lack of administrative decision does not derive from default of the adopting parent-to-be, then adoption shall be deemed approved on the day preceding the child’s reaching its majority even in default of final and absolute administrative decision. Certainly, all legal conditions on adoption requested by law shall be complied with (for instance the minimum and maximum difference in ages, mutual and consentient assent of the parties, the child’s parent’s approval, see above).

In that special case the guardianship authority’s administrative decision shall establish the legal consequences have ensued.

12. Foreigners in adoption procedure in Hungary

a) The rules on adoption shall be completed and changed with special provisions in case of adopting parent of foreign nationality. The foreign nationality of the adopting parent explains the need for such amendments. The fact that which nation the adopting parent comes from and where his or her regular place of residence will determined the difference by law in the course of proceedings. Therefore, the applicable procedural rules shall depend on the mere fact whether the permanent place of residence of the adopting parent is in a country that has joined the Hague Adoption Convention dated on May 29, 1993 or not.

The provisions set forth in the Hague Convention are well-known, therefore are not mentioned herein.

Foreigners interested in adopting a child may report their intention to the competent Hungarian ministry that is the peak organization of guardianship authorities or at consulate officer at Hungarian foreign representation. In the latter case the consul shall forward the application via diplomatic courier to the ministry. If the country is a member of the Hague Adoption Convention, then the adopting person may report his or her intention to the designated Central Authority of the state party or to its representative. In case of applicant from a state party the Central Authority shall forward the application as well as the supporting documents required in the Convention to the competent ministry and to the Central Authority designated by the Convention.

The Hungarian ministry shall inform the foreigner attempting to adopt a child (regardless of coming from a state party or not) on confirming the registration of request; in case of state party a notice is sent to the Central Authority in the state party as well. If there are discrepancies in the submitted application, the person intending to
adopt a child receives a notice to resolve discrepancies within 60 days; in state party the ministry shall send the notice to resolve discrepancies through the Central Authority of the state party or its representative.

**In case the applicant is a foreigner with regular place of residence registered in Hungary**, then the rules on procedures on preceding adoption as detailed under point 26 shall prevail.

In the event the applicant to adopt a child is a foreigner with regular place of residence not registered in a state party, which means it is not the Central Authority in the state party that sends the relevant documents to the Hungarian ministry, then the applicant shall attach the following supporting documents to the request:

- evidence on social and housing situation
- verification of income
- expertise on personal aptitude
- preliminary assent given by the foreign country.
- documents proving his or her nationality
- ideas, thoughts regarding the child and declaration on the reasons for adoption;
- consenting statement on recording his or her personal data in a registry
- licence of any non-governmental organization(s) involved in mediating the child’s adoption

Certified copies with authenticated Hungarian translation primarily legalized by the Hungarian foreign representation shall be submitted; dates of issue of documents shall not be older than 6 (six) months.

The above-listed documents shall be renewed every 2 (two) years. If the validity of expertise on suitability and the preliminary assent of the foreign country exceeds 2 (two) years, then applicant shall be required to submit the report on evidence on social and housing situation and verification of income only.

If in the ministry’s registry there is a child available for adoption with whom applicant can establish proper relationship, then the ministry decides on arranging for meeting in person. Certainly, in this respect the order in receiving applications shall govern. The ministry shall notify the adopting person through the Central Authority in the state party on the possibility of establishing relationship with the child. In that notice the adopting person receives the child’s personal data, is informed on the condition of child’s becoming available for adoption and on the child’s family and health status. The child’s place of care is also disclosed to the applicant.

Within 30 days from receipt of the notice the applicant shall declare on his or her intention to see or adopt the child. The applicant must specify a date or period in which he or she expects to travel to Hungary to see the child.

In the event of positive answer from the foreign applicant the ministry shall inform the competent guardianship authority and child protection special service immediately. At the same time they send the documents attached to the request to the guardianship authority. The ministry confirms that the child is available for a foreigner to adopt, which means no adoption procedures have been initiated in Hungary or such procedures and efforts ended unsuccessfully.
Within 8 days after seeing the child protection authority shall send the documents on the child as well as its proposal for mandatory care to the guardianship authority.

Within 15 days after the receipt of documents from the child protection special service the guardianship authority shall decide on placing out the child into care.

Prior to making such decision the authority shall hear the persons listed under point 28, examines whether all legal conditions pertaining to adoption are complied with in the case, records the requests of the adopting parent and the information on the legal consequences of adoption as per the personal rights of the adopting person.

At the same time the guardianship authority contacts the child protection service in order to monitor the child’s adoption to the new family. The latter organization shall make an expertise within 15 or 30 days and submits a proposition on adoption to the guardianship authority.

Following the above measures the guardianship authority shall issue an administrative decision either on confirming or refusing adoption. The administrative decision shall specify nationalities of both the adopting parent and the adopting child as well. The decision shall grant permission for the child to leave the country and the use of the child's assets if any (grant permission on use).

Otherwise the rules under point C shall govern cases with a foreign adopting person.

If the child to adopt is of foreign nationality but the regular place of residence is outside the scope of states party in The Hague Convention, then the guardianship authority shall proceed as follows:

- shall examine the conditions for adoption as per the child’s personal rights,
- obtains approvals from the competent foreign authorities on adoption,
- at the time of placing the child out into care it contacts and makes the Hungarian child protection special service prepare an expertise.

In addition to the usual content the administrative decision confirming adoption of child with foreign nationality shall specify the specify nationalities of both the adopting parent and the child being adopted as well and the authority responsible for birth registries shall be contacted to arrange for domestic birth registration of the child.

Otherwise the above-discussed general rules shall govern the adoption of child with foreign nationality having place of residence outside the scope of state party.

In the event a Hungarian person intending to adopt a child wishes to adopt a child with regular place of residence is in a state party, then he or she shall submit a request to the competent Hungarian ministry being the Central Authority designated by the Convention.

The Hungarian ministry shall send the report specified in the Convention to the Central Authority or its representative having power in the state as per the regular place of residence of the child.

The rules set forth in the Convention shall prevail over the procedure of adoption.

13. Dissolution of adoption by the guardianship authority.

Procedure to dissolve adoption shall be initiated on request submitted by the contesting parties. The authority shall judge the request with due care following hearing all stakeholders as well as the adopted child’s blood-parents personally. Records shall be taken on all in the course of the procedure. The records shall specify the stakeholders’
personal data and statements on their awareness of the legal consequences of dissolution. Data on the adopted child’s family status and bearing of name before and after adoption shall be recorded. At the end of the procedure the authority shall decide on dissolving the adoption. In its administrative decision the authority shall finalize changes in names arose from adoption, determine the names to bear after dissolution, determine the adopted child’s birth and marriage certificates serial numbers, establishes the personal identity data required to be re-entered or amended in the birth registry. The decision determines the date of request for dissolution and states whom the concerning adoption has been dissolved.

14. Dissolution of adoption by the court

Adoption may be dissolved via legal course if initiated by either party. In case of adoption of infant the guardian authority and state prosecutor shall also be entitled to litigate [please refer to point 23]

15. Disclose blood-parent’s personal data to adopted child

A child who has turned 14 may request the guardianship authority to disclose his or her blood parent’s personal data. No assent from the legal representative shall be required to disclose such data.

Prior to disclosing such data the guardianship authority shall ponder the child’s best interest in this respect. The authority may obtain expertise from psychologists and in case of minor child may hear both the blood as well as the adoptive parents. In case of child of full age only blood parent shall be heard.

In case of secret adoption the blood parent shall not be disclosed information on the adoptive parent’s personal data.

16. Private non-profit organizations facilitating in adoption processes.

In Hungary only organizations of public use are allowed to perform activities with the aim to facilitate adoption. Besides, such activities are restricted to the sphere of open adoption only.

Being of public use, those organizations perform their activities fully opened to the public. They shall make their annual and other detailed reports on their activities public.

Those organizations shall render services exclusively in Hungary and facilitate adoption only between blood parents and persons intending to adopt of Hungarian nationality. A condition of operation is a licence issued by the relevant authority(ies).

Operational licence shall be issued on request. The request shall demonstrate documents on eligibility of public use, the professional qualifications of the manager responsible for services, proof on liability insurance, proof on due protection of data, existence of appropriate technical condition, professional programme, and all data suitable for identifying the organization.

The Ministry on Health, Welfare, and Family Matters is entitled to issue operational licence. In the event conditions change adversely or if services rendered against the best interest of the child or in case of public interest have been offended the licence may be withdrawn or the organization may be prohibited from any future activities. The ministry monitors those organizations in order to ensure legal operation.

17. Services to be rendered by those organizations, in particular

• consulting and assistance to pregnant women in social crisis especially to those intending to keep their pregnancy in secret
- prepare the person intending to adopt a child for adoption
- prepare to establish contact between the blood parent and the person intending to adopt a child
- keep registry of the personal data of the blood parent wishing to give his or her child to adoption and the person intending to adopt a child
- on special request to provide assistance and consulting to the blood parent and the person intending to adopt a child following adoption

In Hungary anyone, with Hungarian nationality and permanent place of residence in Hungary, wishing to adopt a child in open adoption may call on those organizations of public use and use their services rendered. Those organizations have power over and act in the entire country and have national registry of persons intending and found suitable to adopt a child and children available for adoption from registered blood parents. Here are some organizations: Bölcső Alapítvány, Gólyahír Egyesület, Alfa Szövetség, Fészek Alapítvány.

To render services the organization shall enter a written agreement
  - with the blood parent having right of parental control;
  - with pregnant mother or her legal representative;
  - with the curator of the child to be given for adoption;
  - with the person or married couple intending to adopt a child.

Agreement with the latter one shall only be made if he or they have valid administrative decision from the guardianship authority establishing suitability for adoption.

The parties using the services may terminate the agreement any time without offering an explanation. The organization of public use shall terminate the agreement only if it were illegal to maintain. The organization of public use shall not charge service fee or accept donation for the mediation services rendered.

The costs incurred from delivery of services, however, shall be borne to the person intending to adopt a child. Those costs can be partial costs only (telephone, mail, car, etc.). The law limits the maximum amount of costs to be charged.

The organization of public use shall keep a registry of the persons using the services and the children; data protection shall be ensured for in keeping such registries.

18. Administrative decisions made in the course of adoption

In the course of adoption the authority shall issue administrative decision in questions on the merits and administrative order in questions not on the merits. In practice in the end of all phases deemed as milestone in the procedure an administrative decision shall be issued against which appeals may be lied in line with the rules on appeals against decision in line with the general provisions on the public administration.

In adoption procedure child protection special services not bearing authority powers have complementary role. Usually the monitor the practice and fulfilment of precondition of adoption and keep the relevant authority updated. They handle and forward request for adoption and their work and documents shall provide the authority with a basis for decision. It must be highlighted, though, that they lack the power of authorities to issue administrative decision.
2.13. **IRELAND**

1. **HISTORICAL BACKGROUND**

In 1948, the Legal Adoption Society, a multi-denominational body, vigorously campaigned for the enactment of adoption legislation in Ireland. Although many European countries legalised adoption in the early 1900's, Ireland did not provide for legal adoption until the enactment of the Adoption Act 1952. The reluctance on the part of the Irish legislature to recognise and provide for legalised adoption prior to 1952 was largely based on the fear that parents would abandon their children to improper persons or that they would sell them.

Since the introduction of legalised adoption in Ireland, over 40,000 children have been formally adopted. While the number of applications for adoption has decreased in recent years there has been a considerable change in the variety and complexity of applications, in addition to an increase in the number of children “adopted” from foreign countries whose adoption law is not recognised by Irish law.

2. **THE IRISH CONSTITUTION AND LEGISLATION**

In Ireland, the principle sources of fundamental rights in the area of family law are contained in Articles 41 and 42 of the Irish Constitution. Article 41 of the Irish Constitution concerns the family and “recognises the family as the natural and primary unit group of society” and further guarantees “to protect the family in its constitution and authority”. The rights guaranteed by Article 41 are recognised as belonging to the family unit as a whole as opposed to individual members of the family. An individual on behalf of a family may invoke the rights under Article 41, however, as stated by the Court in Murray v Ireland, such rights “belong to the institution in it as distinct from the personal rights which each individual member might enjoy by virtue of membership of the family”.

Resulting from the principle of parental autonomy created by Article 41, the Irish Constitution, it has been argued, lacks a child focus, in that, although the Constitution recognises the child as possessing individual rights, there is a strong constitutional presumption that those rights are best protected within the family unit. Article 41 thereby protects family life and the State can only supplant the role of the parents in circumstances where they have, for physical or moral reasons, failed in their duty towards their children.

The Irish Constitution is therefore unique, as compared to most other Western constitutions, in providing the family unit with autonomy over and above that of the individual members of the family. In fact, the individual rights of the members of the family are both focused and determined by the family as an entity in itself.

That being said, it has been accepted by the Supreme Court that children do have certain personal, unenumerated rights under the Irish Constitution. In the case of G. v An Bord Uchtála, the Supreme Court stated:

"[T]he child has the right to be fed and to live, to be reared and educated, to have the opportunity of working and of realising his or her full personality and dignity as a humane being. These rights of the child… must equally be protected and vindicated by the State. . ." 

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Although in recent years the Supreme Court has moved away from enumerating children’s rights by holding that articulating rights of children is to be dealt with by the Government, it is clear that the Irish Constitution provides some protection of children’s rights and the Irish State is bound to uphold these rights. Currently in Ireland, there is a growing consensus that more explicit protection concerning children should be contained in the Constitution and the Twenty-eighth Amendment of the Constitution Bill 2007 is due to be put forward by way of Referendum in the near future.243

As previously stated, adoption legislation was introduced in Ireland in 1952, at a time when adoption was seen as a method of saving a child from the difficulties attached with illegitimacy. The Adoption Act, 1952 (“the 1952 Act”) provided the legal basis for adoption in Ireland and for the establishment of the Adoption Board, which created a formal adoption procedure. The procedure created under the 1952 Act was seen as a private, consensual process designed to facilitate the legal transfer of a child into an adoptive family.

Embodied in Irish law is the principle that adoption is for the benefit of children and therefore the child is the most important person in the process. Therefore, in determining whether it is appropriate for an adoption order to be made, the Adoption Board/Authority or any court is required to “regard the welfare of the child as the first and paramount consideration.”244

The 1952 Act has been amended six times, by the Adoption Act 1964, 1974, 1976, 1988, 1991 and 1998. The Adoption Acts, 1964, 1974, 1976 and 1998 were largely enacted to amend and extend the preceding Adoption Acts. However, the Adoption Act 1988 (“the 1988 Act”) was enacted to provide for the non-consensual adoption of a child in exceptional and limited circumstances where the parents, for physical or moral reasons, had failed in their duty towards their children. The 1988 Act, which is discussed in detail below, is an important piece of Irish legislation which is also the subject of criticism due to its failure to secure the rights of marital children as opposed to those of non-marital children. Finally, the Adoption Act 1991 (“the 1991 Act”) was enacted to provide for the recognition of certain adoptions effected outside of Ireland and is discussed in detail below.

In Ireland, a child born to parents who are married at the time of birth is treated differently to a child born to parents who are not married to each other. Originally, under the 1952 Act, adoption was only for the benefit of a child born to parents who were not married to each other, as a child born to married parents was not eligible for adoption even if the child’s parents had abandoned him or her. It is only since the enactment of the 1988 Act that marital children have been eligible for adoption and only then once they are “freed for adoption” by order of the High Court245, which will be discussed in detail below.

3. THE ADOPTION BOARD

As previously stated, The Adoption Board/Authority (An Bord Uchtála)246 was created by the 1952 Act and it is an independent quasi-judicial statutory body which has the sole right to grant adoption orders on the application of a person desiring to adopt a child.247

243 The Twenty Eight Amendment of the Constitution Bill 2007 was published by the Government on 19 February 2007. (add detail of bill…)
244 Adoption Act, 1974 s. 2.
245 See Adoption Act 1988.
246 The Irish Government has decided to establish the current Adoption Board as a new central adoption authority. Legislation will be required and is in preparation. Pending the legislation the Board will be described as the Adoption Board / Authority. The Minister for Children is currently preparing adoption legislation which will establish the Adoption Board as an independent authority under the Hague Convention on Intercountry Adoption.
247 Adoption Act, 1952, s. 9.
All applications for adoption orders are made to the Adoption Board/Authority which consists of a Chairman and eight ordinary members appointed by the Government. The primary functions of the Adoption Board/Authority are to grant or refuse applications for adoption orders in relation to Irish adoptions; to register and supervise the Registered Adoption Societies and to maintain the Adoption Societies Register; to grant declarations of eligibility and suitability in relation to intercountry adoptions; and to maintain the Register of Foreign Adoptions. In addition, the Adoption Board/Authority monitors placements through its social workers.

The Adoption Board/Authority also plans and oversees the development of adoption services, sets down guidelines and standards for the provision of all adoption services, provides for review and evaluation of those services, undertakes and promotes research and publishes information about adoption and related services, provides information directly to the general public and supports others in the provision of information on adoption services.

Until 1979 there was legal uncertainty in relation to the Constitutional position of the Adoption Board/Authority. Several cases in the 1970’s argued that the Adoption Board was acting unconstitutionally because it was acting in a judicial capacity thereby contravening Article 37.10 of the Irish Constitution. Due to this legal uncertainty, a referendum was held in 1979 and the Sixth Amendment of the Constitution Act was passed which provides,

“No adoption of a person taking effect …at any time after the coming into operation of this Constitution…and being an adoption pursuant to an order made or an authorisation given by any person or body of persons designated by those laws to exercise such functions and powers was or shall be invalid by reason only of the fact that such person or body of persons was not a judge or a court appointed or established as such…”

In conjunction with the Adoption Board/Authority, the role of a registered adoption society in the adoption process is to act as an intermediary between the natural parent or parents and the prospective adopters. In addition, it is the role of the adoption society to place the child for adoption with suitable prospective adopters, monitor the placement and to provide additional counselling and other social services for both the natural parent(s) and the prospective adopters.

Prior to the Adoption Board/Authority granting an adoption order in respect of a child, it is necessary that several statutory requirements are satisfied and these requirements will be dealt with in detail below, initially focusing on domestic adoptions.

4. CATEGORIES OF ADOPTION

In Ireland, adoption can be divided into three broad categories:

a) Domestic consensual adoption where a child is adopted with the consent of its natural mother and/or guardian. This category of adoption can only include the adoption of a child whose parents are not married to each other at the time of the child’s birth.

In the context of domestic consensual adoption, a distinction is drawn between non-relative adoption and adoption by the relatives of a child. The term “relative” originally included only persons traced through the natural mother, however, since the 1998 Act “relative” includes all persons related to the child, whether traced through the mother or the father of a child.248

248 Adoption Act, 1998, s.2(e) provides “relative”, in respect of a child, means a grandparent, brother, sister, uncle or aunt of the child, whether of the whole blood, of the half-blood or by affinity and includes the spouse of any such person, relationship to the child being traced through the mother or the father.”
In Ireland, originally non-relative adoptions were the most common form of adoption, however, adoptions by relatives are now more common than adoptions by non-relatives. Most of the relative adoptions in Ireland are by a natural parent and his/her new spouse, i.e. step-parent adoptions. For natural parents, adoption is the only way of providing the spouse of the natural parent with guardianship rights in respect of the child. However, in order to achieve this, the natural parent must also adopt his/her own child even though he/she already has parental rights and obligations in respect of the child. In Ireland, the Adoption Acts do not provide a means by which the natural parents can continue a legal parenting system, and, at the same time, allow the custodial parent to adopt the child with his/her spouse. In this regard, the Adoption Board/Authority has called for a change in legislation which would allow a new spouse of a natural parent to obtain joint guardianship rights, while at the same time allowing the continuation of any relationship of the non-custodial natural parent with the child.

b) Domestic non-consensual adoption where an adoption order may be granted without the consent of the parents. This category of adoption can occur pursuant to section 3 of the Adoption Act 1974, which allows a child who has been validly placed for adoption by its natural mother or guardian to be adopted notwithstanding the subsequent withdrawal of consent. Alternatively, this category of adoption can occur pursuant to the 1988 Act, which allows for the adoption of a child (including a child whose parents are married to each other) in circumstances where parental failure, i.e. total abandonment, has occurred.

c) Intercountry adoption where the adoption of a child not of Irish residential origin may be recognised provided certain conditions being met.

5. GENERAL CRITERIA IN ADOPTION

Pursuant to Irish law, several statutory requirements must be met in order for an adoption order to be made in respect of a child. The Adoption Acts contain several criteria which must be satisfied in respect of the child, the person(s) who place the child for adoption and the prospective adopter.

A. WHO MAY BE ADOPTED

Irish law allows an adoption order to be made in respect of a child who is:

- An orphan\(^{249}\), meaning a child whose parents are dead\(^{250}\). Such an adoption may proceed even if the parents, while alive, were married to each other;

- An illegitimate child, i.e. a child born outside marriage and not subsequently legitimated by its parents’ marriage\(^{251}\). In this regard, a child will be deemed to have been born outside marriage if its parents were not married to each other at the time of birth;

- A legitimated child whose birth has not been registered under the Legitimacy Act 1931\(^{252}\). In this regard, where the parents of a child marry after the child’s birth, an adoption may still proceed provided the child has not been registered as a “legitimate” child. However, in order for such a child to be adopted, the consent of the natural father to the placement is required;

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\(^{249}\) Adoption Act 1952, s. 10(c).
\(^{250}\) Adoption Act 1952, s. 3.
\(^{251}\) Adoption Act 1952, s. 10(c)
\(^{252}\) Adoption Act 1964, s. 2.
• An abandoned child, regardless of the marital status of the child’s parents\textsuperscript{253}.

As previously stated, the 1952 Act originally restricted adoption to orphans and “illegitimate” or “non-marital” children. Furthermore, adoption was confined to children who were resident in Ireland and aged between six months and seven years.\textsuperscript{254} The 1952 Act further required that the adoptive parent(s) were of the same religion as the child and its parent(s)\textsuperscript{255} which in effect meant that an inter-denominational couple could not adopt, and the child of inter-denominational parents could not be adopted.

However, the 1964 Act widened the category of children who could be adopted. Significantly, under the 1964 Act, children who had been legitimated by the subsequent marriage of their parents, but whose birth has not been re-registered could be adopted provided the father consented to the placement of the child for adoption and to the final adoption order.\textsuperscript{256} The 1964 Act also allowed the adoption of children over the age of seven and required the Adoption Board/Authority to give due consideration to the child’s wishes taking into account the age and understanding of the child.\textsuperscript{257}

In order for a child to be the subject of a domestic order for adoption, he/she must, at the time in question, reside in the State.\textsuperscript{258} In the case of a child, the exact period of residence is not defined in the legislation. However, in the case of an adult, in order to be eligible for adoption he/she must be ordinarily resident in the State and have been resident so during the year ending on the date of the making of the adoption order.\textsuperscript{259} Irish nationality or Irish domicile is not a jurisdictional criterion in the case of either a child or an adult.

Adoption orders can be made by the Adoption Board/Authority in relation to any children as listed above without the intervention of the Courts. However, following the enactment of the 1988 Act, which also further extended the category of children who could be adopted by allowing for the adoption of children of married parents, the High Court may, in exceptional cases, make orders under section 3 of the Act authorising the adoption of certain children. Pursuant to the Act, any child, whether or not born to married parents, may be eligible for adoption where the Court find that the parents have failed in their duty to their child, that such failure was likely to continue and that such failure amounts to an abandonment of their rights as parents.\textsuperscript{260} As previously mentioned, much criticism is levelled against the provisions contained in the 1988 Act because the only way in which a marital child can be adopted is when they are “freed for adoption” pursuant to the rigorous requirements under the Act in the most extreme of circumstances.

**B) WHO MAY PLACE A CHILD FOR ADOPTION**

Pursuant to Irish law, the following may make a placement for adoption:

• a health board;

• a registered adoption society;

• a parent of a child, but only where the child is being placed with a relative of the parent or of the child.

\textsuperscript{253} Adoption Act 1988, s. 3.
\textsuperscript{254} Adoption Act 1952, s. 10(a) & (b).
\textsuperscript{255} Adoption Act 1952, s. 12.
\textsuperscript{256} Adoption Act 1964, s. 2. The father’s consent to the final adoption order can be dispensed with pursuant to the Adoption Act 1952.
\textsuperscript{257} Adoption Act 1964, 3
\textsuperscript{258} Adoption Act 1988, 3
\textsuperscript{259} Adoption Act 1991, s.10(6)
\textsuperscript{260} See generally Adoption Act 1988.
Generally, only a registered adoption society or a health board can lawfully place a child for adoption. Pursuant to the 1952 Act, it is unlawful for any body of persons to make or attempt to make any arrangements for the adoption of a child, unless such body is a registered adoption society or health board.261

Originally, it was possible for an individual to put forward a child for adoption, or cause a child to be put forward for adoption, if that person was a parent of the child or if the person intending to adopt was a relative of the child. However, following the enactment of the 1998 Act, it is illegal for any person, including a parent of the child, to make a private placement of a child for adoption unless the prospective adopter is a “relative” of the child.262 For purposes of the relevant section of the 1998 Act, “relative” includes a parent and the spouse of a parent of a child. Therefore, a parent can put forward their child for adoption in a step-parent adoption.

C) WHO MAY ADOPT

Under Irish law, the Adoption Acts presuppose that adopters will be married couples. However, the Adoption Act 1991 permits adoption by single parents where the Adoption Board/Authority is satisfied that, “in the particular circumstances of the case, it is desirable” for such an order to be made.263 Subject to satisfying the Adoption Board/Authority as to their suitability, the following persons are eligible to adopt:-

- a married couple living together.264
- The natural mother of the child in question.265
- The natural father of the child in question.266
- A relative of the child.267 For these purposes, a “relative” includes a person related to either the mother or the father of the child.268
- A widow.269
- A widower.270 Originally, widowers were not entitled to adopt. However, the Adoption Act 1974, in an effort to rectify this situation, authorised adoption by a widower where, inter alia, the widower already had children in his custody. However, the High Court, in T.O’G v Attorney General & Ors.271 struck down the provision as offending the guarantee of equality contained in Article 40 of the Irish Constitution.
- A single person.272 A previously stated, where the Adoption Board/Authority is satisfied that it is “desirable”, a single person may adopt a child.
- A married person alone. In these circumstances, the spouse’s consent to adopt must be obtained, unless they are living apart and are separated under:

261 Adoption Act 1952, s. 34.
262 Adoption Act 1998, s. 7.
263 Adoption Act 1991, s. 10(2).
264 Adoption Act 1991, s. 10(1.(a).
265 Adoption Act 1991, s. 10(1.(b).
266 Id.
267 Id.
268 Adoption Act 1998, s.2(e).
269 Adoption Act 1991, s. 10(c).
270 Id.
272 Adoption Act 1991, s. 10(2).
Court decree; or Deed of Separation; or The spouse has deserted the prospective adopter; or Conduct on the part of the spouse results justifies the prospective adopter leaving the spouse and living apart.\textsuperscript{273}

Interestingly, under Irish law an individual in a stable non-marital relationship may adopt under the Acts, however, a couple in the same circumstances may not adopt as it is not possible for two unmarried persons to adopt jointly.

In addition, an adoption order can only be made in favour of applicants who are ordinarily resident in the State and have been so resident during the year ending at the date of the making of the adoption order.\textsuperscript{274} The Adoption Acts do not require that applicants have either Irish nationality or an Irish domicile. Prior to the making of an adoption order, the Adoption Board must be satisfied that the applicant(s) are of good moral character, have sufficient means to support the child and are suitable person(s) to have parental rights and duties in respect of the child.\textsuperscript{275}

Irish law further provides that an adoption order shall not be made unless a couple adopting a child to whom they are not related must both be at least 21 years of age and where the child is being adopted by a married couple and one of them is the mother or father or relative of the child, only one of them must be at least 21 years of age.\textsuperscript{276} Irish law does not prescribe upper age limits for applicants, however, age is a significant factor when assessing an applicant(s) suitability to adopt and most adoption agencies apply their own upper age limits.

As stated above, the Adoption Act 1952 provided that the child had to be of the same religion as the adopters, which meant that a married couple who were each of a different religion were not capable of adopting. This provision was subsequently found to be unconstitutional\textsuperscript{277} and the Adoption Act, 1974 now governs and stipulates that a person whose consent is required for the adoption must be informed of the religion of the adoptive parents.\textsuperscript{278}

**D) PROCEDURE**

The adoption procedure in Ireland is dictated by the identity of the parties involved and we will therefore discuss the procedure which must be followed from the prospective of the different parties.

**E) PROSPECTIVE ADOPTERS – DOMESTIC CONSENSUAL ADOPTION**

As previously stated, within the category of domestic consensual adoption, a distinction is drawn between non-relative and relative adoption. The most prevalent relative adoptions in Ireland are step-parent adoptions, where, for example, a birth mother marries a person other than the birth father of her child and they both adopt the child. In such a case, the birth mother gives up her sole legal rights to the child and both she and her husband take on joint legal rights and responsibilities in respect of the child on the making of the adoption order. The procedures for both relative and non-relative adoption are discussed below.

1. Relative Adoption

Where a natural parent and his/her spouse or a relative want to adopt, they initially contact the Adoption Board/Authority for an application form which is signed by the applicants and returned to the Adoption Board/Authority. The applicants include a
number of documents with the application form, including but not limited to the child’s birth certificate, the applicant’s civil marriage certificate and the applicant’s birth certificates.

As part of the process, one of the Adoption Board/Authority’s Welfare Officers visits the prospective adopters’ home on a number of occasions to discuss the adoption application, interview the child where appropriate and make a recommendation to the Board.

In this regard, the Adoption Board/Authority must ensure that the statutory requirements, as discussed above, in respect of the prospective adopters are satisfied. In addition, the Adoption Board/Authority must be satisfied as to the suitability of the prospective adopters pursuant to the Adoption Acts as further discussed above.

The Adoption Board/Authority makes every effort to seek a birth father’s view on the adoption application, even if he is not a joint guardian of the child, before it decides whether it is in the interest and welfare of the child to make an adoption order. The Adoption Board may decide in exceptional circumstances that there are compelling reasons why the birth father should not be notified of an adoption application in respect of his child and in such circumstances, the Adoption Board/Authority will require the birth mother swear an affidavit outlining her relationship with the birth father and the reasons for not informing him of the adoption application.

In this regard, the rights of natural fathers in the context of the adoption procedure will be discussed in detail below.

The Adoption Board/Authority invites the prospective adopters and the child to attend before it when the application is finalised. Most family adoption applications are finalised within one year, expect where difficulties arise.

2. Non-relative Adoption

A couple wishing to have a child placed with them for adoption applies to a Registered Adoption Society or their local Health Board.

A couple being considered by an adoption agency undergoes a detailed assessment in addition to a medical examination. The purpose of this assessment is to establish the couple’s suitability as prospective adoptive parents. The assessment is carried out by one the agency’s social workers, which includes several joint and individual interviews and visits to the couple’s home. The social worker reviews the couple’s relationship, their motives for adopting, their expectations of the child and their ability to help the child to an understanding and knowledge of his/her natural background.

If a couple is accepted by an adoption agency and thereafter have a child placed with them, application is then made to the Adoption Board for an adoption order.

On receipt of an application for an adoption order, the Adoption Board/Authority assigns one of its social workers to the application. The social worker will make at least two visits to the applicants’ home and report to the Board on the applicants’ suitability. An adoption order will not be made unless the Adoption Board/Authority is satisfied as to the suitability of the adopting parents.

The Adoption Board does not usually finalise an adoption until the adopting parents have had the child in their care for at least six months. The Board may require the applicants to have the child in their care for a longer period in certain circumstances.

When the Adoption Board is satisfied that an adoption is ready to be finalised, it will invite the adopting parents to attend before it with the child for the hearing of their application. At the oral hearing, the applicants are asked certain questions on oath in
order to establish their identity and eligibility to adopt and if the Board is satisfied as to
the applicant(s) eligibility and suitability to adopt, it will then proceed to make an
adoption order in their favour.

3. DOMESTIC NON-CONSENSUAL ADOPTION

As stated above, domestic non-consensual adoption is where an adoption order may
be granted without the consent of the parents. The procedure is generally the same as
above for the prospective adopters; however, once an issue arises with regard to
consent, provisions of either the 1974 Act or the 1988 Act are applied depending upon
the circumstances.

Prior to a detailed discussion of domestic non-consensual adoption, it is necessary to
discuss the issue of consent under Irish law.

F. CONSENT GENERALLY

As a general rule, an adoption can only proceed with the “full, free and informed
consent” of all parties whose consent is required under the legislation.279 The Courts
have recognised that the act of placing a child for adoption and the consent to a final
order involves a waiver by the non-marital mother of her personal right to the care and
custody of her child, a right which is guaranteed under Article 40 of the Irish
Constitution.

Pursuant to section 14 of the 1952 Act, consent is required from the following persons:-
The natural mother of the child. The Act specifies that the natural father has no right to
object by reason only of his status as the natural father of the child.

Any guardian of the child. This may include the father of the child who has been
appointed guardian.

Any other person having charge of or control over the child immediately before it is
placed for adoption.

Consent is not required, under section 14 of the 1952 Act where the party whose
consent is sought either cannot be found or is incapable, by reason of mental infirmity,
of giving such consent.

The natural mother's/guardian's consent is required at two stages in the adoption
process, when the child is placed for adoption and before the making of the adoption
order when the final consent is given.

G. THE NATURAL MOTHER OR LEGAL GUARDIAN AND THE NECESSARY CONSENT

1. Initial Consent

The first step to any adoption is the initial consent to the placing of the child for
adoption. Pursuant to Irish law, the initial consent must come from the mother or the
legal guardian of the child and she/he must be informed of the legal implications
involved in placing the child for adoption. She/He must be made aware of her/his legal
rights, and be informed that the mother or guardian may withdraw her/his consent to
the adoption at any time before the making of the adoption order.280 In addition, she/he
must be told that once the child is validly placed for adoption, the High Court may
dispense with her/his consent to the making of the adoption order if it is found to be in
the best interests of the child to do so.

280 Adoption Act 1976, s.3.
In this regard, before accepting a child for adoption, the health board or adoption society is required to provide the mother or guardian placing the child with a statement explaining the consent procedures, and the legal effects of an adoption order upon the rights of the mother or guardian. This is accomplished by the completion of a form entitled “Initial Consent to Placement” or “Form 10”. This form explains the legal effect of an Adoption Order, the procedure relating to consents, the power of the court to dispense with consent, and the procedure involved in reclaiming the child. The mother or guardian must sign a receipt for the information and also sign an acknowledgement confirming that he or she understands the information and this acknowledgment must be also be witnessed. In addition, the adoption society or health board must also be satisfied that the person signing the consent fully understands its import and significance before allowing the mother or legal guardian to sign the initial consent, thereby consent to the placement of the child for adoption.

The Form 10 is not a statutory prerequisite showing proper compliance with the Adoption Acts as it does not affect the question as to whether a consent constitutes an agreement to place for adoption under the Acts. Rather, it is very helpful in establishing “consent” but it is not definitive and failure to comply may not vitiate an otherwise valid consent.

2. Final Consent

Prior to the making of an adoption order by the Adoption Board/Authority, the final consent to the making of such an order, known as Form 4A, must be obtained by the adoption society or health board. The final consent may only be given after the child has attained the age of six weeks and not earlier than three months before the adoption application. This consent must be made on oath, with a full understanding of the consequences. The consent must be unconditional and must not have been withdrawn at the time of the hearing by the Adoption Board/Authority. The natural mother or legal guardian must be advised of his/her right to be heard on the application for the adoption order. If he/she decides to be heard, he/she may be heard in person or through a solicitor or counsel.

If the natural mother or legal guardian withdraws his/her consent, or simply does not complete the final consent, an application may be made to the High Court to dispense with the need of his/her consent which would enable the Adoption Board to make an adoption order in favour of the prospective adopters. However, the prospective adopters could decide to return the child to the natural mother or legal guardian. If the prospective adopters fail to return the child, the natural mother or legal guardian may apply to the High Court for custody of the child. If the consent to adoption is withdrawn, the natural parent(s) will face the “welfare” test in litigation concerning the custody of the child, provided the initial placement of the child to the prospective parents was correct. In all such cases, however, the marriage of the natural parents to each other will have the effect of creating a presumption in their favour, requiring that the child be returned to its constitutional family unless there are compelling reasons to do otherwise. The withdrawal of consent is discussed in detail below.

H. CONSENT AND THE NATURAL FATHER

281 Adoption Act 1952, s. 39.
283 Adoption Act 1974, s.3.
284 See N& anor. v Health Service Executive & ors [2006] IESC 60.
Prior to 1998 there was no provision in the Adoption Acts requiring the consent of, or extending the right to be consulted to, the natural father of a child placed for adoption. While there was a requirement to consult the natural father if he fell into one of the categories listed above, i.e. a guardian of the child or the person having charge of or control over the child immediately before it is placed for adoption, and his parental status alone did not confer such a right. Indeed, until 1998 the natural father had no statutory right to be informed of a proposed adoption of his child.

In Ireland, the natural father of a non-marital child has a right to apply to the court to be appointed as a guardian of his child jointly with the mother of the child. However, although the father has the right to apply to be made guardian, he does not have any automatic right to be appointed as such. Under Irish law, only the natural mother is deemed to be a guardian of her child.

The European Court of Human Rights in Keegan v. Ireland, which involved the adoption of a child without the consultation or notification of the natural father, held that the secret placement of a child for adoption denied the father his right to a “fair and public hearing...by an independent and impartial tribunal” under Article 6-1 of the European Convention of Human Rights. Following this judgment, adoption societies and health boards adopted a policy of ascertaining details regarding the natural father and his views regarding the adoption prior to placing the child for adoption.

Following the enactment of the 1998 Act, the father, meaning the father or the person who believes himself to be the father of the child, of a child may notify the Adoption Board of his wish to be consulted in relation to:-

1. A proposal made by an adoption agency to place his child for adoption, or
2. An application by the natural mother or a relative of the child for an adoption order in relation to his child.

Pursuant to the 1998 Act, adoption agencies are now required to endeavour to ascertain the identity of the natural father, and must request the Adoption Board to provide them with a copy of any notice received from the natural father. Where the agency is unable to consult the father or declines to do so due to the nature of the relationship between the father and the mother or the circumstances surrounding the conception of the child, the pre-placement consultation process may be dispensed with upon authorisation of the Adoption Board/Authority.

Where the natural father is consulted prior to the placement of the child for adoption, he may either consent to the placement or he may refuse his consent. If the father refuses to consent to the adoption, the process is deferred for 21 days in order for the father to apply to the Court for guardianship and/or custody of the child.

I. DISPENSING WITH CONSENT

1. Adoption Act 1974

287 Child Law.
288 Adoption Act 1953, s.7A, as inserted by s.4 of the Adoption Act 1998.
289 Adoption Act 1952, s.7D, as inserted by s.4 of the Adoption Act 1998.
290 Adoption Act 1952, s. 7E, as inserted by s.4 of the Adoption Act 1998.
291 Id.
Prior to the 1974 Act, the Adoption Board/Authority could only dispense with the consent of a person if it was satisfied that the person was incapable by reason of mental infirmity of giving consent or could not be found. This limited power of dispensation was the subject of much criticism as it failed to provide a remedy in circumstances where the consent of the mother could not be obtained.

Following the enactment of the 1974 Act, consent can now be dispensed with where a mother who has initially agreed to the placing of her child for adoption fails, neglect or refuses to give her consent to the making of an adoption order, or withdraws a consent already given. In these circumstances, it is open to the adopting parents, if they have applied for an adoption order for the child, to apply to the High Court for an order under section 3 of the 1974 Act. The High Court, if satisfied that it is in the best interest of the child to do so, may make an order under that section:

- Giving custody of the child to the adopting parents for a specified period, and
- Authorising the Adoption Board/Authority to dispense with the mother’s consent to the making of an adoption order in favour of them during that period.292

2. Adoption Act 1988

Consent can also be dispensed with, thereby allowing for the adoption of legitimate or illegitimate children without parental consent pursuant to the Adoption Act, 1988 in circumstances where the parents are deemed to have failed in their constitutional duty to care for their child. In order for consent to be dispensed with under the 1988 Act, the following procedure must be adhered to:-

- Eligible person(s) to adopt must have had custody of the child they wish to adopt in their home for a continuous period of not less than 12 months prior to applying to adopt the child.293
- Application is made to the Adoption Board/Authority which determines the suitability of the applicants and whether it would be proper to make an adoption order.294 In doing so, the Adoption Board/Authority is obliged to hear from the adoption agency or health board, the natural mother,295 any other person whose consent is normally required for the making of an adoption order and “any other person whom the Board, in its discretion, decides to hear”.296
- If the Adoption Board/Authority is satisfied that it would be proper to make an adoption order, it adjourns the adoption application to allow for the High Court to determine whether it should authorise the adoption of the child.297

At the same time, a declaration is made by the Adoption Board/Authority confirming that if the necessary order is made by the High Court, they will make an adoption order. If, however, the Board determines that it would not be proper to make an adoption order, no application can be made to the High Court to authorise the adoption of the child. The 1988 Act does not provide for an appeal to be brought by unsuccessful applicants to the High Court against the decision of the Board.

292 Adoption Act, 1974 s. 3.
293 Adoption Act, 1988s. 3 (II).
294 Ibid, s. 2(1).
295 In practice, where the identity and whereabouts of the natural father is known, the Board will also notify and hear from him if he wishes to be heard. Keegan v Ireland (1994) 18 EHRR 342.
296 Adoption Act, 1988, ss 2(1).(c) and (7).
297 Ibid, s 2(1.).
Following the Adoption Board making the required declaration as above, the applicants must make a written request to the adoption society or health board to make the necessary application to the High Court. If within 3 months of making the request the adoption society or health board declines or fails to so act, the prospective adopters may apply themselves to the court.  

The 1988 Act provides that if an application authorising the adoption of a child is made pursuant to section 3 the High Court must be satisfied that:

The parents of the child to whom the declaration relates, have for physical or moral reasons, failed in their duty towards the child for a for a continuous period of not less than 12 months immediately preceding the time of the making of the application. In this regard, the Supreme Court has stated that the “most important element in this provision is the ‘concept of failure’ which must be construed as being “total in character”. Furthermore, the Court stated that it is not necessary to establish parental failure which is blameworthy in every case and that “a failure due to externally originating circumstances such as poverty would not constitute [the] failure”

- It is likely that such failure will continue without interruption until the child attains the age of 18 years.
- In this regard, the likelihood that the parental failure will continue requires the court to “mak[e], on the basis of probabilities, predictions, on evidence adduced, as to the course of future events." In doing so, the courts examine in detail the conduct of the natural parents towards the child up to the date of hearing. The Supreme Court has held that the importance of this sub-clause is that it:
  - “[I]ndicates a particular regard to the position of the child in the family into which it was born. Unless there is excluded the likelihood that before the child reaches the age of eighteen years the parent or parents or either of them will resume the discharge of their duty towards it the order sought cannot be made.”

Such failure must form an abandonment on the part of the parents of all parental rights, whether constitutional or otherwise, and

By reason of such failure, the State, “as guardian of the common good, should supply the place of the parents”.

Section 3 of the 1988 Act was essentially framed under the constitutional constraints imposed by Articles 41 and 42 of the Irish Constitution, as previously discussed, and its provision substantially mirror Article 42.5.

It has been recognised that where a child is a national of a foreign country in which its parents are resident, conduct that could be held in Ireland to constitute a failure of duty might not be so regarded in the foreign country and therefore where an application relates to a child who has been resident outside the jurisdiction, the court must take this matter into consideration.

**J. POST-ADOPTION SERVICES**

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298 Ibid, s 3.
299 In re the Adoption (No 2) Bill 1987 [1989] IR 656, see Finlay CJ at p 664.
300 Ibid.
301 Ibid.
302 Ibid.
Once the Adoption Board/Authority issues the adoption order and the child becomes a member of the adoptive family, normal arrangements for health and social services apply as they do for all children in Ireland. This is despite arguments that emotional, psychological and financial support services should be made available to assist adopted children.

**K. LEGAL CONSEQUENCES OF ADOPTION**

The primary legal consequence of an adoption lies in the effect it has on the parental right of the parties. An adoption order removes all parental rights and obligations of the natural mother or guardian in respect of the child. At the same time, an adoption order confers full parental authority in the adoptive parent or parents, as provided for under section 24 of the Adoption Act 1952. Accordingly, the making of an adoption order effectively breaks the legal nexus between the natural parent and the child.

One example of a consequence of an adoption order is the termination of a pre-existing obligation under a maintenance order. For example, the liability of a natural father who has been ordered to pay maintenance in respect of a child will cease upon the lawful adoption of that child by persons other than the mother herself.

Furthermore, Section 26(1.) of the 1952 Act provides that where an adopter or adopted person dies intestate, the “property of such person shall devolve in all respects as if the adopted person were the child of the adopter born in lawful wedlock and were not the child of any other person.” Similarly, section 26(2.) of the 1952 Act provides that in any disposition of real or personal property made, whether by will or inter vivo, after the date of an adoption order, any reference to “child” or “children” of the adopter shall be construed as including any person adopted by them. The adopted child will therefore be included as beneficiary unless the contrary intention is clearly expressed. It is important to note that this provision only operates in relation to dispositions made after the making of an adoption order. A disposition made prior to an adoption order which includes a reference to a “child” or “children” will not generally include the adopted child. Furthermore, a will made before the date of an adoption order shall not be treated as made after that date only by reason that the will was confirmed by a codicil executed after that date.

In addition, any reference in a disposition to the child or children of the natural parents given by them for adoption shall, unless the contrary intention applies, not be treated as being applicable to the child who has been adopted. Therefore, where a natural parent of an adopted child wants to create a benefit for the child, this intention must be expressly stated by reference, where possible, to the name of the child.

As previously stated, it is difficult in Ireland for a child to be adopted where his/her natural parents were married to each other at the time of the adoption. Furthermore, where the natural parents marry each other, presumption in their favour exists when confronting the withdrawal of consent. However, the subsequent marriage of the natural parents of a child who has been validly adopted prior to that marriage is irrelevant to the adoption order. An adopted child is not legitimated by the subsequent marriage of his/her parents unless the adoption order is set aside.

However, where a child has been adopted by one of its natural parents, the subsequent marriage of the natural parents will have the effect of “legitimating” the child and therefore “the adoption order shall cease to be in force.” This is the only

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304 “Upon an adoption order being made:
(a) the child shall be considered with regard to the rights and duties of parents and children in relation to each other as the child of the adopter or adopters born to him, her or them in lawful wedlock;
(b) the mother or guardian shall lose all parental rights and be freed from all parental duties with respect of the child.”
305 Adoption Act 1952, s.4.
306 Adoption Act 1952, s. 29.
307 Id.
instance in which an adoption order that is otherwise valid at its inception can be rescinded.

1. INTERCOUNTRY ADOPTIONS/FOREIGN ADOPTIONS

1. GENERALLY

In Ireland, the growth of intercountry adoptions in recent years has sparked the most significant change in adoption. Intercountry adoption began as a humanitarian response to the issue of abandoned children in Romania in the early 1990s and the 1991 Act, as amended by the 1998 Act, was introduced in response to the significant number of Irish people who travelled to Romania at that time in order to adopt a child. The 1991 Act accomplishes two functions:

- it provides a framework for foreign adopted children to have the same rights as Irish born children; and
- it establishes a legal framework for assessing prospective adopters prior to adoption.

M. RECOGNITION OF ADOPTIONS

Section 1 of the 1991 Act, as amended by the 1998 Act, in defining a ‘foreign adoption’, provides that a foreign adoption must conform to the concept of adoption under Irish law. Pursuant to the definition, the following conditions must be satisfied in order for an adoption to qualify for recognition under Irish law:

1. CONSENT

The first requirement is that the consent of all persons as required under the law of the foreign jurisdiction has been obtained, or properly dispensed with. Therefore, the issue of consent to the adoption is dealt with in accordance with the laws of the foreign jurisdiction and not under Irish law. However, the Irish courts must accept the competence of the foreign jurisdiction to determine the consent requirement(s). Therefore, where a couple fails to comply with any requirements under the foreign local law, even where not required in Ireland, the adoption may not be recognised as a ‘foreign adoption’ under Irish legislation.

Section 10 of the 1998 Act substitutes a new paragraph in the definition of ‘foreign adoption’ under s.1 of the 1991 Act, which provides that if a 'simple adoption', which is an adoption which does not sever the legal links between the birth family and the child, can be converted into a full adoption in the foreign jurisdiction, the adoption may be recognised as a ‘foreign adoption’ capable of recognition in Ireland, provided consent to the ‘full adoption’ is obtained or such consent is lawfully dispensed with pursuant to the laws of the foreign jurisdiction.

2. FOREIGN ADOPTION SUBSTANTIALLY THE SAME AS A DOMESTIC ADOPTION

The second condition provided for in the definition of ‘foreign adoption’ is that the adoption made in the foreign jurisdiction is essentially the same as a domestic adoption in Ireland. As a matter of policy, adoption legislation requires that only adoptions which agree with the Irish definition of adoption should be recognised under Irish law. This requirement allows foreign adopted children to have the same status as Irish adopted children.

In this regard, the Adoption Board/Authority examines the adoption codes of foreign countries to ensure that the foreign code is essentially the same at the Irish adoption code. If the Adoption Board/Authority, following their review, finds that an adoption carried out in accordance with the law of a specific foreign country does not comply
with the definition of a ‘foreign adoption’ as stated in s.1 of the 1991 Act, any adoption carried out in that country will not qualify for an entry in the Register of Foreign adoptions.308

3. ENQUIRIES BY THE FOREIGN JURISDICTION

The third condition is that the foreign jurisdiction carried out an enquiry into the adopters, the child and the parents or guardians. This condition requires that at least some basic enquiries are made.

4. INTERESTS AND WELFARE OF THE CHILD

The fourth condition is that the court, or other authority or person by whom the adoption was effected in the foreign jurisdiction, gave due consideration to the interests and welfare of the child. Although ‘due consideration’ is not defined in the Act, the European Convention requires the competent authority to refrain from making an adoption order unless it is satisfied that the adoption will be in the interests of the child.

5. NO PAYMENT MADE

The final condition is that no money, other than any payment which is reasonable and proper in connection with the making of the adoption order in the foreign jurisdiction, should have changed hands. This is a predominant policy consideration in both the European Convention on the Adoption of Children and the Irish adoption code.

Under Irish law, a foreign adoption will only be recognised in Ireland if all of the above conditions are satisfied.

6. ADOPTERS WITH A FOREIGN DOMICILE

Pursuant to the 1991 Act, an adoption effected in a place where either or both of the adopters are domiciled will be recognised.309 In addition, where an adoption takes place in a jurisdiction other than the adopters’ place of domicile and is recognised by the law their place of the domicile, that adoption will also be recognised under Irish law. In this regard, the domicile of the parties shall be that as on the date of the adoption order. Furthermore, the adoption must be recognised as valid in the place in which it was effected and such adoption must not be contrary to the public policy in Ireland.

7. ADOPTERS HABITUALLY OR ORDINARILY RESIDENT OUTSIDE OF IRELAND

Pursuant to the 1991 Act, an adoption effected in a place where the adopters’ are habitually or ordinarily resident will be recognised, unless recognition would be contrary to public policy.310 Following the enactment of the 1998 Act, a foreign adoption effected in a place in which the adopters are not domiciled or resident and which is not recognised under the laws of their place of domicile or residency solely because the law does not provide for the recognition of foreign adoptions will be recognised, unless contrary to public policy, under the laws of Ireland.311

8. ADOPTERS ORDINARILY RESIDENT IN IRELAND

308 Presently, the Adoption Board/Authority, following an examination of the laws of Guatemala, has found that an adoption carried out in accordance with the laws of Guatemala do not comply with the definition of ‘foreign adoption’ under s. 1 of the 1991 Act and therefore the Adoption Board/Authority will not accept any applications to adopt from Guatemala. See www.adoptionboard.ie/intercountry/whatsnew.php.
309 Adoption Act 1991, s. 2(1).
310 Adoption Act 1991, ss. 3 and 4.
311 Adoption Act 1991 s. 4 as amended by s. 12 of the Adoption Act 1998.
Where the adopters are ordinarily resident in Ireland, far more stringent requirements apply pursuant to section 5 of the 1991 Act. Pursuant to the Act, recognition of a foreign divorce where the adopters are ordinarily resident in Ireland will occur where The Adoption Board/Authority must certify:-

- That the adopters are eligible to adopt under section 1 of the 1991 Act, as amended by section 10 of the 1998 Act and as discussed above;
- the adopters must be ordinarily resident in Ireland on the date of the adoption;
- Where the adoption took place before April 1, 1992, the Adoption Board/Authority has certified in writing that it is satisfied that the provisions of section 10 of the 1998 Act have been met in respect of the adoption.
- Where the adoption took place after April 1, 1992, the Adoption Board/Authority declared in writing before the date on which the adoption was effected, that the adopters satisfy the provisions of section 10 of the 1991 Act and that following an assessment by the relevant Health Board or registered adoption society, the adopters are suitable persons under section 13 of the 1952 Act.

N. PROOF AND REGISTER OF FOREIGN ADOPTIONS

Where an adoption was effected outside of Ireland, a rebuttable presumption arises that the law of the place where it was effected has been complied with in full. An authenticated document purporting to be a copy of a foreign adoption order shall be deemed to be a true copy unless the contrary is proven.

All foreign adoptions recognised under Irish law, must be registered by the Adoption Board/Authority upon the request of the adopters. Pursuant to the 1991 Act, the Adoption Board/Authority is required to establish and maintain a register of foreign adoptions and a certified copy of an entry in the register is evidence that the adoption to which it relates is a foreign adoption deemed to have been effected by a valid adoption order.

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312 See Adoption Act 1991, s.5, as amended by s. 13 of the Adoption Act 1998.
313 Adoption Act 1952, s. 13 provides that, “[t]he Board shall not make an adoption order unless satisfied that the applicant is of good moral character, has sufficient means to support the child and is a suitable person to have parental rights and duties in respect of the child.”
314 Adoption Act 1991, s. 9(4).
315 Adoption Act 1991, s. 6.
2.14. **ITALY**

1. Briefly describe the process of domestic adoption (national adoptive parents - national children).

   a. Which are its various steps?

   b. Indicate in which steps court orders intervene and to which subject they relate (aptitude to be adopted, confirmation of preparation to the adoption, creation of the adoptive bond...).

   c. Which are the possible recourses? To which steps do they intervene?

**Premise**

The site of the Italian Department for justice (www.giustizia.it) defines the domestic adoption like the procedure that guarantees a family for a minor whose own family is not able to provide for his or her growth, development and education. The procedure will not be used for reasons connected solely with poverty. For the families at risk the law provides also for a set of support remedies, which are alternatives to the declaration of abandonment of the minors, to the aim to prevent the abandonment and to guarantee to the minors the right of being educated within his or her own family.

a. The fundamental national law of the adoption institute is the Law 4 May 1983 n. 184 addressed: "The minor's right to a family" as amended by Law 28 March 2001 n. 149 that has introduced a set of modifications in relation to the procedure, accepting, on one side the jurisprudential solutions asserted in the course of the years and, on the other, acknowledging and adapting the inner law to the international conventions in the matter, with special reference to the two Strasburgo conventions of 1967 and 1996.

Such law provides that the partners that want to adopt a child shall apply to any juvenile Court, or rather, to more juvenile Courts at the same time. The application form must be equipped with a set of documents concerning the family status, the assent to the adoption by the parents of the adopters, medical and economic certificates. The law only allows the adoption to partners joined in wedding from at least three years and that have not been separated, not even temporary, during the last three years. In order to appraise the solidity of the couple, the novel of 2001 recognizes also the cohabitation years, coming before the wedding. Therefore if partners, before joining in wedding, have cohabited in a stable condition for three years and then decide to marry, a child can quickly be adopted by those partners without waiting other three years.

Before the presentation of the application form it is compulsory for the partners to approach the authorized ASL (Local health districts) in order to obtain the social report containing the assessing of the psychologist about their suitability to educate, instruct and maintain the child.

In the adoption application form the adopters have also to specify their eventual availability to adopt minors bigger than 5 years or handicapped persons. Those who ask to adopt a child bigger than five years old or handicapped persons can count upon a preferential lane for the assessment of the application form.

The partners can make application of adoption even in more than one juvenile court, provided that communication is given to all the juvenile courts previously resorted.

After having presented the application form to the chancellery of the juvenile court, the opening of the file and the previous verification of the requirements mentioned in art. 6
of L. 184/83 by the juvenile Court, the aspirant’s parents are subordinates to a series of investigations, generally remitted to the social services, with the collaboration, if necessary of the local health district or hospitals. The procedure shall start without delay and shall be concluded within the mandatory term of 120 days that can be extended only once. It is asked to police officers of the residence area to assess the personal situation of the spouses.

Some courts (e.g. Milan Court) demands, besides social surveying that spouse meet a team of experts, made up of two honorary judges.

The Italian process of domestic adoption, establishes two important steps: 1. one to assess the state of abandonment of a child, 2. another step aimed to identify the couple of parents that can better meet the needs of the child.

1. FIRST PHASE: The assessment of the state of adoptability of the minor. (Paragraph II of L. 184/83 articles from 8 to 21.

The child for which it has been assessed the abandonment situation, is declared in state of adoptability by the juvenile Court. Anyone can denounce an abandonment situation. The family fostering children in difficulty shall quarterly report about the children under their care. The state of adoptability of the child is declared by the juvenile Court when:

- the parents and relatives summoned in order to verify the state of abandonment do not appear in Court without a valid reason;
- their audition demonstrates a persisting of lack of moral and material attendance without any intention to modify the situation;
- the prescription given in order to guarantee to the child moral attendance, maintenance, instruction and education are unattended due to parents responsibility.

The proceeding for the declaration of the state of adoptability is a litigation promoted by the P.M. (Public Prosecutor) through a demand to the juvenile Court, asking the President or a delegated judge the assessment of the state of adoptability.

Such procedure is intended to verify the existence of a state of abandonment of a child.

The juvenile Court immediately arranges a series of assessments on the legal and effective conditions of the child and on the environment in which the child lives, if necessary, asking for the collaboration of local social services.

In order to assert the state of abandonment of the child, as an essential requirement of the adoption, the Court orders further investigation only in case the child has parents. If not, the abandonment condition is implicit.

Considering the nature of the procedure of adoption, it is provided that the parents and the relatives within 4^ degree are duly informed about the starting of the proceeding. This, in the aim to verify the possible availability of the family of origin to remedy to the lack of moral and material attendance of the child.

In case of an orphaned child and of a child without relatives within the fourth degree or, in case of children of unknown people because not recognized, the juvenile Court immediately declares the adoptability of the child, unless there is a demand of suspension of the procedure by whom, asserting of being natural parent of the child,
asks term in order to supply to the acknowledgment. In such case the suspension of the adoptability procedure can be granted for no more than two months, unless the natural parent is not under-age. In this case the suspension, in the event of missing acknowledgment for age defect, is agreed upon the attainment of 16th year of age from the natural parent. At the attainment of the 16th year the parent can ask a further suspension for others 2 months. In the event in which the Court suspends or postpones the procedure, nominates, if necessary, a temporary tutor for the child. In such a case the juvenile Court can adopt the provisions and give the prescriptions that deems necessary in the exclusive interest of the child. If within the indicated terms the acknowledgment of the minor is obtained, the procedure must be declared closed since it does not exist any more the state of moral or material abandonment. If the terms pass by without the acknowledgment, the court declares, without other formality or procedure, the state of adoptability. Once the adoptability or the pre-adoptive foster care has been declared, the acknowledgment is without effects. The sentence for the judicial declaration of paternity or maternity is suspended by right and it is extinguished when the adoption becomes definitive.

Such procedure is concluded with the issue of a sentence of the juvenile court having competence in the area. This provision is taken in Jury room, and declares the state of adoptability of the child or the end of the procedure because of the child attains the legal age. The territorial competence is defined on the basis of the place where the child lives at the moment of the abandonment, or on the basis of the location where is situated the juvenile Court that establishes ex-officio the assessments. Any possible further change in minor residence does not affect the competent court.

With the sentence the parental authority is suspended as per article 330 and the following ones of the Italian Civil Code and the most appropriate provisions are adopted in the interest of the child.

The declaration of adoptability (declared by the juvenile Court) is notified for extended to the public prosecutor, to the parents, to the relatives within 4° degree and to the tutor, warning them at the same time of their right to propose claim to the court who has pronounced the state of adoptability within thirty days from the notification.

The provision that declares the adoptability of the child, can be appealed at the juvenile section of the Court of appeals. The Court, hears the parties and the public prosecutor and carries out every other opportune assessment, pronouncing sentence in Jury room and transmitting it to the chancellery of the Court, within 15 days from pronounces. The sentence is notified ex-officio to the public prosecutor and to the other parties.

Against the sentence of the Court of Appeals it is possible to present appeal to the Supreme Court, within 30 days from the notification.

The appeal hearing must be held within 60 days from the presentation of the respective introductory acts.

As soon as the adoptability declaration becomes definitive, the chancellor of the juvenile Court can write out the state of adoptability of the minor on the registry held in the chancellery of the same court.

During the adoptability procedure, the juvenile court can adopt, in case of urgency, also ex-officio, the temporary provisions deemed necessary in the interest of the child. Said provisions are only temporary, are immediately executive and are modifiable as a result of further events. They must be communicated to the parents and the public prosecutor in order to allow them the allegation of new circumstances, affecting the previous
sentence of adoptability. Among the provisions that can be adopted there are:
identification of a temporary foster home and the suspension of the parental authority.

The state of adaptability stops for adoption or for coming the legal age.

In the interest of the minor, the state of adoptability also stops for the revocation of that
state when the conditions provided for the art. 8 of law 184/83 (situation of
abandonment because the minor is free of moral and material attendance from the
parents or from relatives held to provide for, provided that the attendance lack is not
due to an act of God) are failed, successively to the definitive sentence and therefore
no more object of appeal, declaring the state of adoptability of the minor as per art. 15
codicil 2 of the same law, until to when it has not been arranged the pre-adoptive
confidence. The pre-adoptive confidence precludes revocation of the state of
adoptability when it exists at the same time of the presentation of the application of
revocation.

Legitimated to demand the revocation of the state of adoptability are: the public
prosecutor, the parents (also those natural) and the tutor. The procedure is concluded
with a sentence by the juvenile Court in Jury room, and it can be appealed before the
Appeals Court. The decision of the Court can be appealed before the Supreme Court,
according to article 111 of the Italian Constitution. The revocation of the adoptability
status involves that the child came back to the family of origin.

2. SECOND PHASE: The choice of the suitable partners and the pre-adoptive
confidence (head III of L. 184/1983 articles from 22 to 24.

Once the state of abandonment of a child is determined, it begins the second phase of
the complex procedure of adoption. The aim of this second phase is to identify the
appropriate parents that better can answer to the needs of the child. The choice of the
suitable spouses must be the result of a comparative judgment of the adoptive parents,
between those who have the requirements provided for the law, where place the child
in sight of the future adoption. Weekly a jury room is convened before the juvenile
Courts in order to link parents and children.

The Court is composed by two judges and two honorary judges. They interview the
social workers, in charged of following the case of the adoptable child with the aim of
determine the main features of the partners that better answer to the needs of the child.
The President of the Court in charges therefore a team of social workers and of an
honorary judge to choose between the partners in comparison to whom that have the
features required. The team identifies a tern of suitable partners to subject to an
exhaustive interview. At the end of this step the team moves for a suggestion of pre-
adoptive foster care, showing it to the partners during a visit to their domicile and, if
accepted, the child is involved in the meeting. At the end of this step the juvenile Court
chooses between the partners that have presented the application form, the one who
better corresponds to the needs of the minor. The jury room of the Juvenile Court,
heard the public prosecutor, the ancestors of the petitioners where exist, the child who
is, at least, twelve years old and also less than twelve, provided his/her ability to
discernment, arranges without delay the pre-adoptive foster care for a year, that can be
extended for another year, determining the modalities of the pre-adoptive foster care of
the child with a decree.

The child who is at least 14 years old must manifest his/her express consent to the pre-
adoptive foster care to the chosen partners. The pre-adoptive foster care represents a
necessary step of the adoption proceeding. The same Juvenile Court that has declared
the status of adoptability of the child has the territorial competence to declare the pre-
adoptive foster care. Once the pre-adoptive foster care is decided, every legal
transaction or judicial provision inclined to create a different legal status for the child is completely moot. With the pre-adoptive foster care, the state of abandonment of the minor ends and he/she enters in a definitive familiar nucleus and the pre-adoptive parents obtain the parental authority, even if the tutor named in the judgment of adoptability remains in force. The juvenile Court supervises on the good trend of the pre-adoptive foster care making use of the social services and the social workers that have the task to support the family in the integration of the minor in the familiar nucleus also obtaining psychological supports. At the end of the year of pre-adoptive foster care, the social services shall send to the juvenile Court a report. The measure with which the Court has arranged the pre-adoptive foster care can be revoked. This request can be introduced by the Public Prosecutor, the tutor or those who have the supervision or ex-officio. The juvenile Court examines the request in Jury room, after having heard the public prosecutor (P.M.), the one who made the request of revocation, the child of 12 years old or even less, according to his/her ability to discernment, the pre-adoptive parents, the tutor and those who have carried out activity of supervision, and decide with a motivate decree. The aims of this step of the proceeding is to verify if there is any difficulty of a suitable cohabitation between the minor and the pre-adoptive parents, and to assess the pre-adoptive parents and minor the ability of adapting themselves to the new family nucleus.

The revocation is communicated to the Public prosecutor, to the pre-adoptive foster care parents and to the tutor. Either the measures that are taken for the pre-adoptive foster care or the revocation of that measures can be appealed before the Appeal Court, juvenile section. Those measures can be appealed by the Public prosecutor (P.M.) and the tutor within 10 days from the communication of the measure. However the pre-adoptive foster care parents are not legitimated to appeal the revocation of the pre-adoptive foster care measure.

With the revocation of the pre-adoptive foster care the Courts adopts the appropriate temporary measures in the exclusive care of the child. The measure of revocation of the pre-adoptive foster care declared by the juvenile Court can be appealed before the Supreme Court as per article 111 of the Italian Constitution, it concerns the right of the minor to grow up in a good atmosphere.

3. THE ADOPTION DECLARATION (Head IV of L. 184/1983..)

At the end of the pre-adoptive foster care period the juvenile Court declares the state of adoptability, after having heard the adopters partners, the child who is 12 years old or less than twelve, according to his/her ability to discernment, the public prosecutor (P.M.), the tutor and those who have supervised the proceeding. The Courts verifies the conditions provided for the law in order to declare the adoption with a judgement assessed in Jury room. The child of 14 years old shall manifest his/her express consent to the adoption regarding the partners pre-chosen. At the end of the adoption proceeding, the child adopted obtains the status of legitimate son of the adopters and receives a stable and definitive legal status of son of the new familiar nucleus.

Once the adoption is declared, it becomes definitive and no more changeable.

Article 25 of the law of adoption establishes that, if, during the pre-adoptive foster care, one of the spouses dies or takes part the separation, in order to avoid to the child, already engaged in a familiar nucleus, the shock of a “separation”, the adoption can be however disposed, in the exclusive interest of the minor.

The adoption interrupts every type of relationships with the family of origin, with the only exception of the marriage prohibitions. The child obtains the right to use the last paternal name and carries out the transcriptions to the marital status. It is forbidden to
anyone to supply news and information about adopters sons and, in particular, it is forbidden to the registrar to issue certifications, extracted or copies from which it is possible to turn out the adoption relationship.

The judgement that declares the adoption is communicated to the Public prosecutor (P.M.), to the adoptive partners and the tutor.

In case of a negative judgement, the pre-adoptive foster care fails and the Juvenile Court takes the opportune temporary measures in the exclusive interest of the child, provided for article 10 codicil 3, and articles 330 of the Italian civil code.

4. APPEALS

According to of the article 26 of the adoption Law the judgement that declares if to make place or not to make place to the adoption, can be appealed within the term of thirty days.

Legitimated to propose the appeal is: the public prosecutor, the adopters and the tutor of the minor. The appeal must be proposed before the minor section of the Appeal Court. The Appeals Court hears the parties and after having taken every opportune assessment, pronounces a judgement. The judgement is notified, ex-officio, to the parties.

Against the judgement of the Appeals Court is admitted appeal before the Supreme Cassation. It must be proposed within 30 days from the notification for violation or false application of the right norms. The hearing of the appeal and of the appeal before the Supreme Court must be fixed within 60 days from the presentation of the introductory actions.

The sentence that declares the adoption is immediately transcribed in the registry of the Chancellery of the juvenile Court and the transcription is communicated to the registrar who annotates it to the margin of the birth certificate of the adopted son.

b. The juvenile Court, at the end of the first phase of the adoption proceeding, declares with a judgement the state of adoptability of the children who are abandoned. The juvenile Court, after the opening of the proceeding of adoption, can take every opportune temporary measure in the exclusive interest of the minor, like e.g. arranging for a temporary familiar foster care of the child to a suitable couple in view of an eventual adoption or assessing the suspension of the parental authority.

The second phase of the adoption proceeding begins with the decree of pre-adoptive foster care and ends, after a year from the pre-adoptive foster care, with the declaration of a judgement of adoption.

The declaration of a pre-adoptive foster care represents the positive outcome of the preliminary assessments of the proceeding. It is in this phase, that adopter and adopted establish a personal relationship, that can be defined like adoptive relationship. The pre-adoptive foster care is of exclusive competence of the judge who is called to assess the suitability of the couple to realize the interest of the minor.

c. L. n. 149/2001 that has modified L. n. 184/1983, recognizes a nature of legal argument to the proceedings of domestic adoption. It determined the elimination of the phase of opposition to the declaration of the adoptability of the minor, arranging its direct appeal following the ordinaries appealing tools, as better specified in point 1.a.4.
2. Briefly describe the process of international adoption (parents of European nationality (A) – non European children or non European children European (A) and adoptive parents).

a. Which are its various steps?

b. Indicate to which steps Court orders intervene and on (S) object (S) they carry (aptitude to be adopted, confirmation of preparation to the adoption, creation of the adoptive bond,…)

c. Which are the possible recourses? With which steps do they intervene?

Premise

In Italy, the adoption of foreign minors has place in compliance with the principles and second the directives of the Convention for the protection of the minors and the cooperation in matter of international adoption, held on the 29 Haja May 1993 (hereunder, for brevity, the Convention).

The Convention has been ratified and rendered enforceable with the law 31 Decembers 1998 n. 476, enclosed in the text of the Italian law on adoptions, that is, the law 4 May 1983 n. 184. "The minor's right to a family" (for brevity, the adoption law). The law 28 March 2001 n. 149 have, then, amended the adoption law and some dispositions held in the Italian civil code.

The spirit of the Convention and, consequently, the spirit who characterizes the whole Italian rules in topic of international adoption places to the centre the pre-eminent interest of the minor and, in such perspective, it sanctions the subsidiary character of the international adoption: the first and principal right of the minor is, therefore, to remain near his/her own family and in his/her own origin country, and, only in case it is not possible to keep this relationship and the minor finds himself/herself in a abandonment situation, it is possible to consider his/her adoption beyond border. In addition of the subsidiary principle, there is the principle of the “informed consent”.

According to that principle, the biological family and the minor must be informed on the consequences of the international adoption and must be adequately assisted, ether under a psychological point of view or under a technical side, during all the proceeding. No international adoption will be able to have place, if the minor has not been declared adoptable from the competent authority of its state of origin.

Made this general preamble, the Convention indicates, in the detail, the elements in presence of which the international adoptions between the contracting countries can have place.

Specifically the article 4 of the Convention establishes that:

“The adoptions contemplated from the Convention can only have place if the competent authorities of the State of origin:

a) have established that the minor is adoptable;

b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry is in the child’s best interests;

c) have ensured that:
the persons, institutions and authorities, whose consent is necessary for adoption, have been counselled as may be necessary and duly informed on the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his/her family of origin;

- such persons, institutions and authorities have given their consent freely, in the required legal forms and expressed or evidenced in writing;

- the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and

- the consent of the mother, where required, has been given only after the birth of the child; and

d) have ensured, having regard to the age and degree of maturity of the child, that

- he/she has been counselled and duly informed of the effects of the adoption and of his/her consent to the adoption, where such consent is required;

- consideration has been given to the child’s wishes and opinions;

- the minor’s consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and

- such consent has not been induced by payment or compensation of any kind”.

The following article 5 of the Convention establishes that:

“An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State:

- have determined that the prospective adoptive parents are eligible and suited to adopt;

- have ensured that the prospective adoptive parents have been counselled as may be necessary; and

- have determined that the minor is or will be authorized to enter and reside permanently in that State”.

Made this due premise, hereunder, we summarize the procedure provided for the Italian legislator in the context of an international adoption, assuming the hypothesis of an adoption by a couple of persons habitually residents in Italy, of a foreigner child coming from a contracting State.

a) Adoption procedure by persons (Italian citizens or foreigners) habitually residents in Italy, of a child coming from a contracting State;

1. The persons habitually resident in Italy, which want to adopt a foreign child must apply to the juvenile Court of the district in which they have the residence. In the event of Italian citizen’s residents in a foreign State, the
competent juvenile Court is the one of the district of the place of their last residence. Failing this becomes competent the Juvenile Court of Rome.

Once identified the competent juvenile Court, the aspirants to adoption shall apply a “declaration of availability” to international adoption.

The Juvenile Court, except in case of manifestly lack of the requirements provided by law, passes on, within fifteen days from the application, the declaration of availability to the social welfare services of the area.

2. The social welfare services have the important task of becoming acquainted with the couple and accessing their parental capacities, gathering information on their personal, family and social history.

The work of the services leads to the drawing up of a report to be sent to the Court in order to provide it with the elements for assessing the couple’s request.

The report of the services shall be forward to the competent juvenile Court within 4 (four) months starting from the day in which the services receive the declaration of availability by the Court.

3. After receiving the report of point 2 the Juvenile Court convenes the prospective adoptive parents, and, after ordering, if necessary, further investigation, declares, within the 2 (two) months by a motivated decree (with is revocable,) whether they are or not eligible and suited to adopt (infra). The decree of suitability to adopt, has effect during the whole procedure, which the prospective adoptive parents shall promote within a year from the issue of the decree.

The decree is passed on to the C.A.I. (Commissione Adozioni Internazionali) and, if already appointed by the prospective adoptive parents, to the accredited Body that will assist them during the whole procedure.

4. Once in possession of the decree of suitability the prospective adoptive parents shall introduce, as said, within a year from its issue, the procedure of intercountry adoption, approaching one of the Body accredited by the C.A.I to act as intermediaries between Italy and the Country of origin of the child.

In this phase the prospective adoptive parents can be oriented towards a country among those in which the Body they have chosen operates.

The accredited Body meets the prospective adoptive parents in order to inform them on the procedures of adoption in force in the countries in which the Body operates and, at the same time, inform them about the responsibilities involved in an intercountry adoption. During the meetings the accredited Body, with the collaboration of psychologists and other experts, prepares the couple aspiring to intercountry adoption for the future role of adoptive parents.

Except exceptional cases (art. 31 Co. 2, approaching an accredited Body is a compulsory stage for a valid intercountry adoption to come about (art. 31 l. cit.).
5. The accredited Body appointed by the prospective adoptive parents carries out all the procedures before the competent authorities of the Country of origin, forwarding the “declaration of availability” to adopt applied by the prospective adoptive parents, the decree of suitability and the attached report of the social welfare services so to enable the authorities of the Country of Origin to identify the child or children, among those eligible for adoption, the couple appears able and qualified to care. Then, the competent authorities of the State of origin propose to the accredited Body appointed by the couple the encounter with that specific child.

Once received, from the Authority of the State of origin, the proposal of encounter, the accredited Body gives communication of it to the prospective adoptive parents, which have to express in writing their consent to meet the child. The accredited Body shall assist the prospective adoptive parents during their staying in the Country of origin, where they will meet the child, verifying whether they are or not able to care and meet the needs of child. The accredited Body accompanies the prospective adoptive parents till the end of the adoption procedure, carrying out all the necessary formalities.

If the initial contact between the prospective adoptive parents and the child end positively, and the authorities of the Country of origin agrees on the placement, the accredited Body forwards to the C.A.I all the documents and reports related to the child, the adoptive parents, the combination between adoptee and adopters. In particular, the accredited Body shall transmit to the C.A.I a formal statement, by which the competent Authority or the Country of origin attests the presence of the requirements laid down by the Hague Convention in art. 4. The accredited Body shall then specify whether, according to its opinion, it agrees with the Authority of the Country of origin on the opportunity to proceed with the adoption, according to the envisaged placement.

The accredited Body shall forward, also, to the C.A.I., which takes care to collect and preserve them, all the documentation relating to the child, along with the provision from the foreign judge.

6. Once received, by the accredited Body, the above mentioned documentation on the meeting abroad and after assessing and certifying that the adoption in the country of origin has been carried out within the scope and in compliance with the provisions of the Hague Convention, the C.A.I. declares that the intercountry adoption takes place in the best interest of the child and, upon request of the accredited Body, expressively authorize the child to enter and reside permanently in Italy (art. 32 l. cit.).

When the adoption granted in the Country of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, nevertheless be converted into an adoption having such an effect, on condition that the Juvenile Court assesses and recognizes that the adoption is within the scope of the Hague Convention.

7. Once the authorization for the child to enter and reside permanently in Italy has been issued, the Italian consular offices abroad release the entry visa for the adoption in the best interest of the child.

At this stage [or at the time any period of pre-adoptive fostering has elapsed] the procedure is completed with an order from the Juvenile Court
to transcribe the adoption decision in the registries of civil status. To this effect, the adoptive parents shall expressively apply to the competent Juvenile Court. The power to have this transcription done lies with the Juvenile Court of the place of residence of the parents at the moment of their entry into Italy with the child (even if this differs from the one that first issued the decree of suitability).

The Juvenile Court, therefore, orders the transcription of the adoption in the registries of the civil status. The transcription is ordered after assessing the subsistence of the statement of conformity of the adoption to the Hague Convention by the C.A.I., the authorization for the child to enter and reside permanently in Italy, and, of course, after assessing that the adoption is respectful towards the enforced fundamental principles in the Italian system in relation to the family and children rights.

In case the adoption is to take place after the transfer of the child to the receiving State (Italy) because of the fact that the adoption granted by competent Court in the Country of origin does not have the effect of terminating the pre-existing legal parent-child relationship, the Juvenile Court shall recognize the adoption as a fostering with a view to adoption, giving effect to the foreign provision as pre-adoptive fostering. This, of course, after assessing that it is not contrary to the fundamental principles governing the Italian family and children laws and to the child’s best interest. The pre-adoptive fostering lasts, as probationary period, for of a year. At the end of that year, if appears to the Juvenile Court that the continued placement of the child with the prospective adoptive parents is still in his best interest, the Court grants the adoption and orders the transcription of the adoption in the registries of civil status.

The transcription of the adoption enables the child to acquire the Italian citizenship and definitively becomes a member to all intents and purposes of the new multi-ethnic family. The transcription completes the procedure of intercountry adoption.

According to art. 35 of Law 4 May 1983 n. 184, the Juvenile Court can refuse to order the transcription of the adoption in cases in which:

- the adoption provision granted by the competent Court of the Country of origin refers to prospective adoptive parents who are not eligible and suited to adopt according to the requirements provided for in the Italian Law on adoption;

- the adoption provision granted by the competent Court of the Country of origin does not respect the information contained in the suitability decree about the characteristics of the child/children for whom the couple would be qualified to care;

- it is impossible to convert the adoption granted by the competent Court of the Country of origin into an adoption producing the effects provided for in article 27;

- the adoption has not been carried out by and between a Central Authority and an accredited Body;

- the placement of the child in the family of the prospective adoptive parents appears manifestly contrary to the best interest of the child.
Adoption of children coming from non contracting States

According to art. 36 co. 1 L. 4.5.1983 n. 184 the intercountry adoption of children coming from Contracting States, or from States that, in the spirit of the Hague Convention have entered into agreements, can only be carried out in compliance with the provisions of Law 184/83, producing the effects established in it.

If the Country of origin of the child is a non Contracting State, and it has not entered into an agreement in the spirit of the Hague Convention with Italy, our system admits nevertheless the possibility for the adoption granted by the competent Court of the Country of origin to be recognized and have effect in Italy, thus avoiding the stasis of the mutual relationships till the signature of a bilateral agreement.

In this case Italy expects, in one hand, a minimum of collaboration, asking the authorities of the State of origin to recognize and accept the accredited Body as the institutional interlocutor of our Country; in the other hand, Italy imposes to the Juvenile Court and the Central Authority a more incisive monitor aimed, as a matter of priority, to assess the real background of the child, mostly, whether he/she is adoptable and appropriate measure have been taken to enable the child to remain in the care of his or her family/country of origin.

In consideration of what above written, art. 36, Law 4 May 1983 n. 184 subordinates the recognition of the adoption granted by the competent Court of the Country of origin, to the presence of the following requirements:

it has been assessed (i) that the child is adoptable and that appropriate measures have been taken to enable the child to remain in the care of his or her family/country of origin; (ii) that the parents have been duly informed about the effect of the adoption and have expressed their consent, if required, according to the formality provided by law; (iii) that the adoption has the effect of terminating the pre-existing legal parent-child relationship and that the adoption create a permanent parent-child relationship;

- the prospective adoptive parents have been declared eligible and suited to adoption by the Juvenile Court and the procedure to adopt has been carried out by and between the Central Authority and an accredited Body;
- the instructions contained in the suitability decree on the characteristic of the child the couple would be qualified to car have been respected;
- the subsistence of the authorization for the child to enter and reside permanently in Italy;

The adoption of Italian children by persons habitually resident abroad (Italians citizens or foreigners)

Title III, Head II of Law 4 May 1983 n. 184 titled “The transfer of a child with a view to adoption”. According to the opinion of the experts, the provisions reported in title III, more than disciplining the hypothesis of the transfer of an Italian child with a view to adoption in a foreign country, governs other aspects involved in the procedure. Specifically, on one side, those provisions appoint the Authorities deemed to deal with the adoption of Italian children by foreigners, or by Italian citizens habitually resident abroad, on the other, define the formalities through which our State can protect the Italian children in case they are abandoned and/or in difficulty once they have already entered the receiving State.
Art. 40, L. 184/1983, provides that the persons residents abroad, foreigners or Italian citizens, that intend to adopt an Italian child, shall apply, with the help of the Italian Consul, to the Juvenile Court of the district of the place where the child usually lives or the place of last residence of the child in Italy, failing which will become competent the Juvenile Court of Rome.

According to the provisions above mentioned, the adoption procedure and the requirements to adopt will follow Italian laws: the procedure shall be introduce before the Italian Courts and, in order to be considered eligible and suited to adopt, the foreigners prospective adoptive parents shall fulfil the same requirements provided for in L. 183/1983 for Italian couple aspiring to adoption.

The Italian Consul appointed in the receiving Country is in charged to control the progress of the pre-adoptive fostering of the child during the probationary period, if necessary, with the help of the social Italian or foreigner organizations suitable on the territory. In case it appears that the pre-adoptive fostering of the child with the prospective adoptive parents is not in the child’s best interest, the Italian Consul shall without delay inform the Juvenile Court which has granted the fostering.

The Italian Consul shall monitor that the measures granted by the Juvenile Court are appropriately respected and, if not and the interests of the child so require, arrange, as a last resort, the return of the child.

In case of prospective adoptive parents citizens of a contracting States, the provisions of the Hague Conventions regarding the involving and the tasks of the Central Authority and accredited Bodies shall apply. In particular, the Central Authorities will carry out the functions of the Consul.

b. During the procedure to adopt, the judicial authority takes part:

1. in order to issue the decree of adoptability of the child. In the event of adoption of a foreign child by persons who reside in Italy, the decree will be issue by the competent Authority of the Country of origin of the child, according to the requirements provided for by the law in force in that State. In the event of adoption of an Italian child by persons who reside abroad, citizens or foreigners, the decree will be issued by Italian Juvenile Court, subsisting the requirements provided for in art. 8 of Law 4 May 1983 n. 184.

2. in order to issue the decree of suitability to intercountry adoption of the prospective adoptive parents who have applied. The power to issue the suitability decree lies with the Juvenile Court competent according to the rules governing the territorial competence (cfr. point a.1.).

The Court shall issue the decree on condition that all the requirements provided for in art. 6 L. 184/1983 are respected. The Court shall grant the decree after receiving the report of the Social Welfare Services, disposing, if necessary, further investigations and after having, in any case, called the aspirants to adoption to a hearing.

The decree shall be issued within 15 days starting from the moment in which the Court received the report of the social welfare services. It shall be motivated and contain, among the others, indications in order to favour the best combination between adoptee and adopters.
The decree of suitability to international adoption has effect for all the length of the procedure that shall be introduced by the prospective adoptive parents within a year from when they received communication of the decree (art. 30, Co. 2, l. cit.).

3. in order to revoke, at any time during the procure to adopt, the decree of suitability to intercountry adoption in case of circumstances occurred and of such a nature to be able to affect the eligibility and suitability to adopt of the applicants previously assessed. The Juvenile Court shall immediately inform the C.A.I. and the accredited Body appointed by the prospective adoptive parents about the revocation of the decree.

4. with the aim of ordering the transcription of the adoption to the registries of the civil status, once the procedure is concluded and the child has obtained the authorization to enter and reside permanently in Italy. The Juvenile Court orders the transcription of the adoption granted by the competent Court of the State of origin:

- after assessing that the Authority of the State of origin has stated that the adoption has been carried out in compliance with art. 4 of the Hague Convention;

- after assessing that the adoption is not contrary to the fundamental principles governing the law of family and child in Italy, evaluated in relation to the best interest of the child;

- after assessing the conformity of the adoption to the scope and the provisions of the Hague Convention and the subsistence of the authorization for the child to enter and reside permanently in Italy, granted by the C.A.I..

With the transcription order the adoption procedure is concluded and the child acquires the Italian citizenship.

The power to have the transcription done lies with the Juvenile Court of the place of residence of the parents at the moment of their entry into Italy with the child (even if this differs from the one that first issued the decree of suitability)

In case the State of origin is a non contracting State, the power to have the transcription done lies with the Juvenile Court which has initially issued the decree of suitability to international adoption.

5. in order to issue both the adoption and the order of transcription in the registries on civil status, in case the adoption is deemed to be pronounced in Italy once the child has already entered Italy for the reasons explained in point a.7 (the adoption has not the effect of terminating the pre-existing legal parent-child relationship) . In these cases, the Juvenile Court recognizes the adoption granted by the competent Authority of the State of origin as a fostering with a view of adoption, provide it is not contrary to the fundamental principles governing the laws of family and child in Italy, having regard to the best interest of the child. Then pre – adoptive fostering lasts, as a probationary period, for a year. When the probationary period is over and it appears to the Juvenile Court that the fostering of the child is still in his best interest, the Court grants the adoption and orders its transcription in the registries of the civil status. If not, the Court revokes the pre-adoptive fostering and arrange without delay any appropriate necessary measures to protect the child (art. 21 Convention).

c. As far as it concerned the possibility to challenge the provisions/orders of the Courts, the law provides that:
1. The prosecuting attorney and the prospective adoptive parents have the possibility to appeal the suitability decree, the decree of unsuitability and the order of revocation of the decree of suitability, before the Court of Appeals. The provision of the Court of Appeal is not definitive, thus does not prevent the prospective adoptive parents from applying for adoption before other Courts. So the provision of the Court of Appeal is not susceptible of being challenged before the Supreme Court of Cassazione. The claim has to be proposed within 10 (ten) days starting from the notification of the provision of the Court of Appeal.

2. In case the accredited Body appointed by the couple declares that the combination did not prove to meet the child’s need and or does not accept a particular adoption proposal by the foreign Central Authority, the prospective adoptive parents have the possibility to submit the matter to the C.A.I.. If the Commission agrees with the opinion expressed by the accredited Body, the procedure interrupts and the prospective adoptive parents shall wait for a new encounter to be arranged by the Central Authorities of the same State of origin or by the Central Authority of others States of interest. If the Commission dissents from the opinion expressed by the accredited Body, the procedure moves on, under the control of the C.A.I. directly or under the control of another accredited Body appointed by the C.A.I. to compete the procedure.

3. Which are the various bodies or services which take part in the process of adoption?

   a. Which is their nature (legal, social…)?
   b. At which stages of the procedure they enter into?
   c. Which are their missions? Take care to specify, if necessary, to whom their services are addressed (biological parents, adoptive parents, children, others)?
   d. Which is the composition of these bodies or services?
   e. Are there social speakers, which, with which formations, in which proportions?
   f. Do the members of these bodies or services profit from a specific training? If so, which kind of training?

In order to answer to the question it appears necessary to distinguish between national and international adoption.

The procedure of national adoption involves the following bodies /services:

- the Juvenile Court (the Court of Appeals/Supreme Court of Cassazione)
- the so called Social Welfare Services of the local Authorities
- The procedure of intercountry adoption involves the following:
  - the Juvenile Court(Court of Appeals);
  - the Regions
  - the Social Welfare Services of the local Authorities;
The Commission for the International Adoptions (Central Authority);
- the accredited Bodies;
- the Central Authority of the State of origin;
- the competent Court/Authorities of the State of origin;

The Juvenile Court

The Juvenile Court is a jurisdictional organism, disciplined by the Royal Decree 20 July 1934 n. 1404 and subsequent amendments.

According to the law, the Juvenile Courts are set up under each of the twenty-six Appeal Courts and the three detached Appeal Courts divisions. There is one in all capitals of Regions (except Aosta) and in a number or cities of particular importance (Brescia, Bolzano, Lecce, Catanzaro, Salerno, Messina, Catania, Caltanissetta, Sassari).

The Juvenile Court is a body specialized in its composition (it decides by a bench made up of two professional judges and two honorary judges who are experts in the human sciences) and in its civil, penal and administrative powers.

In the civil sphere its competences have to do with protection of the person of the child in potential situations of prejudice or abandonment, resulting measure may lead to restrictions on the exercise of parental power, to adoption and to the disciplining of the custody of children disputed between unmarried parents.

Challenges to rulings by the Juvenile Court are considered by the Juvenile Division of the Appeal Court, by a specialized bench made up of three professional judges and two honorary judges.

The rulings of the Juvenile Division of the Appeal Court are challenging before the Supreme Court of Cassazione. This, with the exception of the decree that declares the couple eligible and suited to adopt, that, as said, is not challenging as it is not definitive, thus does not prevent the couple from apply a declaration of availability to adopt before another Juvenile Court.

Regarding the participations of the court in the course of the procedure of intercountry adoption, we send back, in order not to repeat, to what written above while answering the question n. 2.

The Regions

Law n. 476 of 1998, with which Italy ratified the Convention, entrusted to the Regions and the autonomous Provinces of Trento and Bolzano major tasks in the sphere of intercountry adoption, enlarging their competences.

According to art. 39 bis, comma 1, of Law 476 of 1998, the Regions have the task of organizing a network of services able to perform the duties laid down by Law n. 476 in their respective local areas. The Regions must further monitor the functioning of the structures and services operating on their territory, verifying that their actions are appropriate and cover the tasks assigned to them.

The Regions and the autonomous Provinces of Trento and Bolzano have also to promote the definition of operational protocols and the conclusion of agreements between the various accredited Bodies and social services, ancd also to arrange for
stable forms of connection between these and the Juvenile Courts, again with the aim of securing the full implementation of the law.

According to art. 39 bis of Law 476 of 1998, the Regions and the autonomous Provinces of Trento and Bolzano have the possibility to set up intercountry adoption services meeting the same requirements and having the same powers as the accredited bodies, and carrying out the same activities for couples aspiring to adoption.

In consideration of the functions assigned to the social services of the Region, they will be subject to the authorization and monitor of the C.A.I. as well as the other accredited Bodies.

**The Social Welfare Services of the Local Authorities**

The law attributes many important tasks to the Social Welfare Services of the local authorities, whose involvement is no longer optional but mandatory.

The mission of the Social Welfare Services addresses, during the phase that preceding the declaration – by decree- of eligibility and suitability to adopt, to the prospective adoptive parents and, after that provision, to the new family.

- before the suitability decree

The Social Welfare Services enter into the procedure once the prospective adoptive parents has apply the “declaration of availability” to adopt before the competent Juvenile Court, on condition that the Court has not refused the application as the couple manifestly miss the requirements requesting by law in order to adopt.

The Juvenile Court forwards the declaration to the local Social Welfare Services, asking them to prepare a report about the applicants including information about their identity, background, family and medical history, social environment, reasons for adoption, ability to undertake and intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care, so to enable the Juvenile Court to judge and declares whether the applicants are or not eligible and suited to adopt.

In particular, after recognizing that the Social Welfare Services have the power to promote further investigation about the couple aspiring to intercountry adoption, if necessary making use of the local health units and collaborating with the accredited bodies as appropriate, art. 29 bis, comma 4 of Law 184/1983 provides that they must:

a) supply information on intercountry adoption and the relevant procedures, on the accredited bodies and their functions, and on other forms of solidarity towards juveniles in difficulty (for instance: remote support);

b) ensure preparation for prospective adopters, helping them to understand their resources and the deep motivations for the request to adopt, as well as verifying together with them their real willingness to face the responsibilities they are taking on;

c) gather information on the personal family and health situation of prospective adoptive parents, on their capacity to handle an intercountry adoption and on any special features of the juvenile they might be able to take;
d) collect any other factor that may help the juvenile court to assess their suitability for intercountry adoption

At the end of the investigation, the Social Welfare Services shall draft a report, to forward to the Juvenile Court before which the couple has applied the “declaration of availability” to adopt. The task of the services is thus essentially to help and explain. Assessing suitability is a matter for the judge.

- after the declaration – by decree - of suitability of the couple to intercountry adoption and after the adoption

The law assigns important tasks to the Social Welfare Services after the adoption too. Indeed, particularly initially, it is essential in order to help the new adoptive parents and the child with the little and not-so –little problems that may arise at the familiarization stage.

Moreover, most countries of origin require, for at least a year, periodic reports on the child’s condition and acclimatization in the new family. It is, therefore, essential for the Services to follow the course of the new adoption for that period at least.

The local Social Welfare Services and the accredited bodies are not in competition with each other. Their collaboration is indispensable and is provided for by law. According to art. 39 bis of the Law on adoption, it is for the Regions to promote and encourage the accredited bodies and services to define operational protocols – and agreements where appropriate – among themselves.

The commission for the International Adoptions

The International Adoption Commission (C.A.I.) has been instituted by law 31 December 1998 n. 476 for the purposes of art. 6 of the Convention. The Commission, therefore, represents the Central Authority of the Italian State.

Its composition and its tasks are specifically indicated in the art. 38 and 39 of the cited law, recently modified by D.P.R. June 8th, 2007 n. 108, entitled “Regolamento recante riordino della Commissione per le adozioni internazionali”. The Regulation has been published in Official Gazette Series gen. - n. 171 of the July 25th, 2007.

The Commission has his head office with the Prime Minister's Office - Department for the policies of the family. It is presided by the Prime Minister or the Minister of the policies for the family, with functions of coordination of the activity and vigilance of its acts.

The President of the Commission has, then, the task to transmit to the Parliament a biennial relation regarding the state of the international adoptions, the state of the performance of the Convention and the drafting of bilateral agreements also with not adherent Countries.

The Commission is made of:

- a vice president, named with Prime Minister's decree, on proposal of the president, a magistrate experienced in the child field or of a manager of the public administration or of the regional administrations having analogue detailed specific experience;

- three representatives of the Prime Minister's Office;

- a representative of the Ministry of the social solidarity;
- a representative of the Ministry of Foreign Affairs;
- a representative of the Ministry of the Interior;
- two representatives of the Department of justice;
- a representative of the Ministry of the health;
- a representative of the Ministry of the economy and finances;
- a representative of the Ministry of Education;
- four representatives of the unified Conference referred to in art. 8 of the legislative decree August 26th, 1997 n. 281, and successive modifications;
- three designated representatives by familiar associations with a national feature, at least one of which designated from the Forum of the familiar associations;
- three experts named by the Prime Minister or by the Minister of the family policies, chosen among persons of proved experience in the adoption law.

The tasks of the Commission are detailed in the art. 6 of D.P.R. June 8th, 2007 n. 108 and by the special law on the adoptions. In particular, the Commission:

a. cooperates with the central authorities for the international adoptions of the other States, also collecting the necessary information, in order to perform the international conventions in adoption matter;

b. it proposes to the Prime Minister's Office the drafting of bilateral agreements in international matter of adoptions;

c. it writes up the criteria for the authorization to the activity of the body as per art. 39 of the law on the adoption; it authorizes, on the base of the same criteria, the activity of the agencies; it looks after the specific register and check it at least every three years; it supervises on their acts; checks that the accredited bodies are credited in the foreign countries for which has been granted the authorization; it can limit the activity of the bodies with reference to a particular international; revokes the authorization in case of serious non-fulfilment, or violations of laws; in particular, revoke the authorization in case the achieved results attest the insufficient effectiveness of the action of the agency. The same functions are carried out by the Commission with reference to the activity carried out by the services for the international adoption, referred to in art. 39 of the law on the adoption;

d. it acts to the aim to assure the homogenous spread of the accredited body on the national territory and of their representations in the foreign Countries, helping the coordination, and let the fusion to the aim to reduce the numbers and to improve their quality;

e. conserves all the acts and information of the international adoption procedures;

it promotes the cooperation between the subjects that operate in the field of the international adoption and the protection of the minors;
it promotes initiatives of training and education for who is operating or is willing to operate in the field of the adoption;

takes note of the authorization to the income and the permanent stay of the foreign child adopted or given in custody for the adoption arranged from the vice president;

it certifies the conformity of the adoption to the provisions of the Convention, provided by the article 23, co 1, of the Convention;

it examines reports, requests and petitions concerning the adoptive procedures in course;

it supplies to inform the community with reference to the international adoption, and to the respective procedures, to the agencies that cure the adoption procedure, to the Countries in which the same can operate, with the information of the costs and the average times for ending the procedures, periodically up to dated and distinguished with reference to the origin Countries of the child; prepares suitable instruments to permit the access of the private and publics subjects to the information;

promotes every six months a consultation with the national familiar associations;

it arranges, if necessary, that the accredited bodies can carrying out the activities and arrange indispensable documents for the post-adoption tests;

it establishes, also on the basis of the investigation activity carried out through technical meeting with the representatives of the regions and the accredited body, the ways to coordinate the activities of cooperation in the foreign Countries for the protection and the promotion of the rights of the child and the activities of formation and education of the operators;

To all above listed activities, is to remark what we have reported to the previous answer 2, point c.2., concerning the fact that the Commission can be called, to request of the couple, to decide on the opportunity to ending or not the adoption proceeding proposed by the origin Country, if the accredited body appointed by the couple has expressed its negative opinion for the adoption.

All above referred we can therefore to conclude that the International Adoptions Commission is a Public nature organization, expressed by the executive power, without any profit-making, having his main function to act as an official institutional speaker to the central Authorities of the foreign Countries. Beside such function, the Commission carries out, also, functions of extreme importance is in the context of the adoption procedure (cfr. Previous lett. h and i), or regarding the other organs involved in the adoption (cfr. previous lett. to, c, d, and, f, g etc.), or, finally, regarding the government body of the Country (cfr. previous lett. b, biennial relation to the Parliament etc.).

The Commission has a mixed composition, in order to ensure the presence not only of the Government representatives, but also and especially of the representatives of the associations interested on the territory and of expert persons in the matter, or of persons able to represent and to give voice to the adopters and minors.

The Accredited Bodies

The Accredited Bodies are organizations no profit-making, having, among the others, the primary function to act as intermediaries between the aspirants to the adoption and
the Central Authorities of the origin countries of the minor: they assist the couple in searching of the child abroad, helping during the meeting and in the accomplishment of all the procedures previewed by the legislation of the origin country in order to get the child adoption.

The law of the December 31st, 1998 n. 476, of ratification of the Convention, obliged the participation of the Accredited Bodies in all the procedures of international adoption (art. 31 l. adoption). Therefore to the couple of aspirants parents is prohibited, today, to address directly to the foreign authorities (the prohibition has some exceptions, specifically referred by the art. 31, comma 2, adoption law).

Therefore, each couple must, once obtained the decree of suitability to the international adoption, to give a task to the favourite authorized Accredited Bodies. The youth Court will transmit to the accredited body chosen by the couple a copy of the decree of suitability to the adoption and of the report of the social assistance services.

According to art. 31 comma 3, adoption law, the accredited body appointed to assist the adoption procedure:

a) informs the prospective adoptive parents about the procedures that will be going to do and about the concrete possibilities of adoption;

b) carries out all the paperwork among the competent authorities of the Country as indicated by the aspirants to the adoption, among those with which it keeps relationships, transmitting the request of adoption, together with the decree of suitability and the attached report, so that the foreign authorities formulate the proposals of meeting between the aspirants to the adoption and the child to adopt;

c) receives from the foreign authority the proposal of meeting between the aspirants to the adoption and the minor to adopt, assuring that is completed with all the sanitary information regarding the child, the news regarding its origin family and its experiences of life;

d) transfers all the information and all the news regarding the child to the aspirants adoptive parents, informing them about the proposal of meeting between the couple and the minor to adopt, assisting them for all the activities to carry on in the foreign country;

e) transfers all the information and all the news regarding the child to the aspirants adoptive parents, informing them about the proposal of meeting between the couple and the minor to adopt, assisting them for all the activities to carry on in the foreign country;

f) receives the written consent for the meeting between the couple and the child, proposed by the foreign authority, by the aspirants to the adoption, certifying the subscription and transmits the consent to the foreign authority, carrying out all the other formalities as requested;

g) receives from the foreign authority certification about the existence of the conditions as referred to article 4 of the Convention and agrees with the foreign authority, if existing the necessary conditions, the opportunity to proceed with the adoption or, in contrary case, certify the lacked agreement and gives immediate information to the International Adoptions Commission, informing about the reasons, if by the State of origin requested, approves the decision to give the minors to the future adoptive parents;
h) immediately informs the Commission, the youth court and the social services of the accredited body about the decision regarding the of confidence of the foreign authority and demands to the Commission, transmitting the proper documentation, the authorization to the income and the to the permanent residence of the minor or the minors in Italy;

j) certifies the date of the child income among the adoptive parents;

i) receives from the foreign authority copy of the documentation concerning the child and transmit it immediately to the youth court and to the Commission;

k) supervises the modalities of transfer in Italy and makes every efforts to make it together with the adopters or the future adopters;

l) upon request of the adopters supports the adoptive nucleus in cooperation with the local services, since the income of the child in Italy;

Each accredited body needs and authorization to operate by the International Adoptions Commission.

Art. 39 ter of the adoption law, specifies that in order to obtain the authorization, and to conserve it, the bodies must have the following requirements:

a) to be managed and composed by persons with proper formation and competence in the field of the international adoption, and with suitable moral qualities;

b) to make use of professional's in social assistance, legal and psychological field, enrolled to the professional register, that have the ability to support the couple before, during and after the adoption;

c) to have an adequate organized structure at least in one region or an independent province in Italy and of the necessary personal structures in order to operate in the foreign Countries in they intend to act;

d) not being profit-making, to ensure an absolutely transparent book keeping management, also about the necessary costs for the accomplishment of the procedure, and a correct and verifiable operating methodology;

e) not to have and not to operate any judicial discriminations with reference to the persons who aspire to the adoption, included ideological and religious discrimination;

f) to engage itself to participate to activity of promotion of the rights of infancy, preferably through actions of cooperation to the development, also cooperating with the not governmental organizations, and of performance of the principle of cooperation of the international adoption in the origin Countries of the children;

to have legal head office in the national territory.

With reference to the Accredited bodies, we point out the policy document called “Linee guida per l’ente autorizzato allo svolgimento di procedure di adozione di minori stranieri”, object of the resolution March 1st, 2005 n. 3/2005/S.G of the Commission for
4. Which are the follow-ups post-adoptive installations?

The art. 34 of the Law 4 May 1983 n. 184, with following modifications, provides for: “From the moment of the income in Italy and for at least 1 year, to the aims of a corrected familiar and social integration, the social assistance services of the local agencies, and the authorized agencies, upon request of the interested ones, assist the adoptive, parents and child. They refer in any case to the youth Court about the course of the insertion, informing about the possible difficulties for the opportune participations”.

With the lines guide of the accredited bodies of March 1st, 2005, it has been provided that, by making itself responsible for the couple, the Accredited Body remains bound also to the respect of the law provided by the foreign country in which the couple has chosen to adopt. It follows that the Agency will be, among other things, obliged to send the relations on happened integration of the child in the adoptive family, for three or more years after the adoption, like provided by the legislation of the origin country of the minor. Whereby the regional protocols provides that the report post-adoptive are written up by the social sanitary services, but for a number of smaller years regarding that one requested by the foreign country, the accredited body is obliged to the drawing up and to the transmission of the report for the years to follow.

Although the cited normative law, we would like to point out that, or the national law, or the majority of the regional rules, neglects the period after the finalized adoption. In practice, the subsidy to the couple once put into effect the adoption, is given most times to the initiatives of the single regions, which have supplied through public services, most times constituted by multidisciplinary teams.

The activities of support and accompanying to the adopters and to the adopted child, becomes to be subsidiary regarding the judicial procedure. The attention is directed to the vigilance more than to the intervention quality. The determination of the essential levels of the services concerning social rights that have to be guaranteed in all the territory of the State for the adoptive families is inadequate.

A clear protocol of the “opportune actions” that the youth Court can adopt in case of difficulty of insertion (art. 34 cited Law) is lacking: the procedures in case of adoptive failure that involves the restitution of the child, or before, that after the transcription of the adoption, are by the Convention of the Aja regulated, without any kind of specific inner rules with the indication of the modalities of collaboration with the foreign central Authorities; the question concerning who have to writes up and transmits the periodic relations on the course of the adoptions to the foreign central Authority is not regulated.

5. In which cases, a European adoption (parents - children with different but European nationalities (A) is it possible?

The Italian legal system does not provide any kind of “European” type of adoption, being included such a proceeding among EU citizens in the rules of the international adoption.

6. Which are the conditions to adopt? Distinguish, if necessary, the national and international adoption.

According to the parity principle that regulates the international adoption, the qualifications provided for adopters in order to get the declaration of suitability to the
adoption are the same to those demands for the national adoption and also their evaluation.

Such requirements are duly detailed by the art. 6 adoptions laws, which exactly says:

“1. Adoption is permitted to spouses joined in wedding since at least three years. The married couple has not to be separated nor have had a personal separation in last the three years even of fact.

2. The spouses must be affectively suitable and able to educate, to instruct and to maintain the child that they are willing to adopt.

3. The age of the adopters must exceed at least eighteen and than not more of forty-five years the age of adopting child.

4. Requirement of the stability of the relationship of which to comma 1 can be considered as realized also when the married couple have cohabited in a stable and permanent way before the wedding for a period of three years, in the event in which the youth court checks the continuity and the stability of the cohabitation, with regard to all the circumstances of the concrete case.

5. The limits as per the paragraph 3 can be deviated, in case the youth court checks that from the lacked adoption is coming a serious damage and not otherwise avoiding to the minor.

6. It is not forbidden the adoption when the maximum limit of age of the adopters is exceeded by one of them in a way not higher to 10 years, or when they are parents of natural or adoptive sons of which at least one is in a under age, or when the adoption regards a brother or a sister of the underage already from the same couple adopted.

7. To the same wife and husband are permitted more adoptions also with following actions and constitutes preferential criterion for the adoption having already adopted a brother of adopting child or making demand to adopt more siblings, or the declared availability to the adoption of underage who are in the conditions as per the art. 3, paragraph 1, of the law of the February 5th, 1992, n. 104, concerning the attendance, the social integration and the rights of the handicapped persons”.

Requirement provided by law must not only exist at the moment of the suitability declaration, but also at the moment in which the youth court acquires the foreign action of adoption or preadoptive confidence, also with reference to the evaluation of the conformity to the inner public order of that action.

7. Which are the conditions to be adopted? Distinguish, if necessary, the national and international adoption.

Concerning the conditions required to be adopted, we have to distinguish between national and international adoption.

With regard to this last one, the declaration of adoptability of underage is emitted by the origin country, with reference to the requirements provided by law.

With reference to the national adoption, or in any case to the adoption of an Italian child by citizens of a foreign country, the article has to be referred is the art. 8 adoptions law, which provides that:
“They are declared in state of adoptability by the youth court of the district in which they live, underage of which is checked the abandonment situation because lacking in moral and material assistance by the parents or by the relatives obliged to provide for, provided that the attendance lack is not due because of act of force majeure of transitory character.

The situation of abandonment is existing, as long as are pending the conditions provided by paragraph 1, even when the underage are living in attendance institutes, private or publics ones, or communities of familiar type or are in familiar foster care.

Is not existing a case of force majeure when subjects as per paragraph 1 they refuse the measures of support offered by local social services and such a refusal is considered as unjustified by the judge”.

Considered that the law text does not give any clear definition about the concept of moral and material attendance, jurists made many efforts in order to clear up the norm.

According to doctrine and jurisprudence, the state of abandonment can exist, whether the child is lacking in the family, or in the event he has a family and “consists in an objective and not transitory deficiency of adapted relatives parents assistance”, in which is lacking the capacity of the parent to promote the physical and psychical development of the child and they infringe their duties provided by artt. 147 cod. civ. and 30 Italian Constitution. Therefore the state of abandonment, according to the major jurists direction, in objective and not subjective sense (Juvenile Court of Aquila, 14.04.1997, Appeals Court of Milan 06.06.2003..)

Other jurisprudence has then specified, that the state of abandonment is independent of will or intention of the behaviours of the parents with child and is independent too of fault or negligence of the parents or of the relative obliged to provide for the child, because the adoption is not a penalty action against the familiar ones, but simply an instrument of protection of the minor and its right to become part and to grow in a suitable family.

The Italian Supreme Court (7.1.1998 n. 11241. says that:“ The damage to the child can not be necessarily current, being able to be it upgrades them as a result of the parents conduct, and has to be checked also with reference to the circumstances happened during the opposition proceeding to the declaration of the adoptability.

The state of abandonment, finally, is existing only in the event in which the parent knows about the existence of an own son (Cass. Civ. 28.03.1991 n. 3353..

The valuation as made by the judges, regarding a fact check, is not subject to the Supreme Court judgement.

8. Within the adoption procedure, which procedure is provided to hear the child?

A. NATIONAL ADOPTION

a) It is provided that the child has to be listened many times during the adoption procedure (sees artt. 7 and 25 for the adoption declaration, 10 and 15 in adoptability matter, 22 and 23 in preadoptive confidence) and also in phase of appeal against the declaration that the child is adoptable according to the wide faculties of investigation conferred to the judge. The child is listened also in order to take any temporary decision regarding him. The child has to be necessarily listened or not according to the child age.
b) The child over 12 years old has to be obligatory listened while for child under 12 years old is optional, according to the ability to discernment of the child.

c) The lacked listening of the child determines a defect of the procedure that can be objected just with the appeal of the judgement declaring that the child is adoptable.

B. INTERNATIONAL ADOPTION

The child has to be listened according to the origin country law. Art. 4 of the Convention of the Aja, provides in any case, that the right of the minor to being listened must be guaranteed, as it is a necessary condition for a valid adoption.

9. Who has to give his assent to the adoption?

a. the adoptee;

b. legal parents (titular of the parental authority);

c. biological parents (who are juridical not the parents);

d. other (S) member (S) of the family.

a) 1. National adoption: adopting child if over 14 years old must give an explicit consent to the adoption. This consent must be manifested also when the minor completes that age during the proceeding. The given consent can however to be revoked until the definitive statement of adoption. If adopting has instead an age between the 12 completed years and the 14, must be listened for a correct trial investigation; if the adopting child is smaller than 12 years must be listened with reference to its ability to discernment.

a) 2. International adoption: the necessity of the possible consent from the adopting child is quite connected to the rules of the single foreign countries. Also for such a matter it is necessary to make reference to the dispositions provided by the Convention de Aja, that it guarantees, whereby provided, that the consent of the child has to be taken once the child has been informed on the consequences of the adoption (art. 4..)

b) National and international adoption: the prospective adoptive parents: the aspirants parents when they introduce the request of adoption to the juvenile Court must declare their own availability to adopt a child in state of adaptability.

c) 1. National adoption: the biological parents of the minor: is not requested their consent to the adoption, because the judgment to valuate the state of adoptability is geared towards checking the objective existence of a situation of abandonment independently from any consent, not provided. During the state of adoptability the exercise of the power of the parents on the minor is suspended.

c) 2. International adoption: the necessity of the eventual consent by the biological parents is regulated by laws and norms of the single foreign countries. Whereby the law of the origin country provides the consent, the
disposition of the Convention de the Aja guarantees in any case that it is picked up.

d) 1. National adoption: other members of the family that do not give the consent to the adoption but of which is provided the consent and/or the notification to appear. Living parents of the adopters must give a declaration of consent to the adoption to enclose to the request of adoption introduced by the couples who mean to adopt a child. The ancestors of the petitioners must be listened, if existing, by the juvenile Court before that is given the preadoptive placement.

2. If during the investigation concerning the child state of abandonment is proved the existence of fourth parents they have to be listened necessarily.

The meeting with the relatives is due only if it is clear they have maintained meaningful relationships with the child. Their involvement in the procedure in fact is provided in the limits in which they are keeping strong and durable affective relationships with the child, in order to offer essential reasons to valuate the interests of the child.

This is provided also in order to prevent the abandonment and to consent to the minor to be educated within its own family.

3. The tutor of minor

4. The special guardian of the child if appointed.

5. The representative of the institute that eventually accommodates the child only if able to express an opinion on the condition of the child.

6. Temporaries prospective adoptive parents.

7. The descendants legitimize or legitimized of the prospective adoptive parents, must be listened from the juvenile court that declared the state of adaptability, passed one year from the preadoptive placement, before the emission of the sentence deciding the adoption.

d) 2. International adoption: living parents of the adopters must introduce a declaration of assent to the adoption to enclose to the request of adoption introduced by the parents who intend to adopt a child.

10. At which time, after the childbirth, the mother it is authorized to give her assent to the adoption?

According to Italian law (national and international) it is not provided that the mother gives her consent to the adoption. That is considering that in the adoption matter is valid the aid principle, according which the adoption is the last remedy to use, once verified the impossibility of every alternative aid to the declaration of abandonment of the child, in order to prevent the abandonment of the child and consent to the child of being educated within its own family. Or in consideration of the fact that the adoption is the result of a jurisdictional judgement once valuated the objective state of abandonment of the child.

11. Does there exist the possibility that the relative, who must grant the adoption, gives an assent in white (agreement whereas the adopting family is not yet known)?
Italian law does not provide the forecast of the release of some consent to the adoption, less than never “in white”. This in consideration that the adoptability of the child presupposes the necessary and objective condition of the abandonment of the child.

12. Does there exist the possibility to cross the refusal of necessary assent?

The Italian law does not provide such a possibility, not being not provided that the parent of the child must give the consent to the adoption.
2.15. **LATVIA**

**A. SOMMAIRE**

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**B. INTRODUCTION**

There is no such right as the right to adopt a child. Adoption is a voluntary process.

Declaration of the Rights of the Child (1959) proclaimed by General Assembly resolution 1386 (XIV) of 20 November 1959 is in force in Latvia since 1992.03.24. The second principle of the Declaration foresees, that “the child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.”\(^{316}\)

Article 20 of Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, which is in force in Latvia since 1992.05.14, states the following:

“1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.”\(^{317}\)

Therefore, the best interests of the child shall be of the paramount consideration and the child is entitled to special protection and assistance provided by the State.

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According to the Regulation “Procedures for Adoption”, the purpose of adoption is to create for the child left without parental care circumstances that enable the child to be raised in a family, by ensuring a stable and harmonious living environment.  

Therefore, the purpose of adoption is not to provide a child for a family, but to provide a family for a child to ensure his or her development. Section 162 of Latvian Civil Law states that the adoption of a minor child shall be permitted if it is in the interests of the child.

Latvian legislation provides that adoption cannot be limited by any conditions or terms whatsoever.

Section 6 of the law On Protection of the Rights of the Child Law provides that in all activities in regard to a child, irrespective of whether they are carried out by State or local government institutions, public organisations or other natural persons and legal persons, as well as the courts and other law enforcement institutions, the ensuring of the rights and interests of the child shall take priority.

Section 31 of the law On Protection of the Rights of the Child Law states the following: “In cases and in accordance with procedures provided for in law, a child may be adopted to a foreign state, if one of the conventions which determine the protection of the rights of the child and co-operation in international adoptions is binding on this state, or if Latvia has entered into a bilateral agreement with it in regard to legal co-operation in the field of adoption.”

Latvia has entered into bilateral agreements with the following countries regarding the legal assistance in family matters:

Agreement between Republic of Latvia and Republic of Kirghizia on legal assistance and legal relations in civil, family and criminal matters in force since 2001.03.24;

Agreement between Republic of Latvia and Republic of Uzbekistan on legal assistance and legal relations in civil, family, labour and criminal matters in force since 1997.05.12;

Agreement between Republic of Latvia and Republic of Byelorussia on legal assistance and legal relations in civil, family and criminal matters in force since 1995.06.18;

Agreement on legal assistance and legal relations between Republic of Latvia, Republic of Estonia and Republic of Lithuania in force since 1994.04.03;

Agreement between Republic of Latvia and Russian Federation on legal assistance and legal relations in civil, family and criminal matters in force since 1995.03.28;

Agreement between Republic of Latvia and Republic of Poland on legal assistance and legal relations in civil, family, labour and criminal matters in force since 1994.03.17;

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318 Regulation Nr. 111 “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, amendments published in Latvian in Latvijas Vestnesis Nr. 80 on 05.20. 2005, Section 3 (translation of Translation and Terminology Centre)

319 Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162;

320 Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 168 (translation of Translation and Terminology Centre)


Agreement between Republic of Latvia and Republic of Moldova on legal assistance and legal relations in civil, family and criminal matters in force since 1995. 10.04.

Agreement between Republic of Latvia and Republic of Ukraine on legal assistance and legal relations in civil, family, labour and criminal matters in force since 1996.08.11.

Section 55 of the law On Protection of the Rights of the Child Law states that where a child with special needs is placed for adoption, the adopters shall be informed regarding the state of health of the child, developmental characteristics and their consequences, and the special nature of care for the child.323

European Convention on the Adoption of Children (signed in Strasbourg, 24.IV.1967) is in force in Latvia since 2000. 03. 31. Section 2 of the Law On European Convention on the Adoption of Children, foresees, that in accordance with Article 26 of the Convention to determine that requests on providing of information in Republic of Latvia shall be received and sent by the Ministry of Children and Family Affairs. 324

Convention on Protection of Children and Co-operation in respect of intercountry adoption is in force in Latvia since 2001.11.09. Law on Convention on Protection of Children and Co-operation in respect of intercountry adoption foresees, that in accordance with Article 6 of Convention the central authority in Latvia for fulfilment of Convention is the Ministry of Children and Family Affairs.325

In accordance with Section 13 of Convention on Protection of Children and Co-operation, the functions stated in Articles 11 and 12 of Convention shall be carried out by Orphan court.

According to information provided by the Ministry of Children and Family Affairs, in 2005, there were 60 children adopted in Latvia and 111 children adopted by foreigners.

According to information published in the web page of the Ministry of Children and Family Affairs326 the adoption tendencies in the year 2007 are the following:

In 2007 comparatively many of children being adopted have been taken into families by their guardians because the true parent-child relations appeared between the child and the guardian. As further provided by the information published in the web page of the mentioned Ministry, in 2005, 21 children were adopted from guardianships, in 2006 – 29, but in 2007 – 35 children.

In 2006 2 children were adopted by Latvian adopters from foster families, while the number of children adopted in this manner in 2007 rose to 9. Eighteen children were adopted from foster families to foreign countries.

According to further information published in the same web page of the Ministry of Children and Family Affairs in 2007 foreign adopters expressed the wish to adopt more than one child (brothers and/or sisters) still more often than Latvian adopters. In 2006, 2 adopter families from Latvia adopted 2 children each, while in 2007 the number of such families was four times bigger (8 families). While in comparison with the 25 foreign adopter families which adopted simultaneously 2 children in 2006, only 17

foreign adopter families adopted simultaneously 2 children in 2007 (of these 8 cases have already been approved by the court). 7 foreign adopter families (of which 6 cases have already been approved by the court) adopted simultaneously 3 children, 2 families adopted simultaneously 4 children, but 1 foreign adopter family adopted simultaneously 5 children in 2007.

Pursuant to further information published in the web page, the number of permits for foreign adoption of children issued by the Minister of Children and Family Affairs in 2007 year was smaller. In 2005, such permits were issued for 111 children, in 2006 – for 147 children, but in 2007 – for 114 children. In 2006, most of the children adopted to a foreign country were adopted to France (83 children), followed by Italy (41 children) and the USA (21 children), while the situation was considerably different in 2007. In 2007, most of the children were adopted to the USA (46 children), followed by Italy (36 children) and France (30 children). One child was adopted to Spain and one to Sweden.

As advised by the Ministry of Children and Family Affairs, the average duration of the adoption process for the local adoption from the date of receipt of the application to the completion of the adoption process is approximately a year and six months. In the cases of foreign adoptions of children under 7 years of age, one has to wait for approximately 4 years until information on the child to be adopted is provided, which is due to the large number of foreign adopters. However, after receipt of information the adoption process lasts for about three months.

As advised by the Ministry of Children and Family Affairs, difficulties arising during the adoption process are mostly related to the health conditions of the children, because the adopters prefer adoption of a healthy child, while in most cases the children have some health problems, which tend to reduce the number of prospective adoptive families.

C. Institutions dealing with adoption matters in Latvia

Role of Orphan courts

At the moment there are approximately 500 Orphan Courts in Latvia.

Section 2 of the Law On Orphan’s Courts states, that an Orphan's court is a guardianship and trusteeship institution established by a county, city or parish local government. The relevant local government council (parish council) shall assign financial resources for the operation of an Orphan’s court. If several local governments jointly establish an Orphan’s court, it shall be financed in accordance with the agreement of the relevant local governments.

Law On Orphan’s Courts foresees, that the Orphan's court consists of Chairperson of the Orphan's court and Members of the Orphan's court. In the composition of the Orphan's court may be included the Vice-Chairperson of the Orphan’s court.

The mentioned Law provides that a secretary or an employee appointed by the local government council (parish council) shall manage the record-keeping of an Orphan’s
court. Depending on the amount of work the Orphan’s court is entitled to employ other employees for ensuring the work of the Orphan’s court.\textsuperscript{331}

The relevant local government council (parish council) shall elect the Chairperson of the Orphan’s court, the Vice-Chairperson of an Orphan’s court and not less than 3 Members of an Orphan’s court for 5 years.\textsuperscript{332}

Pursuant to Section 34 of the Law On Orphan’s Courts\textsuperscript{333}, the functions invested by Orphan courts in adoption process are the following:

1. An Orphan’s court shall take a decision regarding:
   1. the recognition of a person as an adopter;
   2. the separation of brothers and sisters, half-brothers and half-sisters in the cases specified by the Civil Law;
   3. if it is possible to ensure the upbringing of a child in a family or appropriate care for the child in Latvia;
   4. the transfer of a child to the care and supervision of an adopter until the approval of adoption;
   5. the termination of pre-adoption care for a child;
   6. the compliance of adoption with the interests of a child.

The personal presence of an adopter in the meeting of the Orphan’s court is obligatory.\textsuperscript{334} In case of foreign adoptions that can cause practical difficulties and expenses for the adopters to travel to Latvia to participate in Orphan court meetings, especially in cases when adopters live far away.

Other participants of adoption shall express the consent to the adoption of the child in person in the Orphan’s court of the place of residence of such participants or submit the consent publicly certified by a notary or the Orphan’s court.\textsuperscript{335}

Law On Orphan’s Courts provides for jurisdiction over the cases.

Thus, the Orphan’s court, which has taken the decision regarding the out-of-family care of a child, shall take decisions regarding the separation of brothers and sisters, half-brothers and half-sisters in case of adoption and also decisions on adoption of children to foreign countries.

Section 57 of the Law On Orphan’s Courts provides the following:

\textsuperscript{331} Law On Orphan’s Courts, published in Latvian in Latvijas Vēstnesis 107 2006.07.07, amendments published in Latvian in Latvijas Vestnesis Nr. 207 on 12.29.2006, Section 8
\textsuperscript{332} Law On Orphan’s Courts, published in Latvian in Latvijas Vēstnesis 107 2006.07.07, amendments published in Latvian in Latvijas Vestnesis Nr. 207 on 12.29.2006, Section 7
1. If a child is adopted by a Latvian citizen, non-citizen or a foreigner who has a permanent residence permit in Latvia, the Orphan court, in the territory of operation of which the place of residence of an adopter is declared, shall decide on the following:

1. the recognition of a person as an adopter;
2. the transfer of the child to the care and supervision of the adopter until approval of the adoption;
3. the termination of pre-adoption care of the child; and
4. the conformity of the adoption to the interests of the child.\(^{336}\)

Section 57 of the mentioned Law further provides the following:

2. If a child is adopted by a foreigner who does not have a permanent residence permit in Latvia, or a person who resides abroad, the Orphan’s court, which has taken a decision regarding the out-of-family care of the child shall decides regarding:

1. the transfer of the child to the care and supervision of the adopter until the approval of the adoption;
2. the termination of pre-adoption care of the child;
3. the conformity of the adoption to the interests of the child.\(^{337}\)

Special provisions refer to adoption of a child by spouse. Thus, the mentioned Law foresees, that if a child of the spouse is being adopted, a decision regarding the conformity of the adoption with the interests of the child shall be taken by the Orphan’s court of the place of residence of such parent with whom the child resides.\(^{338}\)

Section 49 of Law On Orphan’s Courts foresees, that decisions of an Orphan’s court shall come into force and shall be executed immediately.\(^{339}\)

The interested party may appeal a decision of an Orphan’s court to a court in accordance with the procedures specified in the Administrative Procedure Law. Submission of an application to a court shall not suspend the operation of the decision.\(^{340}\) The decision can be appealed within one month term.

Section 291 of Administrative Procedure Law\(^{341}\) foresees, that an appellate complaint may be submitted within twenty days from the day the judgment is pronounced.

Section 325 of Administrative Procedure Law\(^{342}\) further provides, that participants in administrative proceedings may appeal, in accordance with cassation procedure, from


\(^{337}\) Law on Orphan’s Courts, published in Latvian in Latvijas Vēstnesis 107 2006.07.07, amendments published in Latvian in Latvijas Vēstnesis Nr. 207 on 12.29.2006, Section 57, Part 2


judgments and supplementary judgments of courts of appellate instance if the court has breached the norms of substantive law or of procedural law or, in adjudicating the matter, has exceeded the limits of its competence.

Section 329 of Administrative Procedure Law foresees, that a cassation complaint may be submitted within thirty days from the day when judgment is pronounced.

Role of Ministry of Children and Family Affairs

The Ministry of Children and Family Affairs is the leading state administrative institution in the field of children rights protection, children and family rights and youth.

Pursuant Section 3 of the Regulation “Procedures for Adoption” the registration of children left without parental care and of the persons who are willing to adopt shall be carried out in the Adoption Register. The stated Section further foresees, that the information included in the Adoption Register shall have the status of the restricted access. The State of Latvia is the only owner of the Adoption Register. The holder of the Register is the Ministry of Children and Family Affairs.

According to By-law of the Ministry of Children and Family Affairs, the Ministry is directly subordinated to the Minister of Children and Family Affairs.

By-law of the Ministry of Children and Family Affairs provides for the structure of the Ministry. The work of the Ministry shall be lead by the minister.

The Parliamentary Secretary carries out responsibilities stipulated in the Law on State Administration System and other normative acts.

The Secretary of State can have deputies. The competence of the Deputy Secretary of State, as well as the Ministry’s structural units under direct subordination of the Deputy Secretary of State shall be determined by the Secretary of State.

The Ministry’s structural units are departments, their divisions and independent divisions.

The departments, their divisions and independent divisions shall be formed, re-organized and liquidated by the Secretary of State. Regulations of departments, their
divisions and independent divisions, subject to approval of the Secretary of State, shall be issued by the head of the respective structural unit.\textsuperscript{350}

The departments and independent divisions shall be subordinate to the Secretary of State or the Deputy Secretary of State in accordance with the distribution of functions determined by the Secretary of State.\textsuperscript{351}

The department shall be managed by the Department Director. The Department Director may have deputies. The competence of the Department Director and his deputies shall be specified in the official’s job description or employment contract.\textsuperscript{352}

The divisions shall be managed by Head of Division. The head of division may have a deputy. The competence of the Head of Division and his deputy shall be specified in the official’s job description or employment contract.\textsuperscript{353}

The Minister and the Secretary of State may form councils, working groups and commissions in the Ministry. The authorized representatives from other institutions, as well as private individuals may be involved in the said institutions. By-laws of the institutions shall be respectively approved by the Minister or the Secretary of State.\textsuperscript{354}

Section 4 of the By-law of the Ministry of Children and Family Affairs the Ministry states that functions of the Ministry of Children and Family Affairs:

"4.1. to develop state policy in the field of children rights protection, children and family rights and youth;

4.2. to organize and coordinate implementation of policy in the field of children rights protection, children and family rights and youth;

4.3. to perform other functions stated in normative acts."\textsuperscript{355}

In order to ensure the fulfilment of the functions, the Ministry of Children and Family Affairs, performs a variety of tasks, including the following: organizes and coordinates supervision to make sure that normative acts are followed in the field of children rights protection, provides methodical help to the specialists of local governments in the area of organizing children rights protection and out-of-family care for the children, ensures the methodical management of children out-of-family care institutions in the field of children rights protection, ensures the supervision and methodical management of the orphan courts (parish courts) work (except for the functions that are stated in the law “On Orphan’ Courts” in chapters VII and VIII), ensures the united registration of


\textsuperscript{352} Regulations Nr. 687 on the By-law of the Ministry of Children and Family Affairs of the Cabinet of Ministers of Republic of Latvia, published in Latvian in Latvijas Vēstnesis 124 2004.08.06, amendments published in Latvijas Vēstnesis Nr. 160 on 2004.08.09.2004, Section 16.


\textsuperscript{354} Regulations Nr. 687 on the By-law of the Ministry of Children and Family Affairs of the Cabinet of Ministers of Republic of Latvia, published in Latvian in Latvijas Vēstnesis 124 2004.08.06, amendments published in Latvijas Vēstnesis Nr. 160 on 2004.08.09.2004, Section 18.

adoptable children and adopters in Adoption Registry and in the procedure stated in normative acts issues to the adopters the statements to children out-of-family care institutions.

**Role of Courts**

Cases on approval and cancellation of adoption are adjudicated in closed court hearings.

According to Section 259 of Latvian Civil Procedure Law, an application regarding approval of an adoption shall be submitted to a court according to the place of residence of the adopter, but an application on cancellation of adoption – to a court according to the place of residence of one applicant. 356

An application from a foreigner or a person living in a foreign state regarding approval of an adoption shall be submitted to a court according to the place of residence of the person being adopted.357

Latvian Civil Procedure Law foresees that the matter shall be adjudicated with the participation of at least one of the adopters in person and the prosecutor. Also, the following persons shall be summoned to the adjudicating of the matter:

1. the adopted person, if he or she has reached the age of twelve years;
2. the parents of a minor adopted person if they have not had parental rights removed, or a guardian.

The court, having examined the basis of the application and whether it conforms to the requirements of the law, shall provide a judgment regarding approval of the adoption or dismissal of the application.358 Section 262 of Latvian Civil Procedure Law states, that in a court judgment approving of an adoption there shall be stated such information as is necessary to provide the entry in the appropriate Births Register.359

To the former parents of the child the court shall issue an extract of the judgment in which information regarding the adopter is not stated.360

A judgment which has come into lawful effect approving the adoption shall constitute the grounds for making an entry in the Births Register and issuing of new birth certificate of adopted person.

At the request of the adopter the court shall ensure that the parents of the child to be adopted do not find out the identity of the adopter. If it is not possible, the parents of the child being adopted shall be heard in a separate court hearing.361

If the adopter dies until the court has approved the adoption, that is not an obstacle for approval of adoption, but if the adopted person dies before such approval, the matter shall be terminated. 362

Cancellation of adoption:

The court may cancel adoption pursuant to joint application by adopter and the adopted person who has attained full age. 363

According to Section 415 of Civil Procedure Law364 “an appellate complaint regarding a judgment of a court of first instance may be submitted within 20 days from the day of pronouncement of the judgment.” The mentioned Section further foresees, that “if an abridged judgment has been pronounced, the time period for appeal shall be calculated from the date, which the court has announced for drafting up of a full judgment.” 365 As indicated by Orphan court representative, as a result, there arises a situation, which can be interpreted as such which does not comply with the interests of the child.

Pursuant to Section 450 of Civil Procedure Law366 “a judgment (supplementary judgment) of an appellate instance court may be appealed by participants in the matter in accordance with cassation procedures, and a prosecutor may submit a cassation protest.” The stated Section further foresees, that “a judgment of an appellate instance court may be appealed pursuant to cassation procedures if the court has breached norms of substantive or procedural law or, in adjudicating a matter, has acted outside its competence.”367 A cassation complaint may be submitted within 30 days from the day a judgment is pronounced. If an abridged judgment has been pronounced, the time period for appeal shall be calculated from the date, which the court has announced for drawing up of a full judgment.368

D. WHO CAN BE ADOPTED?

Section 162 of Latvian Civil Law states, that "a minor child may be adopted if prior to the approval of the adoption he or she has been in the care and supervision of the adopter and the mutual suitability of the child and adopter has been determined, as well as there is a basis for considering that as a result of the adoption between the adopter and the child being adopted shall be established a true child and parent relationship."369

Section 165 of Latvian Civil Law provides, that several children can be adopted at the same time.370 Law does not provide for the maximum amount of children who can be

366 Civil Procedure Law, published in Latvian in Latvijas Vestnesis 326/330 1998.11.03, and amendments published in Latvian in Latvijas Vestnesis Nr. 169 on 2002.11.20 and Nr. 188 on 2007.11.22, Section 450 (translation of Translation and Terminology Centre)
367 Civil Procedure Law, published in Latvian in Latvijas Vestnesis 326/330 1998.11.03, and amendments published in Latvian in Latvijas Vestnesis Nr. 169 on 2002.11.20 and Nr. 188 on 2007.11.22, Section 450, (translation of Translation and Terminology Centre)
368 Civil Procedure Law, published in Latvian in Latvijas Vestnesis 326/330 1998.11.03, and amendments published in Latvian in Latvijas Vestnesis Nr. 169 on 2002.11.20 and Nr. 188 on 2007.11.22, Section 454, Part 2, (translation of Translation and Terminology Centre)
369 Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162; Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 162, (translation of Translation and Terminology Centre)
370 Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162; Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 165
adopted at the same time. Latvian legislation provides, that when adopting brothers and sisters shall not be separated.\textsuperscript{371}

However, separation of brothers and sisters is permissible in the light of the law in case if one of them has an incurable disease or there are impediments, which hinder the adoption of brothers and sisters together. Latvian legislation does not determine the possible impediments.

Decision about separation of brothers and sisters is adopted by Orphan courts.

The child can be adopted only if there is passed the decision by Orphan's court that such an adoption in the interests of the child.

The Orphan’s court in taking such a decision shall:

- find out about the views of the person being adopted if only he or she is able to formulate such;
- shall take into account information regarding the adopter, including capacity to raise a child, religious faith if there is such, his or her identity, household circumstances, material circumstances, as well as information regarding the child being adopted, including his or her identity, religious faith if there is such, health and ancestry.

Special requirements apply to foreign adoption.

Thus, Section 169 of Latvian legislation states that “A child may be adopted pursuant to a request from an foreigner who does not have a permanent residence permit in Latvia or a person residing abroad, with the permission of the Minister for Children and Family Affairs and only in the event it is not possible to provide for the raising of the child in a family and his or her appropriate care in Latvia.”\textsuperscript{372}

A special role is granted to foster families.

According to Regulations for Foster Families, “a child shall be placed into a foster family for a period of time until the child can return to his or her family or, if this is not possible, until adoption of the child or the establishment of guardianship. On taking a decision regarding the placing of a child into a foster family the Orphan’s Court shall indicate the period of time for which a child shall be placed into a foster family. The Orphan’s Court in the interests of a child may extend the period of time of a child’s care in a foster family, by taking a new decision.”\textsuperscript{373}

Section 25 of the Regulations for Foster Families foresees, that spouses (person) who have carried out the duties of a foster family have the priority right to become the adopters or guardians of a child if the Orphan’s Court has not declared any of the nearest kin of a child as suitable.

The representative of one of the Orphan courts has advised us the following:

\textsuperscript{371} Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162; Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 165
\textsuperscript{372} Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162; Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 169, Part 6.
\textsuperscript{373} Regulations Nr. 1036 for Foster families, published in Latvian in Latvijas Vestnesis 207 2006.12.28, Article 25 (translation of Translation and Terminology Centre)
“It sometimes happens that the foster families in which children are placed and whose task is to prepare children for adoption perform this task insufficiently and deficiently because the foster families are not sufficiently prepared to disassociate themselves from the child in cases of separation (return of the child to the parent, the adoption).

It is necessary to train foster families in how to prepare children for adoption and how to facilitate movement of children into the adopter families. Guardians and foster families receive remuneration for their work. Not always are foster families prepared for taking children with behavioural problems in the family therefore they rather prefer taking and keeping younger children.

Establishment of guardianship over an child being adopted (especially a young child) for whom a person who is not the child's relative is appointed as the guardian can be considered a problem. Frequently enough, before declaration of the guardianship the prospective guardian expresses the wish to adopt the child in the nearest future and wants that the child arrives into the family from the institution as soon as possible, but with receipt of the monthly allowance the guardian no longer shows interest in starting the adoption process and there have even been cases where the guardian turned to the orphan court just shortly before the child's reaching of age (less than two months remaining until becoming of age, while the child has been under guardianship from three years of age). No time restrictions apply to being granted the status of the guardian, while in order to be granted the status of the adopter the family investigation for at least six months is required. If the investigation periods were equal, it is possible that there could be persons who would turn to adoption.

The children becoming teenagers, guardians or foster families often no longer want to keep the children in their families due to the behaviour problems and it is not possible to find adopter families for teenagers because families are not eager to become adopters for teenage children."

According to one of the Attorneys at Law, the artificially created obstacles to foreign adoption should be lifted and adoption to the EU and USA has to be equalled with the local adoption, because the number of local adopters is still very small. Attorney at Law further suggests, that the following should be prescribed under the law:

1. a child may be placed under guardianship exclusively to relatives provided they wish to establish guardianship for the purposes of adoption;
2. a child under guardianship who has not been adopted by their guardian after one year of guardianship should be put on the adoption children register;
3. all children who have been listed in the adoption children register for local adopters for more than one year should be listed in the register of children for foreign adoption;
4. all children who have been under guardianship for more than one year and whom the guardians do not wish to adopt within the following half of the year should be listed in the register of children for foreign adoption.

**E. WHO CAN ADOPT?**

The adopter must have capacity to act.\(^{374}\)
Persons who are not married to each other may not adopt one and the same child.\textsuperscript{375} The Constitution of Republic of Latvia defines marriage as a union between a man and a woman. Section 110 of the Constitution of Republic of Latvia states the following: “The State shall protect and support marriage – a union between a man and a woman, the family, the rights of parents and rights of the child.”\textsuperscript{376} Therefore, marriage and consequently adoption between persons of the same gender is not allowed.

Section 163 of Latvian Civil Law provides, that the adopter must be at least twenty-five years old, and be at least eighteen years older than the child being adopted.\textsuperscript{377} Section further foresees, that the conditions regarding the minimum age of the adopter and the eighteen-year difference may be disregarded if ones own spouse’s children are being adopted.\textsuperscript{378} However, according to Latvian legislation also in such case the adopter must be at least twenty-one years of age, but the age difference between the adopter and the child may not be less than sixteen years.\textsuperscript{379}

The conditions regarding the eighteen-year difference may be disregarded if several children are being adopted (brothers and sisters). Nevertheless, also in such case the age difference between the adopter and the child may not be less than sixteen years.

Special provisions are provided by Latvian legislation in case of adoption by spouses. Thus, Section 164 of Latvian Civil Law foresees the following:

“Spouses shall adopt a child jointly, except in cases where:

1. the children of the other spouse are adopted;
2. the other spouse has been declared missing (absent without information as to whereabouts); or
3. the other spouse has been recognised as lacking capacity to act due to mental illness or mental deficiency.”\textsuperscript{380}

A guardian may not adopt his or her ward so long as he or she have not submitted the pertinent accounting and not been released from guardianship.\textsuperscript{381}

Regulation “Procedures for Adoption” foresees who can adopt foreigners who do not have a permanent residence permit in Latvia or persons residing abroad:

Section 41 of the Regulation “Procedure of Adoption” states the following:

\textsuperscript{375} Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162; Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 166 (translation of Translation and Terminology Centre)
\textsuperscript{376} The Constitution of the Republic of Latvia, published in Latvian in Latvijas Vestnesis 43 1993.07.01 with further amendments published in Latvijas Vestnesis, Section 110 (translation of Translation and Terminology Centre)
\textsuperscript{377} Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162; Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 163
\textsuperscript{378} Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162; Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 163
\textsuperscript{379} Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162; Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 163
\textsuperscript{380} Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162; Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 164, Part 1 (translation of Translation and Terminology Centre)
\textsuperscript{381} Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162; Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 167 (translation of Translation and Terminology Centre)
“41. Foreigners who do not have a permanent residence permit in Latvia or persons residing abroad may adopt the following:

41.1. a child of the other spouse;

41.2. a child from a guardian’s family, if the adopters are relatives of the child to be adopted; or

41.3. a child that resides in a foster family or in the upbringing institution, if it is impossible to provide proper upbringing and care of the child to be adopted in a family in Latvia.382

As advised by the representative of one of the Orphan courts, the maximum age for adopters should be determined.

F. NECESSARY CONSENTS FOR ADOPTION

The Regulation “Procedures for Adoption” foresees that it is necessary that all participants of adoption provide their consents to adoption.

Section 169 of Latvian Civil Law provides for the persons who must give the consents for adoption and states the following:

“ It is necessary that all parties to the adoption give their consent to the adoption:

1. the adopter;

2. the person being adopted if he or she has reached the age of twelve years;

3. the parents of a minor person being adopted if they have not had parental authority removed, or a guardian.”383

The Regulation “Procedures for Adoption” specifically foresee, that the consent from the parents to adoption of the child is necessary to be obtained from the parents of the child, regardless if they live together with or separately from the child to be adopted, or the child to be adopted resides permanently in a child care and upbringing establishment or in an educational and upbringing establishment for children, or in another family.

The Regulation “Procedures for Adoption” provide for Annex Nr. 1 containing the form of the Consent of the parent (guardian) to the adoption of the child. The form of consent contains information, for instance, about the name, surname of the child and the confirmation, that the person is aware of the legal effects of adoption and has been informed regarding the secret of adoption, as well as that the person has been informed about possibility to receive social assistance and social services provided for families with children.

The Regulation “Procedures for Adoption” provide for Annex Nr. 2 containing the form of Consent to the Adoption by a Child who has Reached Twelve Years of Age. The consent, for instance, contains the statement, that the child agrees to his or her adoption by a specific adopter whose name and surname is stated in the form and that he or she wishes after adoption to retain his or her surname or to acquire the adopter’s surname.

382 Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 41
383 Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162;
Section 6 of the Regulation “Procedures for Adoption” provide a detailed list of cases when the consent of parents to adoption is not necessary:

“6. The consent of parents to adoption is not necessary:

6.1. if the parental authority of the parents has been removed in accordance with the procedures prescribed by law;

6.2. if the parents are deceased;

6.3. if the court has determined that the place of residence of the parents is unknown;

6.4. if the court has determined that according to the factual circumstances the consent of the parents is not possible due to a permanent obstacle (for example, unknown parents).”

Section 200 of Latvian Civil Law foresees that cases when the parent may have parental authority removed:

1. the parent treats a child especially badly;

2. the parent does not care for the child or does not ensure the supervision of the child and it may endanger the physical, mental or moral development of the child; or

3. the parent has given his or her consent for the adoption of the child.

If the child to be adopted is less than 12 years old, the Orphans’ court shall find out about his or her opinion by listening to the child at his or her place of living.

The participants of adoption shall express their consent about adoption to Orphan Court in person or shall submit a consent publicly certified at a notary or in the parish court.

Specific provision refers to the consent for adoption of a mother - a mother may not give her consent for the adoption of her child earlier than six weeks after the birth.

Latvian Civil Law provides for a case when the court can relieve the parties from the attestation of such consent. Thus, Section 169 of Latvian Civil law provides, that “a court may relieve the parties from the attestation of such consent if, according to the factual circumstances, it is shown that this is impossible due to some permanent impediment or also if the place of residence of the persons whose consent is required is unknown. The court shall publish in the newspaper Latvijas Vestnesis an invitation to the referred person to respond.”
In cases when the parental authority is vested in only one of the parents and the other parent, without an important reason, refuses to provide the consent for adoption, Latvian Civil law states that in such case, the consent may be given by the Orphan’s court of the place where the person being adopted lives.

Representative of one of the Orphan courts has advised us of the below stated practical problem:

The Civil Law Section 169 stipulates that a minor’s parents should grant their consent to adoption if they are not deprived of parental authority.

Section 34 of the Law on Orphan’s Court prescribes that other adoption participants express their consent to the adoption of the child in person to the orphan court of their place of residence, or submits consent certified publicly before the notary or the orphan court. It should be mentioned that consent could be withdrawn, therefore the Civil Procedure Law Section 261 states that parents of a minor person being adopted, if they are not deprived of parental authority, should be summoned to the court, because a situation may arise that the adoption process has already arrived at its final stage – approval by the court, but the parents announce at the court hearing that they do not agree to adoption of the child.

The Civil Law stipulates that parents can be deprived of parental authority over the child provided the parent has granted consent to adoption of the child. The child, in their turn, can be adopted provided agreement of parents to adoption has been obtained. Deprivation of parental authority is a time-consuming process. The adopter feels unsafe in this situation because what if the parent withdraws their consent when the child has already been under the care of adopters for a longer period.

**G. PROCEDURE ON NATIONAL ADOPTION.**

The procedure starts with submitting application by adopter to the orphans’ court of his or her place of residence.

**Documents**

Section 13 of the Regulation “Procedures for Adoption” provides the following:

“13. The adopter shall present a personal identification document and shall submit the following documents:

- an application, in which the reasons for adoption, the preferable number of children to be adopted, their sex and age, as well as the religious beliefs, if such exist, of the adopter are indicated;

- a copy of the marriage certificate, presenting the original, if the adopter is married;

- a document certifying a divorce, if the marriage has been divorced;

- a statement regarding the ensuring of accommodation;

curriculum vitae (CV);
- a statement regarding the state of health of the adopter, in which congenital and acquired diseases of the adopter are specified, if such exist.  

As advised by representative of one of the Orphan court, the Regulation “Procedures For Adoption” stipulates that the adopter should submit to the orphan court a certificate on the adopter’s health condition in which the adopter’s hereditary and acquired diseases are indicated, which could be considered a problem. It is preferable that the time period for which the person is under health care of the physician who issues the certificate on the person’s health condition is specified here, for instance, at least 6 months, or else it is the commission of physicians who issues such health certificate.

If a child lives in the family of the adopter, the orphans’ court may release the adopter from the necessity to submit a statement regarding the ensuring of accommodation, curriculum vitae (CV), a statement regarding the state of health of the adopter, in which congenital and acquired diseases of the adopter are specified, if such exist.

In case if the adopter is one of the spouses and the other spouse has been recognised as lacking the capacity to act or being lost (missing), the adopter in addition to the documents stated in Section 13 of the Regulation “Procedures for Adoption” shall submit to the orphans’ court an extract from a court judgement or a true copy of it (presenting the original) regarding the recognition of the other spouse as not having the capacity to act or being lost (missing).

In case, if the child of the other spouse is being adopted, an adopter shall attach to the application the following documents:

- a copy of the birth certificate of the child to be adopted (presenting the original);
- a statement regarding the state of health of the child to be adopted;
- the consent of the biological parents of the child to the adoption or a document which certifies the existence of any of the following circumstances - the place of residence of the other parent is unknown; the other parent is deceased; the parental authority of the other parent has been deprived in accordance with the procedures prescribed by law.

Family research

Section 18 of the Regulation “Procedures for Adoption” provides the following:

“18. After the receipt of the application for adoption and the relevant documents the orphans’ court shall examine the documents submitted and perform the family research, including the following:

18.1. evaluate the reasons for adoption, mutual relations of the family members and their ability to raise a child;

18.2. clarify the living conditions of the family of the adopter and evaluate the financial situation of the adopter;

18.3. request information regarding the facts in respect of the adopter included in the Penalty Register; and

390 Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 13
18.4. send the adopter to a psychologist to receive an opinion regarding suitability of the person for adoption.\textsuperscript{391}

**Duration of carrying out of family research and the term of effect of Orphan court decision**

According to the Regulation “Procedures for Adoption” the term of performing family research is at least 6 months. Orphan court in the case of necessity can ask consultations of specialists.

However, the Regulation “Procedures for Adoption” also provides, that “in exceptional cases the orphans’ court may perform the family research in a shorter period of time, by especially motivating that in the decision.”\textsuperscript{392}

After carrying out family research, Orphan court adopts the decision.

The decision of the orphans’ court shall be in effect for 12 months term.\textsuperscript{393}

In case if adopter within a period of 12 months has not chosen the child to be adopted, the orphans’ court shall carry out a repeated family research and shall decide substantively.\textsuperscript{394}

As advised by one of the Orphan courts, family research of the adopter’s family over the period of six months is comparatively long while the opinion produced as the result of the family research is valid only for one year. As further advised by the representative of the Orphan court, the decision of the Orphan court declaring the family or the person to be adopters passed as the result of family research of the adopter’s family should be valid for five years instead of 12 months.

**Information on adoptable children**

Adopter may receive the information about adoptable children in the Ministry of Children and Family Affairs. Adopter must present the decision passed by Orphan court and a document certifying his or her identity.

According to the Regulation “Procedures for Adoption” in case the adopter has chosen a child, the Ministry of Children and Family Affairs shall issue a statement to the adopter in order for the adopter to get personally acquainted with the child.

**Getting acquainted with the child**

Pursuant to Section 23 of Regulation “Procedures for Adoption” the statement which is issued by the Ministry of Children and Foreign affairs shall be submitted by the adopter to the head of upbringing institution and must present a personal identity document.\textsuperscript{395} After that, the head of the upbringing institution shall introduce the adopter with the child to be adopted (in accordance with the statement) and with child’s documents.\textsuperscript{396}

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\textsuperscript{391} Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 18, (translation of Translation and Terminology Centre)

\textsuperscript{392} Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 19

\textsuperscript{393} Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 20

\textsuperscript{394} Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 20

\textsuperscript{395} Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 23

\textsuperscript{396} Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 23
Pursuant to Section 24 of the Regulation “Procedures for Adoption” the adopter within a period of 10 days after getting acquainted with the child to be adopted and his or her documents shall take a decision regarding the taking of the child in his or her care and supervision.397

If the adopter takes a child into his or her care and supervision, the orphans’ court of the place of residence of the adopter shall without delay decide regarding the procedures for the care of the child. 398

The term provided by the Regulation “Procedures for Adoption” of placing the child into the care and supervision of adopter is up to six months.

A note in the personal records of the child is made by the head of the upbringing institution on the placement of the child in the care of the adopter. The adopter shall sign for the receipt of the child.399

The head of the upbringing institution shall without delay send to the orphans’ court of the place of residence of the adopter a copy of the birth certificate of the child, an extract from the medical documents of the child and a document that approves the consent of the parents to the adoption or the existence of any of the following circumstances:

1. the parental authority of the parents has been removed in accordance with the procedures prescribed by law;
2. the parents are deceased; or
3. the place of residence of the parents is unknown.400

The head of the upbringing institution shall without delay inform the orphans’ court, by the decision of which a child has been placed in the upbringing institution, as well as the orphans’ court of the place of residence of the adopter and the Ministry of Children and Family Affairs regarding the child placed into care and supervision.401

The orphans’ court shall issue to the adopter a certified copy of the birth certificate of the child and an extract from the medical documents of the child.402

Research of the family during the term of care and supervision of the child
One of the functions of the orphan court is carrying out of research of the family during the term while the child is placed in the care and supervision of adopters.

Pursuant to the Regulation “Procedures for Adoption”, the orphans’ court of the place of residence of the adopter after the receipt of the information from the upbringing institution regarding a child placed into the care of the adopter, shall regularly perform the research of the family in order to establish whether there are grounds to believe

397 Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 24
398 Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 25
399 Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 26
400 Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 27
401 Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 29
402 Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 30
that, as a result of adoption, a true parent and child relationship will develop between
the adopter and the child to be adopted.403

Section 31 of the Regulation “Procedures for Adoption” states the following:

“31. The orphans’ court, when performing family research during the care of the
child, shall clarify, inter alia, the religious beliefs (if such exist) of the
adopter and the child and evaluate the following:

31.1. personality of the adopter and the child;
31.2. specific characteristics of the dwelling and the household;
31.3. ability of the adopter to raise a child; and
31.4. mutual suitability of the adopter and the child to be adopted, specifying the
time period during which the child was in the care of the adopter.”404

At the end of the period of care and supervision the orphans’ court shall compile the
results of the family research, prepare an opinion of whether adoption in the adopter’s
family is in the interests of the child, and take a relevant decision.405

In case, if the orphans’ court decides that the adoption is not in the interests of the
child, it shall without delay ensure to the child appropriate out-of-family care.406

In case, if the orphans’ court decides that the adoption is in the interests of the child,
then simultaneously with the decision it shall issue to the adopter the documents of the
child for their filing to the court.407

Section 35 of Regulation “Procedures of Adoption” states the following:
“35. The orphan’s court of the place of the residence of the adopter shall extend the
care period until the approval of the adoption in a court.”408

Representative of one of the Orphan court has advised us the following:
Orphan Court passes decisions on extension of pre-adoption care and supervision and
permits the child to leave the country only in cases the adopter has beforehand
submitted to the orphan court a certificate from the adoption agency who investigated
the foreign adopter’s family in the respective country in which the adopter’s permanent
place of residence is located, that it is possible to place the child in the foreign
adopter’s family prior to adoption and that the said authority undertakes supervision of
care for the child and reporting to the orphan court.

Adoption shall be approved by court. The adopter shall submit the true copy of a court
judgement to the head of upbringing institution.409
H. PROCEDURE OF FOREIGN ADOPTION

According to Section 40 of the Regulation “Procedures for Adoption” adoption of a child to foreign countries shall be allowed if it is impossible to ensure the upbringing and care of the child in a family in Latvia and the orphans court, by the decision of which the child has been placed in the upbringing institution, has passed the respective decision thereof.410

The orphans’ court shall without delay inform the Ministry of Children and Family Affairs about such decision.411

Therefore, it is the function of the Orphan court to adopt a decision, that it is impossible to ensure the upbringing and care of the child in a family in Latvia.

Documents

A foreign adopter must submit the following documents to the Ministry of Children and Family Affairs:

an application, in which the reasons for adoption, the preferable number of children to be adopted, their sex and age, as well as the religious beliefs, if such exist, of the adopter are indicated;

- a copy of the marriage certificate, presenting the original, if the adopter is married;
- a document certifying a divorce, if the marriage has been divorced;
- a statement regarding the ensuring of accommodation; curriculum vitae (CV);
- a statement regarding the state of health of the adopter, in which inherited and acquired diseases of the adopter are specified, if such exist;

family research materials of the adopter prepared by the competent institutions of the relevant state; a statement regarding the criminal records of the person.

Pursuant to Section 43 of Regulation “Procedures for Adoption” the documents shall be submitted to the Ministry of Children and Family Affairs in a duplicate, attaching a notarised translation into Latvian. Besides that, the documents issued in foreign countries must be legalised or certified in accordance with the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents if other procedures have not been stated in the international agreements binding for the Republic of Latvia.412

Section 44 of the Regulation “Procedures for Adoption” state, that “if the term of validity has not been specified in the family research materials, it shall be assumed that the term of validity thereof is one year.”413

410 Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 40
411 Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 40
412 Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 43
413 Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 44 (translation of Translation and Terminology Centre)
After receiving the documents, the Ministry of Children and Family Affairs shall evaluate conformity of the documents submitted with normative acts.\textsuperscript{414}

**Information about adoptable children**

In case if the documents submitted conform to the requirements prescribed by normative acts, a foreign adopter shall receive the information regarding children to be adopted in the Ministry of Children and Family Affairs.\textsuperscript{415} If a foreign adopter, on the basis of the information received, has chosen a child, the Ministry shall issue a statement to the foreign adopter so that the foreign adopter can get personally acquainted with the child.\textsuperscript{416}

**Getting acquainted with the child**

A foreign adopter shall submit to the head of the upbringing institution a statement issued by the Ministry and shall present a personal identity document.\textsuperscript{417}

The head of upbringing institution shall introduce the foreign adopter with the child to be adopted (in accordance with the statement) and his or her documents.\textsuperscript{418}

The foreign adopter within a period of 10 days after getting acquainted with the child to be adopted and his or her documents shall take a decision regarding the taking of the child in his or her care and supervision.\textsuperscript{419}

Pursuant to Section 50 of the Regulation “Procedures for Adoption”, if a foreign adopter takes a child in his or her care, the orphans’ court, by the decision of which the child has been placed in the upbringing institution, on the basis of the statement of the Ministry, shall without delay decide regarding the procedures of the care of the child and his or her temporary place of residence in Latvia.\textsuperscript{420}

As advised by one of the representatives of one of the district courts, the minimum care and supervision term should be specified by the legislative acts, especially in cases when foreign adopters wish to adopt older child (e.g. a teenager).

As advised by the Ministry of Children and Family Affairs, language barrier problems are likely to be experienced in foreign adoptions, but this problem is overcome with the help of the interpreter and the adopting family.

The representative of one of the Orphan courts indicates, that there are no language problems. Foreign adopters are already prepared in their country that there could be a language barrier in communication with children and they are trained in making better contact with the child – the language of gestures, involvement of the child in playing games. Frequently enough foreign adopters arrive with books for children and teach children in the foreign language. Children are taught English at school therefore, if the children are older, there are no problems with communicating in English, provided the

\textsuperscript{414} Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 45
\textsuperscript{415} Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 47
\textsuperscript{416} Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 47
\textsuperscript{417} Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 48
\textsuperscript{418} Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 48
\textsuperscript{419} Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 49
\textsuperscript{420} Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 50.
adoptive parents know the English language. Where necessary, the services of the interpreter are used.

As advised by representative of one of Orphan court, the period of time stated by Orphan Court during which children are placed under care by adopters in foreign adoptions is two weeks for children under 3 years of age and three weeks for children over three years of age. However, the care period is in each case assessed at the orphan court meeting and stated with individual consideration of each concrete situation.

The orphan’s court shall without delay send the decision to the Ministry.

The head of the upbringing institution shall make a note in the personal records of a child regarding the placement of the child in the care of a foreign adopter. The foreign adopter shall sign for the receipt of the child.\(^{421}\)

The head of the upbringing institution shall without delay inform the Ministry and the orphan’s court, by the decision of which a child has been placed in the upbringing institution, regarding the child placed into care.\(^{422}\)

The head of the upbringing institution shall send to the orphans’ court, by the decision of which the child has been placed into the upbringing institution, a copy of the birth certificate of the child, an extract from the medical documents of the child and a document that approves the consent of the parents to the adoption or the existence of any of the following circumstances:

1. the parental authority of the parents has been removed in accordance with the procedures prescribed by law;
2. the parents are deceased; or
3. the place of residence of the parents is unknown.\(^{423}\)

**Research of the family during the term of care and supervision of the child**

The Ministry shall send to the orphans’ court, by the decision of which the child has been placed in an upbringing institution, one copy of the documents submitted by the foreign adopter.\(^{424}\)

Section 55 of Regulation “Procedures for Adoption” provides the following:

“In order to establish that as a result of adoption a true parent and child relationship will develop between the adopter and the child to be adopted, the orphans’ court, by the decision of which the child has been placed into the upbringing institution, shall regularly evaluate the care and supervision of the child, inter alia, clarifying the religious beliefs (if such exist) of the foreign adopter and the child and evaluating the mutual suitability of the foreign adopter and the child to be adopted.”\(^{425}\)

\(^{421}\) Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 51

\(^{422}\) Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 52

\(^{423}\) Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 53

\(^{424}\) Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 54

\(^{425}\) Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 55
At the end of the period of care the orphans’ court shall prepare an opinion of whether the adoption in the foreign adopter’s family is in the interests of the child, and take a relevant decision.\textsuperscript{426}

The orphans’ court together with a decision shall issue to the foreign adopter adoption documents, leaving certified copies thereof in the records.\textsuperscript{427}

The orphans’ court shall without delay send to the Ministry of Children and Family Affairs the decision and a certified copy of the birth certificate of the child.

A foreign adopter may ask the orphans’ court to extend the care period until the approval of the adoption in a court.\textsuperscript{428}

\textbf{Adoption permission}

The Minister for Children and Family Affairs within a time period of three working days after the receipt of a decision of the orphans’ court shall issue a legally based permission for adoption or a substantiated refusal.\textsuperscript{429} The permission shall be valid for three months.\textsuperscript{430}

\textbf{Approval of adoption}

A permission for adoption issued by the Minister for Children and Family Affairs together with the rest of the adoption documents shall be submitted to a court. The adoption shall be approved by a court.\textsuperscript{431}

After a judgement of the court has come into lawful effect, the court shall send a copy thereof to the Ministry for informational purposes.\textsuperscript{432}

As advised by one of the non-governmental organisations, the possible foreign adopters must visit Latvia several times which requires considerable finances and that the duration of adoption process for foreigners must be shortened.

As advised by the representatives of several Orphan courts, adoption of children to foreign countries has been made complicated by the provision stating that the adopter should personally be present in the Orphan court meeting when taking the child under their care and supervision, in the meeting where it is declared whether the adoption is or is not in the interests of the child and at the court hearing when the adoption is approved; the adoption cases however are not examined immediately therefore the foreign adopter is forced to come to Latvia for a number of times.

\textbf{I. ADOPTION SECRET}

Pursuant to Latvian Civil Law, information regarding the adoption until the child reaches the age of majority shall not be divulged without the consent of the adopter.\textsuperscript{433}

\begin{itemize}
\item \textsuperscript{426} Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 56
\item \textsuperscript{427} Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 56
\item \textsuperscript{428} Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 57
\item \textsuperscript{429} Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 58
\item \textsuperscript{430} Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 59
\item \textsuperscript{431} Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 60
\item \textsuperscript{432} Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 60
\item \textsuperscript{433} Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 60
\end{itemize}
According to Section 9 of the Law On Civil Acts, the entries in the birth register connected with adoption until the adopted person’s majority can only be accessed by adopters.\textsuperscript{434} Section 219 of Latvian civil law provides, that the minority of persons of both genders continues until they attain the age of eighteen.\textsuperscript{435}

As advised by the representative of one of the Orphan courts, the society should be urged to discuss the need for preserving the secret of adoption because preservation of this secret is frequently problematic, causing the possibility of psychological trauma in the adopted child through inconsiderate disclosure of the secret.

\section*{J. CONSEQUENCES OF ADOPTION}

With adoption the kinship relations and related personal and property rights and duties of the child with regards to his or her parents and their kin shall be terminated.\textsuperscript{436}

Section 173 of Latvian Civil Law provides, that in relation to the adopter and his or her kin, the adopted child and his or her descendants shall acquire the legal status of a child born of a marriage in regard to personal as well as property relations.

The adoption shall be considered as entered into force as soon as the court has approved it.

A court may permit the non-registering of the adopters in the Birth Register as the parents of the adopted person, if such a request from the adopters is justified.\textsuperscript{437} The adopted person may be assigned with the surname of the adopter.\textsuperscript{438}

Section 172 of Latvian Civil Law provides, that the adopted person shall become a member of his or her adoptive family. The adopter may request the joining of his or her own surname to the surname of the adopted person, except in cases where the adopter or the adopted person already have a double surname.

Pursuant to Section 172 of Latvian Civil Law, if the name of the adopted person does not conform to the nationality of the adopters or it is difficult to pronounce, the name of the adopted person is permitted to be changed or a second name added to it. The exception is a case where the adopted person already has a double name.

On the grounds of a request from the adopter a court may also allow the personal identity number of the adopted person to be changed.\textsuperscript{439} However, Latvian legislation provides, that it is prohibited to change the date of birth of the adopted person.\textsuperscript{440}

\begin{flushleft}
\textsuperscript{433} Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162; Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 171, Part 2
\textsuperscript{434} Law On Civil Acts, published in Latvijas Vestnesis 52 2005.04.01, with further amendments, Section 9, Part 2
\textsuperscript{435} Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162; Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 219.
\textsuperscript{436} Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162; Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 173, Part 2
\textsuperscript{437} Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162; Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 171, Part 2
\textsuperscript{438} Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162; Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 172, Part 1
\textsuperscript{439} Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162; Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 172, Part 3
\textsuperscript{440} Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162;
\end{flushleft}
K. CANCELLATION OF ADOPTION

Latvian legislation foresees, that the adoption may be cancelled by a court if an adopted person of age of majority has agreed with the adopter regarding the cancellation of the adoption.\(^{441}\) When cancelling adoption, the adoption terminates as of the day when the court judgment regarding the cancellation of the adoption comes into force.\(^{442}\)

By the cancellation of the adoption the legal kinship relations between the adopted person, their descendants and the biological parents of the adopted person and their kin are renewed.\(^{443}\)

If in the establishment of the adoption the adopted person has acquired the surname of the adopter or another name or if the personal identity number of him or her has been changed, a court if it is in the interests of the adopted person may retain the acquired surname, given name and personal identity number after the cancellation of the adoption.\(^{444}\)

L. FOLLOW UP PROCEDURES

According to Section 39 of the Regulation “Procedures for Adoption” Orphan’s court of the place of residence of the adopter shall on a regular basis evaluate the care and supervision of the child in the family within two years after approval of adoption.\(^{445}\) Section 58 of The Regulation “Procedures for Adoption” when issuing a permission for adoption, a foreign adopter shall be informed regarding a duty for two years after approval of adoption in a court to submit once a year to the Ministry a report prepared by the competent institution of the relevant state regarding the living conditions of the child in the family.\(^{446}\)

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\(^{441}\) Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162; Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 172, Part 3

\(^{442}\) Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162; Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 175

\(^{443}\) Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162; Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 176, Part 1

\(^{444}\) Latvian Civil Law Family Law, published in Latvian in Zinotajs Nr. 22/23 with further amendments, Article 162; Regulation “Procedures of Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 176, Part 2

\(^{445}\) Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 39.

\(^{446}\) Regulation “Procedures for Adoption”, published in Latvian in Latvijas Vestnesis 45 2003.03.21, with further amendments Section 58
2.16. LITHUANIA

Briefly describe the national adoption process (national adopting parents - national children). what are its different stages?

indicate at which steps judicial decisions intervene and what is (are) their object(s) (aptitude to adopt, confirmation or preparation to adopt, creation of adoption relationship...) what are the possible recourses and at which steps do they occur?

The national adoption process consists of four stages: discovery of documents, inclusion in the registry of prospective adoptive parents’, the suggestion of the children being adopted children and the court’s decision. These stages are described hereinafter:

1. DISCOVERY OF DOCUMENTS

Citizens, who want to adopt may apply to the Child Rights Protection Service of the Municipality in their habitual residence (Regional service)\(^{447}\). The specialists of the Regional service would give more information about adoption and would help to start adoption procedure.

When citizens are sure for starting adoption, they must present to the Regional service these documents\(^{448}\):

- An application containing the data about a citizen (the first name, surname, personal code, the date and place of birth, the place of residence, the working place, the family and material status), his/her family members, the number, age, sex, health condition of the children requested for adoption, as well as the motives for adoption;

- a copy of the citizen's passport or any other document confirming the personal identity (copies of the front page of the passports);

- a copy of the citizen's marriage certificate, if divorced - a copy of the court decision on the dissolution of the marriage or a copy of the divorce certificate, if a widower - a copy of the spouse's death certificate (if any);

- the health certificate in the form established by the Minister of Health Care (046/a form health certification);

- the certificate about the composition of the family;

- the spouse's written consent to the adoption (if a child is adopted by one of the spouses). The consent for the adoption shall not be required from the other

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\(^{448}\) PROCEDURE FOR REGISTRY OF ADOPTION IN THE REPUBLIC OF LITHUANIA, APPROVED by the 10 September 2002 Resolution No 1422 of the Government of the Republic of Lithuania, (Passed on : 10 09 2002; comes into force on: 14 09 2002; published: Valstybės Žinios(Official Gazette), 2002, No. 90-3859);
spouse if the court has taken the decision on the spouses' living separately or if the other spouse is declared untraceable or recognized as legally incapable. In such case it shall be required to submit a copy of the court decision;

- the documents about the income of the family;
- the certificate about the family's living premises;

The Regional service, having received the documents, applies to the Department of Informatics and Communications under the Ministry of the Interior with an application to issue a certificate about the previous conviction of the citizens who want to adopt children and the persons living with such citizens.

The Regional service, after checking all delivered documents, within five working days contacts a certified social worker in writing regarding the verification of the citizens’ readiness for adoption.

2. INCLUSION IN THE REGISTRY OF PROSPECTIVE ADOPTIVE PARENTS

This stage covers verification of prospective adoptive parents’ readiness for adoption: the assessment of the social environment, psychological state and the readiness to become adopting parents and to provide the adopted child with safe environment, to ensure his/her all-round development; also the training of prospective adopting parents. Verification shall be performed by the persons, certified by the State Adoption Service, in compliance with the Procedure for Inspection of Readiness of Prospective Adopting Parents for Adoption approved by the Minister of Social Security and Labour (hereinafter - certified persons).449

“Certified person” is an employee of a public or a municipal body, NGO or any other institution providing social services who is certified following the procedure established by the Minister of Social Security and Labour, whose qualification category is at least of a senior social worker, and who has completed a special training course on the verification of prospective adoptive parents’ readiness for adoption.

Having received the request and having examined the submitted documents, the certified person performs the verification of the prospective adoptive parents’ readiness for adoption. The verification of the citizens’ readiness for adoption is performed within three months from the date the Regional service receives the application and documents. If there is any uncertainty regarding the prospective adoptive parents’ readiness for adoption, the certified person may extend the above deadline; however, the deadline shall not exceed six months. The Regional service and the prospective adoptive parents shall be informed about such decision in writing.

Certified person must meet with the prospective adoptive parents at least twice; a home visit with the prospective adoptive parents must be made. If prospective adoptive parents are spouses, the certified person must meet with both spouses and with each of the spouses separately. If a citizen wishes to adopt his/her spouse’s child, the verification of his/her readiness for adoption within one month from the date the Regional service receives the application and documents; certified person may extend the above deadline, however, the deadline shall not exceed three months. If the prospective adoptive parents have

children who are older than 10 years of age, or if other adults live together with the prospective adoptive parents, the certified person must find out their attitude towards the adoption.

Verification of prospective adoptive parents’ readiness for adoption consists of four steps: a) initial assessment of prospective adoptive parents’ readiness for adoption, b) training of prospective adoptive parents and c) drawing of the conclusion on prospective adoptive parents’ readiness for adoption; d) inclusion in the Registry of prospective adoptive parents’.

Initial assessment of prospective adoptive parents’ readiness for adoption. The initial assessment of prospective adoptive parents’ readiness for adoption is performed within one month from the date the request to perform the verification of prospective adoptive parents’ readiness for adoption is received. During the initial assessment of prospective adoptive parents’ readiness for adoption, the certified person ascertains whether there are any obstacles for adoption referred to in Book Three of the Civil Code, investigate the living conditions of prospective adoptive parents, collect information on the health status of prospective adoptive parents and find out the motives of adoption. While performing these functions, the certified person collects and analyze the following information about the prospective adoptive parent: description of the person (identifying information, life story, character features); family history and relations among the family members (previous marriages, the present marriage); living conditions of the family (accommodation, leisure time, hobbies, addictions); health; criminal record; financial status (assets and income); information about children and other persons residing together, and their opinion on adoption; motives of adoption (expectations regarding the child, attitude towards the child and its upbringing, relations with the child they wish to adopt, opinion of the child (if he/she is capable of expressing his/her view) that they wish to adopt regarding the adoption and prospective adoptive parent); and letters of recommendation of other persons regarding adoption.

If there is any uncertainty regarding prospective adoptive parents’ health status, the certified person may ask the prospective adoptive parents to provide additional opinion of the medical doctor or the psychologist regarding the physical or mental health of the prospective adoptive parents. In such case the opinion of the medical doctor or the psychologist is included into the final conclusion on the readiness for adoption.

Having performed the initial assessment of prospective adoptive parents’ readiness for adoption, the certified person makes the initial decision on prospective adoptive parents’ readiness for adoption. Having made a positive decision on the prospective adoptive parents’ readiness for adoption, the certified person shall organize the training for prospective adoptive parents. Training shall not be mandatory for a prospective adoptive parent who wishes to adopt his/her spouse’s child.

Having made a negative decision on the prospective adoptive parents’ readiness for adoption, certified person draws a negative conclusion and presents it to the Regional service. If prospective adoptive parents disagree with the conclusion on their readiness for adoption made by the certified person, they may appeal against such conclusion to the court following the procedure provided by the Code of Civil Procedure of the Republic of Lithuania. When reasons behind the negative conclusion of the initial assessment of

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450 Article 490 of the Code of Civil Procedure of the Republic of Lithuania. Appealing against the conclusion of the State Adoption Agency: 1. If a person disagrees with the conclusion of the social worker, certified by the State Adoption Agency, concerning the readiness for adoption, such person shall file, within one month from the day of execution of the conclusion, with the local court of his/her place of residence an application for cancellation of the conclusion. The person who
prospective adoptive parents’ readiness for adoption disappear or are eliminated, persons may reapply to the Regional service and request the verification of the readiness for adoption.

**Training for prospective adoptive parents.** Training is mandatory for all prospective adoptive parents except for those, who wish to adopt his/her spouse’s child. The maximum duration of training is two months, starting with the date of completion of the initial assessment of prospective adoptive parents’ readiness for adoption. During the training, prospective adoptive parents have to hear the following subjects: concept of adoption; open adoption; why is it important to tell the truth to the child; child development; understanding the child’s feelings and behaviour. During the training, meetings of prospective adoptive parents with adoptive parents or with an already grown-up adopted person may be organized.

**Drawing of the conclusion on prospective adoptive parents’ readiness for adoption.** Having performed the training of prospective adoptive parents, the certified person draws the conclusion on prospective adoptive parents’ readiness for adoption. The conclusion on prospective adoptive parents’ readiness for adoption consists of the following two sections: information about prospective adoptive parents; the preparation of this section is based on the collected information of initial assessment of prospective adoptive parents’ readiness for adoption; motivated conclusion on the eligibility of prospective adoptive parents for becoming the adopting parents and recommendation regarding the age, gender, health and the number of children that prospective adoptive parents may adopt. The certified person submits the conclusion on citizens’ readiness for adoption to the Regional service.

Having received a positive conclusion on citizens’ readiness for adoption, the Regional service shall present the copy of the conclusion to the State Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour (hereinafter – State Adoption Agency) within three working days; the conclusion shall be issued to the prospective adoptive parents.

Having received a negative conclusion on prospective adoptive parents’ readiness for adoption, the Regional service shall keep a copy of the conclusion and shall issue the conclusion to the prospective adoptive parents within three working days. Along with the conclusion, all the documents submitted by the citizens shall be returned to them. If prospective adoptive parents disagree with the conclusion on their readiness for adoption made by the certified social worker, they may appeal against such conclusion to the court following the procedure provided by the Code of Civil Procedure of the Republic of Lithuania (see above: the prospective adoptive parents’ right to appeal against the conclusion on their readiness for adoption). The citizens may apply repeatedly in respect of adoption when the reasons which precluded the satisfaction of the first application disappear or are eliminated.

**Inclusion in the Registry of prospective adoptive parents.** Having received a positive conclusion on citizens’ readiness for adoption from the certified person the Regional service presents the copy of the conclusion to the State Adoption Agency within 3 working days; the conclusion shall be issued to the prospective adoptive parents. The State Adoption Agency, having received a copy of the conclusion on citizens’ readiness for adoption, shall include, within 2 working days, the citizens in the waiting list of the citizens of the Republic of

 intends to adopt a child abroad shall file an application with Vilnius District Court. 2. An application for cancellation of the conclusion shall be accompanied by the contested conclusion of the certified social worker. 3. The application shall be examined by way of oral proceedings. Notification on its examination shall be given to the applicant, the State Adoption Agency and the social worker who has executed the conclusion. 4. A court ruling shall be taken in respect of the application. This ruling may be appealed against by a separate complaint.
Lithuania who want to adopt and shall notify to that effect the Regional service, specifying the reference number of the citizen in the waiting list. The citizens shall be included in the waiting list in the general order of sequence, taking into account the date of the receipt of the documents from the Regional service.

The requirement to include in the waiting list of the citizens of the Republic of Lithuania who want to adopt shall not apply when a citizen adopts the spouse's child or is a relative of a child.

The file of the citizens included in the waiting list of the citizens of the Republic of Lithuania who want to adopt shall be kept in the Regional service of their residence.

3.PROPOSAL OF THE CHILDREN TO BE ADOPTED

The State Adoption Agency, having included the citizens in the waiting list of the citizens of the Republic of Lithuania who want to adopt, shall select the children from the waiting list of the children eligible for adoption taking into account the requests indicated in the citizens' applications and the interests of a child.

The State Adoption Agency shall notify the citizens through the Regional service about the children eligible for adoption - shall sent to the Regional service the information letter. The information letter shall contain the following data about a child: the first name and surname; the reference number in the waiting list and the code given by the State Adoption Agency; the date of birth; the place of residence (guardianship (care)) of a child; the responsible Regional service; information about a child's parents; the child's health; the ground for adoption. The Regional service shall acquaint the citizens with the information letter sent by the State Adoption Agency.

After the citizens have made their decision as to what child they would like to get acquainted with, the Regional service of the place of the citizen residence shall notify in writing the Regional service of the place of the child's residence. The citizens in the Regional service of the child's place of residence shall be entitled to get acquainted with the child's file, and, upon prior co-ordination of the time and date, to see the child and associate with him/her. The citizens shall file the motivated consent or refusal to adopt a child with the Regional service, having obtained the citizens' consent (refusal) to adopt a child, shall notify the State Adoption Agency to that effect within 3 working days. The citizens in the consent (refusal) to adopt the proposed children shall specify their first names, surnames and the codes given to the children by the Adoption Service.

The same child shall be proposed to the same citizens only once. The citizens, having submitted a motivated refusal to adopt the proposed child, shall be left in the waiting list. After the citizens submit a written refusal to adopt the proposed child, the child shall be proposed to other citizens in the waiting list.

4. COURT’S DECISION

After decision to adopt suggested child, adopting parents have to apply to the court in the their habitual residence or in place of habitual residence of the child being adopted for the permission to adopt and to deliver all documents, mentioned in the Code of Civil Procedure of the Republic of Lithuania.

Apart from the general requirements set for the contents and form of procedural documents, an application shall specify:
1) the data about the applicant (the first name, surname, personal code, date and place of birth, place of residence, working place, marital and material status, health state, whether or not he/she is included in the waiting list of the persons who want to adopt);

2) the data about the child being adopted (the first name, surname, personal code, date and place of birth, his/her parents or guardians (caregivers), the child's location, health state, whether or not he/she is included in the waiting list of children eligible for adoption);

3) the motives for adoption. If the applicant requests to give the child being adopted the surname of the adopting parents and their indicated first name, this shall be stated in the application for adoption.

To the application for adoption shall be attached:

1) the certificates on health state of the adopting parents and, if possible, of the child being adopted, issued in the procedure established by the Minister of Health Care;

2) if possible, a court ruling confirming the consent for adoption of the child's parents and, if the child's parents are minors or legally incapable, of their parents or guardians (caregivers), except for the cases stipulated by laws;

3) if possible and if the child has the guardian (caregiver) appointed in the procedure prescribed by laws, except for the State care institution, a court ruling confirming the guardian's (caregiver's) consent for adoption;

4) if the adoption is requested only by one of the spouses, written consent of the other spouse for adoption, except for the cases stipulated by laws;

5) the data that the adopting parent is included in the waiting list of persons who want to adopt and that the child being adopted is included in the waiting list of children eligible for adoption; 6) the conclusion of a social worker certified by the State Adoption Agency on the readiness for adoption.

The court, while preparing to examine the case shall:

1) assign the State Adoption Agency to submit the conclusion whether or not there are any obstacles stipulated by laws to adopt this particular child, and the data as to whether there is any application of other persons to adopt the same child, about the registration of the adopting parent and child being adopted in appropriate lists;

2) demand and obtain from the State Adoption Agency the data about the background, development, health state and family of the child being adopted.

At the request of the State Adoption Agency or at its own discretion the court may order a probationary period of six to twelve months and transfer the child to be brought up and cared for in the family of the prospective adoptive parents. If the court order is taken to transfer the child to the family of the prospective adopting parents, the hearing of the adoption case shall be postponed. The probationary period may be ordered taking into consideration the psychological preparedness of the child and the prospective adopting parents for adoption,
the duration of contact between the child and the prospective adopting parents before the application for adoption, and other circumstances which may give rise to doubts whether the child can become adapted to the family of the adopting parents. After the child is transferred to the family by a court order before adoption, the mutual rights and duties, except those of succession, of the child and the prospective adoptive parents shall be treated as the mutual rights and duties of children and natural parents.

The adoption case shall be examined by way of oral proceedings in a closed court hearing. Notification on examination of the case shall be given to the applicant, other persons who have stated their wish to adopt the same child, the State Adoption Agency, the Regional service and other persons concerned. Other persons who have stated their wish to adopt the same child may file with the court examining the case the applications with independent claims regarding adoption. Upon acceptance of such applications by the court, these persons shall participate in the case as applicants. The adoption case shall be examined in obligatory presence of the applicants, a representative from the State Adoption Agency, a representative from the Regional service, who state their conclusion on adoption. The court shall check whether adopting parents have proper conditions and are duly prepared for adoption.

The child shall be adopted or the application for his/her adoption shall be declined by decision of the court. The full court decision shall be announced in a closed court hearing.

If the application is satisfied, by the court decision the adopting parents shall be recognized as the child's parents and the children being adopted shall be recognized as the children of the adopting parents. If by the court ruling the child has been transferred to the family prior to adoption, upon adoption of the child the adopting parents shall be deemed the child's parents by law from the moment of coming into force of the ruling to transfer the child to the family. The court shall specify this in the decision. The resolution part of the court decision shall retain the data preserving the child's individuality: the date of birth, the place of birth, also the first name and/or surname unless they are changed.

The court’s judgment shall become effective after 30 days, unless it is appealed. Only persons involved in the case, i.e. the applicants, the guardian of the adopted person, and other interested persons, may only lodge the appeal. An enforced court decision to permit adoption shall be sent, within three days, to the Civil Records Office which has registered the birth of the child. The court decision to permit adoption shall be the ground for the Civil Records Office to change the birth record of the child being adopted and issue a new birth certificate.

Briefly Describe The International Adoption Process (Eu Parents-Non Eu Children Or Eu Children And Non-Eu Adopting parents). what are its different stages?

Indicate at which steps judicial decisions intervene and what is (are) their object(s) (aptitude to adopt, confirmation or preparation to adopt, creation of adoption relationship...). what are the possible recourses and at which steps do they occur?

Citizens of the Republic of Lithuania and foreigners permanently residing abroad may adopt children from Lithuania provided the country they live in has ratified the Hague Convention or if the legal procedure of adoption in his home country meets the requirements fixed by the Hague Convention. Children who are citizens of a foreign country residing in the Republic of Lithuania shall be adopted in the procedure laid down in this Chapter unless provided for

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451 CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION (Ratified on:1997-11-07; comes into force on: 1998-08-01; Valstybės žinios (Official Gazette); 1997-11-07 Nr.101-2550).
otherwise in an international treaty or agreement between the respective foreign country and the Republic of Lithuania.

The international adoption process consists of five stages: discovery of documents, inclusion in the registry of prospective adoptive parents’, the wishes of the children being adopted, the court’s decision and the departure of a child. These stages are described hereinafter:

5. DISCOVERY OF DOCUMENTS

1.1. Along with the application and the information letter, through mediation of the Central Authority of the state of the habitual residence of the applying person or through mediation of authorized foreign organizations (the list of authorized foreign organizations can be found at http://www.ivaikinimas.lt/index.php?p=22&l=EN&n=96), unless otherwise established in bilateral agreements, the citizens of the Republic of Lithuania and foreigners permanently residing abroad and wishing to adopt a child residing in the Republic of Lithuania shall submit to the State Adoption Agency the following documents:

application to the State Adoption Agency in Lithuania containing the data about the citizen, his/her family members, the number, age, sex, health condition of the children requested for adoption, as well as the motives for adoption;

- information letter issued by the Central Authority of a foreign State or authorized foreign organization, containing the information about the identity, origin of the citizens of the Republic of Lithuania and foreigners permanently residing abroad, their ability to raise the child, the history of the family, the social environment, the reasons of adoption, the characteristics of the children they are ready to take care of;

- home study report (the report of the socio-psychological study) prepared in the procedure prescribed by the receiving State;

- description of the family’s life history and social environment (information letter introducing the prospective adoptive parents and issued by the central governmental authority or by an authorized foreign organization);

- certificate of the financial state (certificates of the financial standing of the family (income received and assets owned);

- a copy of the marriage certificate, of the divorce certificate (if divorced) or of the death certificate of the spouse (if widowed);

- clearance certification from the local police office (criminal record certificates);

- copy of the front page of the passports;

- copy of birth certificates;

- copy of health certificates;

- copy of health certificates and copies of birth certificates of children residing together.

- certificate of Eligibility to Adopt issued by the Central Authority for adoption. Also there have to be included: the permit for adoption issued by a competent authority of the receiving State - a consent of the Central Authority or competent authority of the state of the habitual residence of the applying citizens that the adopted child will be authorized to enter and reside permanently in the receiving country; a confirmation that the decision of the Lithuanian court concerning the adoption will be recognized in the receiving State.

Each original document has to be translated and carry APOSTILLE (The Hague Convention, October 5, 1961). The translation of the original documents has to notarized.

The foreigners permanently residing in the Republic of Lithuania and wishing to adopt a child residing in the Republic of Lithuania shall file with the State Adoption Agency the documents indicated above, obtained from relevant institutions of the State of the previous place of residence and/or the Republic of Lithuania. The State Adoption Agency, having received an application from the foreigners permanently residing in the Republic of Lithuania, shall notify them as to what additional documents should be submitted. The State Adoption Agency, after having received all the relevant documents, shall apply to the Department of Informatics and Communications under the Ministry of the Interior with an application to issue a certificate about the previous conviction of the foreigners permanently residing in the Republic of Lithuania, who want to adopt, and the persons living with them. The State Adoption Agency, having received the certificate about the previous conviction of the foreigners permanently residing in the Republic of Lithuania, who want to adopt, and the persons living with them, shall send, within 5 working days, the foreigners permanently residing in the Republic of Lithuania to be inspected whether they are ready for adoption.

When prospective adopting parents, permanently residing in Lithuania wish to adopt a child abroad, they shall submit to the State Adoption Agency an application and documents listed hereinafter:

1) an application containing the data about a citizen (the first name, surname, personal code, the date and place of birth, the place of residence, the working place, the family and material status), his/her family members, the number, age, sex, health condition of the children requested for adoption, as well as the motives for adoption;

2) a copy of the citizen's passport or any other document confirming the personal identity;

3) a copy of the citizen's marriage certificate, if divorced - a copy of the court decision on the dissolution of the marriage or a copy of the divorce certificate, if a widower - a copy of the spouse's death certificate (if any);

4) the health certificate in the form established by the Minister of Health Care;

5) the certificate about the composition of the family;

6) the spouse's written consent for the adoption if a child is adopted by one of the spouses. The consent for the adoption shall not be required from the other spouse if the court has taken the decision on the spouses' living separately or if the other
spouse is declared untraceable or recognized as legally incapable. In such case it shall be required to submit a copy of the court decision.

7) the documents about the income of the family;

8) the certificate about the family's living premises.

6. INCLUSION IN THE REGISTRY OF PROSPECTIVE ADOPTIVE PARENTS

a) Having received the application and all necessary documents of citizens of the Republic of Lithuania and the foreigners permanently residing abroad and wishing to adopt a child residing in Lithuania, the State Adoption Agency shall perform verification of the foreign nationals' readiness for adoption. The verification shall be performed within four months from the date the State Adoption Agency receives the application and documents. If there is any uncertainty regarding the prospective adopting parents' readiness for adoption, the above deadline can be extended; however, the deadline shall not exceed seven months. The prospective adopting parents shall be informed about such decision in writing. If a foreign national wishes to adopt his/her spouse’s child, the verification of his/her readiness for adoption within two months from the date the State Adoption Agency receives the application and documents. If there is any uncertainty regarding prospective adopting parent's readiness for adoption, the above deadline can be extended; however, the deadline shall not exceed four months. The prospective adopting parent shall be informed about such decision in writing.

Having reached the positive conclusion on foreign nationals’ readiness for adoption, the State Adoption Agency shall within three working days include them in the waiting list of the citizens of the Republic of Lithuania permanently residing abroad and foreign nationals in the order of sequence according to the date of receipt of the information letter and the application, and shall give them the original copy of the conclusion.

Having reached a negative conclusion on prospective adopting parents' readiness for adoption, the State Adoption Agency shall keep a copy of the conclusion and shall issue the original copy of the conclusion to the prospective adopting parents within three working days. If prospective adopting parents disagree with the conclusion on their readiness for adoption, they may appeal against such conclusion to the court following the procedure provided by the Code of Civil Procedure of the Republic of Lithuania. When reasons behind the negative conclusion disappear or are eliminated, persons may reapply to the State Adoption Agency and request the verification of the readiness for adoption.

b) The verification of readiness for adoption of foreigners permanently residing in the Republic of Lithuania and wishing to adopt a child residing in the Republic of Lithuania shall be performed by the persons, certified by the State Adoption Service, in compliance with the Procedure for Inspection of Readiness of Prospective Adoptive Parents for Adoption approved by the Minister of Social Security and Labour (see above).

The State Adoption Agency, having received the conclusion of the certified persons concerning the eligibility of foreigners permanently residing in the Republic of Lithuania for becoming the adopting parents, shall include them, within 3 working days, in the waiting list of the citizens of the Republic of Lithuania permanently residing abroad and foreign nationals in the order of sequence according to the date of receipt of the information letter and the application, and shall give them the original of the conclusion.

If the conclusion is negative, it shall specify why the foreigners permanently residing in the Republic of Lithuania may not become the prospective adoptive parents. Along with the conclusion, all the documents submitted shall be returned to them. In such case the
foreigners permanently residing in the Republic of Lithuania shall be not included in the waiting list. If the foreigners permanently residing in the Republic of Lithuania disagree with the conclusion on their readiness for adoption made by the certified social worker, they may appeal against such conclusion to the court following the procedure provided by the Code of Civil Procedure of the Republic of Lithuania. The foreigners permanently residing in the Republic of Lithuania may apply repeatedly in respect of adoption when the reasons which precluded the satisfaction of the first application disappear or are eliminated.

c) Having received the application and all necessary documents submitted by the prospective adoptive parents, permanently residing in Lithuania and wishing to adopt a child abroad, the State Adoption Agency shall organize the verification of these prospective adoptive parents’ readiness for adoption using the procedure applicable to foreign nationals.

Having received the conclusion on the readiness of prospective adoptive parents wishing to adopt a child abroad drawn by the certified social worker, the State Adoption Agency shall issue the conclusion to the prospective adoptive parents within three working days, and the prospective adoptive parents shall apply to Vilnius District Court with the request to approve the conclusion on the readiness for adoption.

If the prospective adoptive parents disagree with the conclusion on their readiness for adoption made by the certified social worker, they may appeal against such conclusion to the court following the procedure provided by the Code of Civil Procedure of the Republic of Lithuania.

7. WISHES OF THE CHILDREN BEING ADOPTED

The State Adoption Agency, having obtained the information from the Regional service about the Lithuanian citizens’ refusals to adopt or take under guardianship (take care of) the proposed child, after 6 months from inclusion of the child in the waiting list of children eligible for adoption shall decide whether intercountry adoption is in the best interests of the child. The State Adoption Agency, having decided that the intercountry adoption is in the best interests of the child, shall notify about such child the citizens of the Republic of Lithuania permanently residing abroad and the foreigners, taking into account the requests contained in their applications, the inheritance of the child’s education, the ethnic origin, religious and cultural dependence and the mother tongue, as well as whether the State to which the child is adopted complies with the requirements of the Hague Convention.

The priority to adopt the child shall be given to Lithuanian nationals residing abroad and to foreign nationals of Lithuanian descent: if the child’s data conforms to the requests of several citizens of the Republic of Lithuania permanently residing abroad or the foreigners, the information about the child shall be furnished in the order of sequence according to the date of their inclusion in the waiting list of the citizens of the Republic of Lithuania permanently residing abroad and the foreigners who want to adopt. A person shall be considered as being of a Lithuanian descent if his/her parents or grandparents, or one of the parents or grandparents are/were Lithuanian, and the person considers himself/herself to be Lithuanian.

The State Adoption Agency shall prepare the information letter about a child and submit it to the citizens of the Republic of Lithuania permanently residing abroad and the foreigners, or the Central Authority representing them, or authorized foreign organization. The following information shall be furnished about the child: the first name and surname; the code given by the State Adoption Agency; the date and place of birth; the reasons of possible adoption; information about a child’s background, social environment, family history, case history of a child and his/her family; the health condition of a child; special
needs of a child; confirmation that all consents for the adoption of a child have been obtained and they have been obtained without compulsion or seeking material benefit.

The citizens of the Republic of Lithuania permanently residing abroad and the foreigners, having obtained information about a child eligible for adoption, shall submit the answer in writing through their representing Central Authority or authorized foreign organization, not later than within 30 calendar days from the sending of information.

The citizens of the Republic of Lithuania permanently residing abroad and the foreigners, having obtained the proposal to adopt, shall be entitled to get acquainted with the child's file in the State Adoption Agency, and having obtained its written permission - also to get acquainted with the child proposed for adoption. The State Adoption Agency issues a special permission for meeting a particular child. The State Adoption Agency recommends arriving and meeting the proposed child. The family shall be free to decide whether to accept or reject the proposal; such decision shall be made within 30 calendar days from the date on which information about the child was provided. The proposal may be accepted in any form (by letter, e-mail or fax).

The State Adoption Agency, having obtained a written consent of the citizens of the Republic of Lithuania permanently residing abroad and the foreigners to adopt a child and an approval of such decision by the Central Authority of the receiving State or authorized foreign organization, together with the confirmation that the adopted child will be given permission to enter the receiving State and reside therein permanently, shall notify to that effect within 3 working days the Regional service of the place of residence of the child, as well as notify the citizens of the Republic of Lithuania permanently residing abroad and the foreigners about the possibility to apply to Vilnius District Court with the request to permit to adopt a desired child.

The citizens of the Republic of Lithuania permanently residing abroad and the foreigners, who have submitted in writing a refusal to adopt the proposed child, shall be left in the waiting list of the citizens of the Republic of Lithuania permanently residing abroad and the foreigners who want to adopt. The family may refuse the proposal. In this case it must indicate the reasons of such refusal. The State Adoption Service shall reserve the right to contact the Central Adoption Authority of the receiving State or the authorized foreign organization regarding a repeated assessment of the family's readiness for adoption.

8. COURT’S DECISION

Having completed the above procedures citizens of the Republic of Lithuania permanently residing abroad and the foreigners shall write the application to Vilnius district court. The family's representative (attorney at law) usually prepares the application and documents for adoption. Both spouses must attend the court hearing. During the hearing the court shall verify whether the pre-trial adoption procedure was properly performed, whether potential adoptive parents meet the requirements and are ready to raise the child, and whether the adoption is to the best interests of the child. The parents of the child shall not be notified about the hearing of the adoption case.

If the application is satisfied, by the court decision the adoptive parents shall be recognized as the child's parents and the adopted children shall be recognized as the children of the adoptive parents. If by the court ruling the child has been transferred to the family prior to adoption, upon adoption of the child the adoptive parents shall be deemed the child's parents by law from the moment of coming into force of the ruling to transfer the child to the family. The court shall specify this in the decision. The resolution part of the court decision shall retain the data preserving the child's individuality: the date of birth, the place of birth, also the first name and/or surname unless they are changed.
The court’s judgment shall become effective after 40 days (30 days if the habitual residence of the applicants is in Lithuania), unless it is appealed. Only persons involved in the case, i.e. the applicants, the guardian of the adopted person, and other interested persons, may only lodge the appeal.

9. DEPARTURE OF THE CHILD

The following documents shall be required for the departure of the child from the Republic of Lithuania:

- the judgment of Vilnius district court regarding adoption;
- a new birth certificate of the child453;
- the child’s passport454;
- a visa, if applicable according to the legislation of the receiving State;
- the certificate on compliance with intercountry adoption455.

What Are Various Organs Or Services That Partake In The Adoption Process?, what are their nature (judicial, social...); At which stage of the procedures do they intervene?; what are their missions? Please specify, as the case may be, to whom they are destined (biological parents, adopting parents, children, others)?; What is the composition of these organs and services?; Are social intervenants involved; which ones; what is their education; in which

453 New birth certificate of the child: after the court’s judgment regarding adoption becomes effective, the adoptive parents must contact the Civil Registry Department that registered the birth of the child regarding the issuing of a new birth certificate. The following documents must be submitted to the Civil Registry Department: 1) copies of passports of the adoptive parents (translated into Lithuanian and legalized); 2) a copy of the marriage certificate of the adoptive parents (translated into Lithuanian and legalized); 3) the original copy of the judgment of Vilnius district court regarding adoption; 4) the original copy of the birth certificate of the child. Both adoptive parents shall fill the application form regarding the issuing of a new birth certificate for their adopted child. One of the parents may authorize the other parent (or both parents may authorize a third party) to contact the Civil Registry Department in order to obtain a new birth certificate for the adopted child. A new birth certificate is usually issued on the same day.

454 Passport of the child: The passport shall be issued to the child by the migration authority (a passport division) of the child’s domicile. The following documents must be submitted to the migration authority: 1) a copy of the judgment of Vilnius Regional Court; 2) copies of passports of the adoptive parents (translated into Lithuanian and legalized); 3) a copy of the consent to adoption by the biological parents of the child, or a copy of the death certificate, or a copy of the court’s judgment regarding the declaration of the biological parents legally incapable or regarding the restriction of the parents’ authority for an unlimited period; 4) a copy of the birth certificate of the child; 5) a copy of the birth entry of the child; 6) a copy of the Mayor’s or the director’s of the administration of the municipality decree regarding the temporary guardianship of the child or the court’s judgment regarding the establishment of permanent guardianship for the child; 7) a copy of the new birth certificate of the child; 8) four black-and-white passport pictures of the child; banker’s receipt certifying the payment of the fee. The application to issue the passport for the child must be signed by at least one of the adoptive parents. The child must be present while submitting the application to issue the passport for the child. As the child moves for permanent residence abroad, the declaration of domicile must be filled in and signed by one of the adoptive parents while accepting the child’s passport. The passport is usually issued for the child within 3-5 days.

455 Certificate on compliance with intercountry adoption: The certificate on compliance with intercountry adoption shall be issued by the State Child Rights Protection and Adoption Agency after the judgment of Vilnius district court regarding adoption becomes effective.
proportions? Are the members of these organs and services specifically trained? If so, which training do they get?

a) The State Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour (hereinafter - State Adoption Agency):

The nature of this institution is executive. The State Adoption Agency functions as the main State adoption authority. Its aim is to organize the national and intercountry adoption, coordinate the activities of the Municipal Services of Children's Rights Protection in the sphere of adoption, and to protect the rights and legitimate interests of the children eligible for adoption.

The State Adoption Agency have the following objectives: to ensure the implementation of the measures for the protection of children's rights; to organize adoption to the citizens of the Republic of Lithuania and to foreign nationals in the Republic of Lithuania; to organize the implementation of the system of representation of children's rights and legal interests in courts; to organize the improvement of professional skills of specialists from municipal services of children's rights protection and the training of guardians/curators and adopting parents.

The State Adoption Agency is the main institution responsible for international adoption in Lithuania, so it intervenes in the majority of adoption stages. In case of national adoption it intervenes in the stages of information clearance (as provider of information on adoption), verification of prospective adopting parents' readiness for adoption (persons, accredited by State Adoption Service, provides training for prospective adoptive parents and draws the conclusion on their readiness to adopt), inclusion in the registry of prospective adoptive parents' (State Adoption Agency administers the waiting list of the citizens of the Republic of Lithuania who want to adopt), the wishes of the children being adopted (State Adoption Agency notifies the citizens through the Regional service about the children eligible for adoption), application to the court and the court's decision (State Adoption Agency submits the conclusion whether or not there are any obstacles stipulated by laws to adopt this particular child and provides other information to the court). In case of international adoption State Adoption Agency acts as Central authority of the Republic of Lithuania.

The State Adoption Agency’s mission is to develop and implement an effective system of children's right protection in order to protect the rights and legitimate interests of children and to ensure every child's right to grow up in a family.

Organization of Activities of the State Adoption Agency: the Minister of Social Security and Labour approves the structure of the State Adoption Agency. The activities of the State Adoption Agency are managed by the Director appointed and dismissed by the Minister of Social Security and Labour following the procedure established by the Law on Civil Service of the Republic of Lithuania. The Director of the State Adoption Agency subordinates and is accountable to the Minister of Social Security and Labour. The Director may have his/her deputies. In the absence of the Director, his/her duties shall be performed by the authorized deputy Director. The procedure and terms of payment of wages to the civil servants and employees of the State Adoption Agency who work under employment contracts are

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457 (Official Gazette, 1999, No. 66-2130; 2002, No. 45-1708);
established by the Law on Civil Service of the Republic of Lithuania, the Labour Code of the Republic of Lithuania and other laws and regulations of the Republic of Lithuania.

b) Courts - judicial institutions in adoption process. There are no specialized courts for family cases, so national adoption cases are examined by the courts of common competence – i.e. by local courts according to the place of residence of applicants' or of the child being adopted in the presence of the adopting parents and representative from the Regional service. Vilnius district court is entitled the sole jurisdiction to examine adoption cases by applications of citizens of the Republic of Lithuania permanently residing abroad and the foreigners (international adoption).

The court has a right to:

- allow an older or single person to adopt;
- reduce age difference;
- confirm parent’s consent to adopt, explain the adoption consequences;
- the approve the application to revoke the consent to adoption or not;
- accept child and spouse consent to be adopted;
- decide on whether the prospective adopting parents have proper conditions and are duly prepared for adoption;
- examine applications to adopt;
- transfer a child for nurturing and maintenance into the prospective adopting parents' family and set up a probation period from six up to twelve months;
- make a decision to adopt a child without the consent of the child's parents or the family, or family group home or the guardian (caregiver);

The court, which has examined the adoption case, may permit disclosure of information about adoption to the adopted child of and over fourteen years of age, or his/her close relatives or other persons concerned, if such information is necessary for the sake of health of the adopted child, or his close relative, or other person concerned, or for other important reasons;

The court also has a right:

- to assign the State Adoption Agency to submit the conclusion whether or not there are any obstacles stipulated by laws to adopt this particular child, and the data as to whether there is any application of other persons to adopt the same child, about the registration of the adopting parent and child being adopted in appropriate lists; demand and obtain from the State Adoption Agency the data about the background, development, health state and family of the child being adopted; if adoption is requested by a citizen of a foreign State or a person without citizenship; assign the State Adoption Agency to submit the conclusion whether the pre-trial adoption procedure has been completed under the Civil Code;

- to check whether adopting parents have proper conditions and are duly prepared for adoption; after filing an application to revoke the consent for adoption, the examination of the adoption case shall be suspended (by the court, G.S.) until the issue concerning the revocation of the consent is resolved;

To find out whether the child being adopted agrees to be adopted by the adopting parent, agrees to the adopting parents to be recognized as his/her parents and himself/herself to be recognized as the child of the adopting parents, also to the change of his/her first name, surname; if an child being adopted is under ten years of age, but is capable of forming his or

her own views, the child shall be listened to in the court hearing concerning the adoption, the change of the first name and surname.

The views may be expressed in verbal, written form or other ways chosen by the child. The court, when making a decision, shall take into considerations the child's wish unless such wish is contrary to the interests of the child; in exceptional cases, at the court's discretion and by its ruling, for the period of listening to the child's opinion, any of the participants of the case may be eliminated from the hall of the court hearings; The court shall explain to the child being adopted the consequences of giving of the consent and adoption. The court shall refuse to accept the child's consent to being adopted if there is any ground to think that the consent has been obtained by way of compulsion or fraud or seeking unlawful financial gain;

The Court which examines the case, at the request of the State Adoption Agency or own initiative, may set by its ruling for the applicant a probation period from six to twelve months and transfer the child to live in the applicant's family, where he/she would be nurtured and maintained. In this case, the examination of the adoption case shall be suspended; having renewed the examination of the case, the court shall satisfy anew the statutory requirements in respect of the consent of the child being adopted.

The child shall be adopted or the application for his/her adoption shall be declined by decision of the court; the resolution part of the court decision shall retain the data preserving the child's individuality: the date of birth, the place of birth, also the first name and/or surname unless they are changed; an enforced court decision to permit adoption shall be sent, within three days, to the Civil Records Office which has registered the birth of the child.

The Court accepts the child's parents or, if they are minors or legally incapable, their parents or guardians (caregivers) written consent to adopt; the court shall explain to the person who gives consent the consequences of giving of such consent and adoption; While approving consent, the court in its ruling shall explain the consequences of adoption and the right to revoke the given consent. The application regarding revocation of the consent for adoption shall be examined by the local court which has approved such consent; The court shall check whether one year has passed from restriction of the parental power and whether the restriction of the parental power is not cancelled, also whether or not the consent for adoption is revoked by virtue of material benefit only.

c) Children’s Rights Protection Service of the Municipality (Regional services). Regional services are the subdivisions of the administration in the Municipality. Regional services are established by the offering of the mayor of the Municipality and the decision by the Council of the Municipality. Regional services are financed from the budget of the Municipalities. The main mission of these institutions is to guarantee the protection of child rights while performing these functions: constantly provide information to the State Adoption Agency about the children eligible for adoption on the territory of their municipality and the persons who want to adopt, perform other actions established herein, furnish any other information requested by the State Adoption Agency; report to the State Adoption Agency the information about the children eligible for adoption on the territory of the municipality not later than within 15 working days from approval of such information; specific functions related to the adoption procedure are performed by the employee of the Regional service whom these functions are assigned in the job description; collect documents for the registry of citizens of the republic of Lithuania, residing in the Republic of Lithuania, who want to

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adopt; apply to the Department of Informatics and Communications under the Ministry of the Interior with an application to issue a certificate about the previous conviction of the citizens who want to adopt children and the persons living with such citizens and send, within 5 working days, the citizens to inspect whether they are ready for adoption.

In addition, no common structure of Regional service is approved and it differs in a particular municipality.

d) Legal guardians of the child. Fostering of children in Lithuania is concerned with the fostering of a minor who is left without parental care and the protection of his/her rights. The purpose of fostering is to ensure the maintenance, the schooling and general education of the child, to create such conditions for a neglected child that he/she could grow up in the surroundings which are similar to those of his/her biological family. Three forms of children’s care are legally acknowledged in Lithuania: care in a family, care in a family group home (these are not child’s biological families but legal persons which have special status under Lithuanian law), institutional care (performed either by State care institutions or non-governmental organizations).

If the child to be adopted has a legal guardian (except for a State care institution), his adoption may be effected only with the written consent of the guardian confirmed by the court. In case a child, whose legal guardian is State care institution, is going to be adopted abroad (intercountry adoption), the State care institution’s consent is also required.

Nonetheless, in cases of intercountry adoption the court, having regard to the interests of the child, shall have the right to decide on the adoption of the child without the consent of legal guardian (notwithstanding the form of guardianship).

e) Persons certified by the State Adoption Service. “Certified person” is an employee of a public or a municipal body, NGO or any other institution providing social services who is certified following the procedure established by the Minister of Social Security and Labour, whose qualification category is at least of a senior social worker, and who has completed a special training course on the verification of prospective adoptive parents’ readiness for adoption. The certification is granted by the decision of the Certification Commission, which is organized by the Director of State Adoption Agency.

Certified persons perform verification of prospective adoptive parents’ readiness for adoption consists of four stages: a) initial assessment of prospective adoptive parents’ readiness for adoption, b) training of prospective adoptive parents. They are entitled to draw the conclusion on prospective adoptive parents’ readiness for adoption that is decisive upon inclusion of the person in the Registry of prospective adoptive parents”.


A foreign institution granted authorization in respect of inter-country adoption in the Republic of Lithuanian (hereinafter referred to as authorized foreign institution) is a non-profit institution accredited by a competent authority of the receiving country, acting in the field of inter-country adoption and authorized to operate in the Republic of Lithuania in compliance with the Procedure Specification. The list of authorized foreign organizations can be found here: [http://www.ivaikinimas.lt/index.php?p=22&l=EN&n=96](http://www.ivaikinimas.lt/index.php?p=22&l=EN&n=96). As of 1 August 2006 new applications for authorization in respect of inter-country adoption in the Republic of Lithuania are not accepted from institutions of foreign states.
The reason for approving the specification of the procedure for granting authorization to foreign institutions in respect of inter-country adoption in the Republic of Lithuania was to create an inter-country adoption system that would prevent non-competent persons and would ensure consistent coordination and control.

The Authorized foreign institution shall carry the following functions: represent the family that wish to adopt a child during the adoption process; inform the prospective adoptive parents that wish to adopt a child in Lithuania of the adoption procedures and requirements in the Republic of Lithuania and provide professional consultations; help the prospective adoptive parents prepare documents necessary for the family to be included in the list of citizens of the Republic of Lithuania permanently residing abroad and foreigners wishing to adopt a child and, having ascertained that the applicants are fully prepared for adoption, devise a document in compliance with Article 15 of the Hague Convention; provide the prospective adoptive parents with all the necessary information regarding the child’s social status, development and health; confirm that the child has been, or will be, granted a permit for entering the receiving country and permanent residence in the country; exchange information about adoption process and measures taken with the Adoption Service; follow the procedure for offering for adoption children with special needs that are eligible for international adoption, approved by the Order of the Director of the Adoption Service; provide the Adoption Service with a feedback on the adopted children (during the first 2 years after adoption – every 6 months, during the following 2 years – once a year, after 4 years after adoption – upon request from the Adoption Service), that consists of reports of the prescribed form about the adopted child’s integration into the family, living conditions, development and state of health and visual material;

As of 17 July 2006 within one calendar year the institution of a foreign state granted authorization to work in the field of inter-country adoption or the central adoption institution of a receiving country may submit no more than two applications of families (persons) wishing to adopt a child (children) under the age of six, except for the cases when a family wishes to adopt a child (children) with special needs.

g) Civil Registry Office (Civil Registry Department) of the Municipality. These are the subdivisions of the administration in the Municipality which main function - the registration of the legal status acts. Civil Registry Offices are financed from the budget of the Municipalities. The organization of the Civil Registry Offices is approved by the mayor of the Municipality. The function of this institution in the adoption is to issue a new birth certificate for the adopted child. In addition, no common structure of Civil Registry Office is approved and it differs in a particular municipality.

h) Migration authority (a passport division) of the child’s domicile. These are the subdivisions of the Territorial police institutions, which work is organized by the Territorial police institutions, the Department of police under the Ministry of the Interior and the Department of migration under the Ministry of the Interior. The main functions of the Migration authority are to rule the migration processes according to the state migration policy and to issue the state citizenship confirming documents. The function in the adoption procedure of this institution is to issue a new passport to the child being adopted in the case of international adoption. No common structure of migration authority is approved and it differs in a particular territorial police institutions.

i) Which Post-Adoption Follow-Ups Exist?

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460 THE GENERAL REGULATIONS OF THE MIGRATION AUTHORITY, APPROVED by the General commissar of Police; 18 06 2007 order No.5-V-403;
Report on the child’s adaptation in his/her adopting family is envisaged in Lithuanian law only in case of international adoption. When adopting parents are represented by authorized foreign organization, authorized foreign organization is obliged to send post-adoption reports. State Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour (hereinafter - State Adoption Agency) requires that post-adoption reports shall be provided as follows: a) every six months during the first two years following the adoption; b) once a year for the following two years; c) and after four years of adoption if requested by the State Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour (hereinafter – State Adoption Agency). The report covers the period from the submission of the previous report until the present moment, or from the placement of the child with the family if the report is submitted for the first time.

The content of the report is regulated by law. Firstly the adopted person and adopting parents are described: adopted person’s name and surname prior to adoption, name and surname after adoption, date of birth, date of adoption, present domicile; adoptive parents’ name and surname, date of birth, relationship. In the first part the adaptation of the child is settled: Physical development of the child (describes the key stages of the child’s development and includes information about the developmental progress of the child, his/her game playing skills, physical activities, and significant developmental changes). Secondly, the adaptation of the child; Emotional and social development (describe the relationship developing between the child and the adoptive parents, the adaptation of the child in the family and whether he feels safe and secure. How did other members of family living together and the extended family react to the arrival of the child? What is their relationship now? What is the child’s relationship with other children of his/her age? Did the child find any friends? Did the child’s behavior change, etc.?); If child adopted according to the special needs adoption program (states the child’s special needs. How are you addressing them?); Health (provides information about the current health condition of the child, about any health problems that the child had and how you addressed them); Language (state how successful the child is in learning the new language, include any remarks on the child’s perceptiveness and the expressiveness of the language. If the adopted child is older, please state whether the child is enrolled in any special language learning program, etc.); Studies and daily habits (describe the child’s progress in a playgroup, a day-care centre or school. What are the favorite activities of the child? What is his/her favorite/least favorite subject, game, etc.?); Living conditions (gives a brief description of the child’s living environment).

The second part of the report is about adoptive parent-and-child relationship: Adaptation of the adoptive parents; relationship with the child (describes the social and emotional adaptation of the family. How did the family address the changes and the increased responsibility? Were there any problems that forced you to seek the assistance of a psychologist, a social worker or another specialist or person? How did you deal with these problems? How do you currently relate to the child? How do you spend your leisure time? To which adoptive parent is the child attached more?); Upbringing (describes the involvement of the family members in the child’s upbringing. What are the disciplinary measures applied? Are they effective?).

The third part contains other remarks: Other remarks or observations; Enclosed documents, photographs, videos, etc.

461ON THE UNDERTAKING OF FOREIGN CITIZENS AND LITHUANIAN CITIZENS RESIDING ABROAD TO PROVIDE REPORTS, AND ON THE APPROVAL OF THE REPORT FORM OF THE ADAPTATION OF CHILDREN IN THEIR ADOPTIVE FAMILY, APPROVED by Order No. BV-8 of the Director of the State Child Rights Protection and Adoption Service under the Ministry of Social Security and Labor dated 28 March 2007.
In Which Circumstances Is A European Adoption (Parents-Children With Different Nationality But Both Eu) Treated Differently Than International Adoptions (Simplified Procedure ...)? Is A Eu National Who Resides In Another Member State Treated Differently Than A Citizen Of Such Member State With Respect To The Possibility Of Adopting A Child?(For Example, Does He Need To Have Resided A Certain Number Of Years Before Or After The Adoption; Do We Apply Tha National Adoption Procedure To Such Cases Or Not...).

There are no particular adoption conditions for European adoption.

What Are The Conditions To Adopt? Distinguish, As Required, Between International And National Adoption.

j) Eligibility to adopt (national adoption):

Age: adopters have to be adults of both sexes from 18 up to the age of 50, properly prepared to adopt a child. The court may give a permission to adopt a child for persons who are older than the established age in exceptional cases: the court can make an exception with the view to the best interests of the child, also considering specific circumstances of the case, e.g. when a child is being adopted by two spouses one of which meets the age requirement and the other exceeds the age requirement but is of a satisfactory physical and mental condition and is capable of bringing up the person being adopted; when prospective adopting parents who are older than 50 wish to adopt an older child (e.g. eight years of age or older) or a child that was in their care for a relatively lengthy period of time; when the prospective adoptive parents ant the adoptee are related; when the person being adopted is the spouse’s child. Age difference between the adopter and the person being adopted shall be at least eighteen years. Where a person adopts a child of his/her spouse, the age difference may be reduced by the court to fifteen years.

Active legal capacity: persons may not adopt if they have been acknowledged by the court as legally incapable or partially incapable.

Absence of previous misconduct: persons may not adopt if they have been restricted of parental power (rights), or were guardians (caregivers) and the guardianship (care) has been cancelled through their fault. Absence of convictions for wilful offences may also be regarded as the precondition for adoption, even if it is not expressis verbis embedded in law.


Marital status: only spouses shall have a right to adopt. Single person or one of the spouses shall be allowed to adopt a child only in exceptional cases. Persons who are not legally married may not adopt the same child. The prospective adopting parents must be a married couple. Marriage is a voluntary agreement between a man and a woman to create legal family relations executed in the procedure provided for by law. In exceptional cases and unmarried (single) person may be allowed to adopt a child. An exception may be applied if no married couple wishes to adopt a specific child or if a married couple wishing to adopt a specific child cannot do that as such adoption would not be in the best interests of the child. Families having their children also have the right to adopt.

The consent of the spouse: where a child is adopted by one of the spouses, the written consent of the other spouse shall be required. The consent of the other spouse shall not be required if the spouses are legally separated by a court judgment or if the other spouse has been declared by the court missing or legally incapable.

Inclusion into the waiting list: persons who want to adopt, (except for the spouse or relatives of a child’s mother/father) shall be included in the registry of persons who want to adopt a child, which is kept by the State Adoption Agency.

Readiness to adopt: prospective adopting parents must pass the mandatory training for (except those, who wish to adopt his/her spouse’s child).

k) Eligibility to adopt (intercountry adoption):

In cases of international adoption prospective adoptive parents must meet the requirements established for prospective adoptive parents by the receiving State, and they must be recognized as suitable to adopt. When the issue of intercountry adoption of a child is under investigation, the child’s education inheritance, ethnic/religious/cultural background and mother language, as well as consistency of the country’s, to which the child will be adopted, legislation with the provisions of the norms of the 29 May 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption shall be taken into consideration. Citizens of foreign countries may adopt children from Lithuania if the country they live in has ratified the Hague Convention or if the legal procedure of adoption in his home country meets the requirements fixed by the Hague Convention. When a child is going to be adopted in any other State, all appropriate measures shall be taken to prevent improper material benefit to be received by persons concerned in relation to the child’s transfer to another State.

The main procedural differences between national and international adoption (in terms of eligibility to adopt) are:

the main institution which organizes international adoption is not Regional service, but the State Adoption Agency;

- there are two separate waiting lists for prospective adopters:

1) waiting list of the citizens of the Republic of Lithuania who want to adopt;

2) waiting list of the citizens of the Republic of Lithuania permanently residing abroad and foreign nationals who want to adopt a child in Lithuania.

463CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION (Ratified on:1997-11-07; comes into force on: 1998-08-01; Valstybės žinios (Official Gazette); 1997-11-07 Nr.101-2550).
the priority is given to national adoption: the adoption by a citizen of a foreign State shall be permitted if there was no application received from a citizen of the Republic of Lithuania to adopt or take into guardianship a child within six months from inclusion of this child into the list of children eligible for adoption;

- cases of international adoption are held in Vilnius District Court while cases of national adoption are held in regional (local) courts;

- in cases of international adoption the court is be entitled to make a decision to adopt a child without the consent of the child’s parents of the family, or family group home or the guardian (caregiver).

international adoption procedures terms are different:

the verification of the foreign nationals’ readiness for adoption shall be performed within four months from the date the State Adoption Agency receives the application and documents. If there is any uncertainty regarding the prospective adoptive parents’ readiness for adoption, the above deadline may by extended; however, the deadline shall not exceed seven months. if a foreign national wishes to adopt his/her spouse’s child, the verification of his/her readiness for adoption within two months from the date the State Adoption Agency receives the application and documents. If there is any uncertainty regarding prospective adoptive parent’s readiness for adoption, the above deadline may be extended; however, the deadline shall not exceed four months.

Different registry for international adoption: the State Adoption Agency, having received from the Central Authority of a foreign State or authorized foreign organizations the information letter containing the information about the identity, origin of the citizens of the Republic of Lithuania and foreigners permanently residing abroad, their ability to raise the child, the history of the family, the social environment, the reasons of adoption, the characteristics of the children they are ready to take care of, as well their applications to be permitted to adopt, shall include them in the waiting list of the citizens of the Republic of Lithuania permanently residing abroad and the foreigners, who want to adopt, in the order of sequence according to the date of receipt of the information letter and the application. The State Adoption Agency, having received a copy of the Lithuanian citizens’, permanently residing in Lithuania readiness for adoption, shall include the citizens in the waiting list of the citizens of the Republic of Lithuania who want to adopt.

the court’s judgment in case of international adoption shall become effective after 40 days, unless it is appealed (30 days if the habitual residence of the applicants is in Lithuania).

What Are The Conditions To Be Adopted? Distinguish, As Required, Between International And National Adoption.

Children eligible for adoption:

Age: from three months to eighteen years. A child may be offered to foreign nationals for adoption if during six months from the registration of the child in the waiting list of children eligible for adoption no family of the Lithuanian nationals wishing to provide foster care of adopt the child was found.

Prohibition of siblings’ separation through adoption: separation shall be allowed in exceptional cases where it is needed for health reasons or where the siblings have already been separated and there are no possibilities to ensure their life together.

Adoption may be effected only with the consent of the parents or caregivers: the consent of the parents of the child to be adopted shall not be required if the identity of the parents is not
known, if they are dead, if the parents are legally incapable, or if the parents’ authority has been restricted for an unlimited period. The parents may revoke their consent to adoption before a court judgment is made on the adoption of the child. The parents may request the court to revoke the restriction of the parents’ authority before a court judgment is made on the adoption of the child. Adoption may be effected only with the written consent of the parents confirmed by the court. Where the child’s parents are minors or legally incapable, adoption may be effected only with the written consent of their parents or guardians (curators) confirmed by the court. If the child to be adopted has a legal guardian (curator)/ (except for a State care institution), his adoption may be effected with the written consent of the guardian/ curator confirmed by the court.

The consent of the child: where the child to be adopted has already reached the age of 10, the child’s consent to the adoption filed with the court shall be required. Where the child is under 10, the court must take account of the child’s wishes if the child is capable of expressing his/her views and if those wishes are not contrary to the child’s interests.

The main differences between national and international adoption (in terms of eligibility to be adopted) are:

- if there was no application received from a citizen of the Republic of Lithuania to adopt or take into guardianship a child within six months from inclusion of this child into the list of children eligible for adoption can be adopted by foreigners;

- only in cases of international adoption the State care institution (if it is legal guardian of a child) shall give a written consent to the court to adoption of the child;

- only in cases of international adoption courts are given the power to make decisions to adopt a child without the consent of the child’s guardians, or parents of the family group home (these are not child’s biological families but legal persons which have special status under Lithuanian law) if the refusal of consent is ill-founded.

Which Process Within The Adoption Procedure Exists To Hear The Child? Is it mandatory or not? Is there an age when it becomes an obligation? which age? What are the effective practices?

If the child being adopted is ten years of age, his/her consent to adoption is mandatory. The child has to give to the court written consent to be adopted, so the participation of the child being adopted in the court hearing is mandatory in order to verify the true child’s will to be adopted or not. The court has to find out whether the consent was given on the free will or not- it is forbidden to threaten the child or to use any kind of violence against child to get the consent. The adoption without child consent is forbidden. The child being adopted can revoke his/her written consent at any time before the court makes decision. In these cases adoption is forbidden as well. The child written consent is given to the court in every particular case regarding his/her adoption to particular persons.

If an child being adopted is under ten years of age, but is capable of forming his or her own views, the child shall be listened to in the court hearing concerning the adoption, the change of the first name and surname. The views may be expressed in verbal, written form or other ways chosen by the child. The court, when making a decision, shall take into considerations the child’s wish unless such wish is contrary to the interests of the child. The court has an obligation to find out whether the child understands the point of the adoption, does he/she want to be adopted and if adoption is not against child interests. An expert psychologist may
be invited to establish whether a child is capable of forming his or her own views and interpret the expressed view of the child. In exceptional cases, at the court’s discretion and by its ruling, for the period of listening to the child’s opinion, any of the participants of the case may be eliminated from the hall of the court hearings. When such person returns to the hall, he/she shall be informed about the views expressed by the child. Upon permission by the court, the teacher and/or psychologist participating in the court hearing, as well as the persons participating in the case, may give questions to the child. The court shall explain to the child belong adopted the consequences of giving of the consent and adoption. The court shall refuse to accept the consent of the child to being adopted if there is any ground to think that the consent has been obtained by way of compulsion or fraud or seeking unlawful financial gain.

Who Must Give Consent To The Adoption?
The person being adopted;
Legal parents (holders of parental authority);
Biological parents (they are not the legal parents);
Other members of the family?

The consent to adoption shall be given in by these persons and in these cases:

The person being adopted gives consent to be adopted. If the child the subject of adoption is ten years of age, it shall be required to have his/her written consent to be adopted. The child shall give his/her consent to the court. It is not permitted to adopt a child without such consent. If the child the subject of adoption is under ten years of age, but is able to express his/her opinion, the child shall be heard out at the court, and the court when making a decision shall take into considerations the child’s wish unless such wish is contrary to the interests of the child;

Legal parents written consent confirmed by the court shall be required for adoption. Parents shall give written consent, executed in the form of an application to the local court of his/her place of residence or of the place of residence of the child in respect of which the consent is given. The consent of the parents of the child to be adopted shall not be required, if the identity of the parents is not known or if they are dead or if the parents’ authority has been restricted for an unlimited period or if the parents are legally incapable or declared dead. The consent is given in all cases of adoption, unless their identity is not known or if they are dead or if the parents’ authority has been restricted for an unlimited period or if the parents are legally incapable or declared dead. If the parents of a child are minors or legally incapable, their parents or guardians (caregivers) shall give written consent, executed in the form of an application to the local court of his/her place of residence or of the place of residence of the child in respect of which the consent is given. If the consent for adoption of a child of under-age or legally incapable parents has been given by their parents or guardians (caregivers), in such case when the child’s parents attain majority or become legally capable the consent for adoption shall lose effect.

Parents may revoke their consent to adoption if there is no court decision on adoption. Parents shall file an application on revocation of their consent with the State Adoption Service. If the child is already adopted, the State Adoption Service shall inform the child’s parents to that effect, without disclosing adoptive parents. If the application is presented before the day the court is going to have a hearing regarding adoption, the State Adoption Service shall inform the court about the application on revocation of the consent to adoption, and shall send the application to the court which approved the consent. The investigation of the application to adopt shall be suspended until the issue of revocation of the consent is resolved. The court shall not approve the application to revoke the consent to adoption if either one year has passed after the parental power (rights) were restricted and this
restriction was not annulled or if the court establishes that the parents revoke their consent to adoption because they seek material benefit.

Biological parents are not given the power to consent to the adoption or refuse it unless their parentage has not been established;

The child’s legal guardians. If the child to be adopted has a legal guardian (except for a State care institution), his adoption may be effected only with the written consent of the guardian confirmed by the court. In case a child, whose legal guardian is State care institution, is going to be adopted abroad (intercountry adoption), the State care institution’s consent is also required.

The other spouse shall give a written consent to adoption if only one of the spouses is adopting. It shall not be required to have the above mentioned consent if there is a court decision for separation of spouses or if one of the spouses is declared as untraceable or recognised as legally incapable. It is not required to give written consent to the court-consent can be confirmed by the notary and given to the court or can be made by simple written form and later spouse’s will confirmed in court by himself/herself.

I) At Which Moment After Childbirth Is The Mother Authorised To Give Her Consent To Adoption?

Adoption shall be possible only in the best interests of a child. It shall only be permitted to adopt children, who are included into the registry (list) of the children eligible for adoption, except for the cases where a child of the spouse or a child, who already lives in an adopting family, is going to be adopted. It shall only be permitted to adopt children who are not younger than three months of age.

Therefore the parents of the child can give consent to adopt their child after three months from childbirth. This term protects parents from premature decision.

m) Is It Possible For A Parent, Who Must Consent To The Adoption, To Sign A Blank Consent (Consent Although The Adopting Family Is Not Yet Known)?

The consent for adoption is given not for a particular person who wants to adopt. The biological parents and other persons who have to give consent for adoption do not know who will be the adopting parents. The procedure of giving consent and the adoption procedure are distinguished. Firstly parents have to decide that they cannot raise child by themselves by giving the consent to adoption of their child; if the consent is given and the child is included in the register of adopting children, the parents or other persons who gave consent do not participate in adoption process anymore. But they still have a possibility to revoke their consent.

Parents may give consent to adopt their child to a particular/concrete prospective adoptive parent only if she/he is related to the family. The evidences about relative connection must be given to the court as well. The relative have to be by blood, not by law. The relative in law can be noticed as concrete adopting parent only when he/she is the spouse of other adopting parent. When child subject of adoption is adopted by his/her mothers/fathers spouse, the consent can be given in the process of adoption, not only in the pre-trial procedures.

n) Is It Possible To Ignore The Refusal Of Consent Required? which?; within which context?; which authority may make this decision?
Where the child is under 10, he must be heard by the court if he or she is capable of expressing his or her views. In taking the decision, the court shall take account of the child’s wishes if those wishes are not contrary to the child’s interests. Therefore, theoretically it is possible that the court ignores the refusal of child being adopted under 10 to be adopted.

The consent of legal parents of the child to be adopted shall not be required, if the identity of the parents is not known or if they are dead or if the parents’ authority has been restricted for an unlimited period or if the parents are legally incapable or declared dead.

The refusal of consent of the child’s guardians (institutions or natural persons) may be ignored in the context of intercountry adoption: the court shall be entitled to make a decision to adopt a child without the consent of parents of the family group home or the guardian. In these cases Vilnius district court (which has the exceptional jurisdiction in international adoption cases) can make decisions considering the best interests of the child.

The refusal consent can be ignored only when there is no possibility to keep child subject of adoption in his/her national country. There are no similar exceptions in the national adoption. But it is the ongoing debate in Lithuania on application of the aforementioned rule in cases of national adoption as well. Formally in national adoption the courts are not given the power to make decisions to adopt a child without the consent of the child’s parents of the family, or family group home or the guardian (caregiver).

There are submissions to apply law analogy in these cases and to allow local courts to make decisions to adopt a child without the consent of the child’s parents of the family, or family group home or the guardian (caregiver) in national adoption as well. But the general view is that changes in law have to be made.
2.17. LUXEMBOURG

A. THE NATIONAL ADOPTION PROCEDURE

1. The different steps:

a) Regarding the child:

The majority of the adoptees children in the Grand Duchy of Luxembourg are born by anonymous childbirth. During the childbirth, the mother verbally states to want to give birth in an anonymous way. Some children are abandoned by their parents, that mean the parents obviously ignored their child during the year preceding the introduction request for declaration of abandonment of their child placed in a shelter or in a foster family. Are considered as being obviously uninterested of their child, the parents who did not maintain with him the necessary relations keeping the emotional ties. The simple renunciation of the assent to the adoption, the news request or the intention expressed but not followed in fact to take again the child are not a sufficient mark of interest. (article 352 of the civil code)

For other children, the parents of origin give their assent to the adoption, by declaration in front of a notary or the guardianship Judge. (article 1035 of the new code of civil procedure). The maternity, the gynaecologist, the foster centre, or the social service,... contacts the service of adoption of the Red Cross to declare that a child is likely to be adopted. The service of adoption of the Red Cross examines the situation of the child and is ensured of his adoptability.

In the case of an anonymous childbirth, the child is declared by the midwife with the municipal authorities of his birthplace. He’s retained within the maternity or the paediatric private clinic until the moment when he is placed in sight of adoption to the potential adoptive parents, where various medical examinations will be carried out to him. A welfare officer of the service of adoption of the Red Cross addresses then a request to the guardianship Judge in order to be named public administrator of the child and to juridically represent this last one until his adoption.

b) Regarding the future adoptive parents:

The future adoptive parents first at all contact the adoption service of the Luxembourg Red Cross, which registers them on a waiting list. They take part in a cycle of preparation to the adoption organized by the Resources Center in adoption matters. They are the subject of an evaluation of their aptitude to adopt by the multi-disciplinary team of the adoption’s service of the Luxembourg Red Cross (welfare officers, psychological, lawyers and doctors), which draws up a social report regarding them. If this report is favourable, the adoption service of the Luxembourg Red Cross proposes a child to the future adoptive parents. If the future adoptive parents accept the child proposed to them, the procedure of adoption follows its course.

c) Regarding the following of the procedure:

The public administrator accompanies the future adoptive parents to the maternity or to the foster shelter to meet the child. It addresses thereafter a request to the guardianship Judge in order to obtain an authorization of the placement of the child. (article 352 of the civil code). Once the authorization granted, the child is entrusted to his future adoptive parents and is declared at his new address. The future adoptive parents sign with the adoption service of
the Red Cross an arrangement of placement for adoption. They constitute a file with the adoption service.

When the child was abandoned by his parents, a request for declaration of abandonment must be addressed to the court of district. This request is formed by application presented at the district court of the residence place of the child by the person in charge of him, by a service of social assistance, or a work of adoption. (article 1031 of the New Code of Civil procedure and article 352 of the civil code).

The affair is informed in a council room and the public ministry is heard. (article 1032 (1. new Code of Civil procedure) the court hears the father and mother, the tutor, or any other invested person of the custody in charge, as any person whose hearing appears useful to him. Any member of the family intending to accommodate the child can also intervene at the instance. (article 1032 (2. new Code of Civil procedure)

The judgement is pronounced within the three months of the convocation of the people mentioned above. (article 1032 (4. new Code of Civil procedure). Within fifteen day delay from the pronounced judgement, this one is notified by way of Clerk’s Office to the father and mother, the tutor, or any invested person of the custody charge. (article 1033 of the New Code of Civil procedure).

By the declaration of abandonment, the service of adoption obtains the guard of the child and the right to grant the adoption. (article 352 of the civil code). The abandonment is not declared if, at the latest during the procedure, a member of the family asks to take in charge the child and if this request is considered in conformity with the interest of the child. (article 352 of the civil code). The abandonment can also be declared during the procedure of adoption. (article 1037 of the New Code of Civil procedure and article 352 of the civil code).

In order to carry out the adoption, the future adoptive parents contact a lawyer at the Court in order to deposit an adoption request to the district court of their place of residence or the child’s place of residence if the future adoptive parents reside abroad. (article 1035 of the New Code of Civil procedure). The deposit of the request can be carried out only three months after the birth of the child or the biological parents’ assent to the adoption, the biological parents having a three months deadline to reconsider their decision and to recognize the child. This request must be also signed by the future adoptive parents, by the child if is older than fifteen years, and the people whose assent is necessary. (article 1035 of the New Code of Civil procedure) the request and the documents and evidence are communicated to the State prosecutor which takes written conclusions. (article 1036 of the New Code of Civil procedure).

If one of the parents, the public administrator, a social service or a work of adoption refuses to give its assent to the adoption, it is convened to appear in front of the court for purposes to know the reasons for its refusal. (article 1036 of the New Code of Civil procedure). The court states in the three months of the convocation of the parties. (article 1036 of the New Code of Civil procedure)

The examination of the application and the debates take place in a council room, in the presence of the Public Ministry, and the procedure is oral except for the parties should putting their notes. (article 1038 of the New Code of Civil procedure). The court is surrounded by all the useful information and can ask to the parties, the documents considered necessary. It can proceed to investigations and to order the personal appearance of any interested part, including the parents of the adoptee. (article 1038 of the New Code of Civil procedure).
The decision is notified by the clerk's office with the people in question, within fifteen days of delay from the pronounced judgement. (article 1040 of the New Code of Civil procedure). The judgement is transcribed at the request of the public ministry to the civil registers of the birthplace of the child. (article 1042 of the New Code of Civil procedure). If the child is born abroad or if its birthplace is unknown, the judgement is transcribed on the registers of the marital status of the Town of Luxembourg. (article 1042 of the New Code of Civil procedure)

2. Court orders :

Court orders intervene following the request for declaration of abandonment, and following the request for adoption of the future adoptive parents.

3. The possible recourses :

(articles 1034 and 1041 of the New Code of Civil procedure). The judgement given for the abandonment and/or the adoption is not likely of opposition but can be struck of call by the state’s prosecutor by very part in question, within forty days which runs for the state’s prosecutor from the day of the pronounced judgement and for the other parties in question as from the day when the judgement their was notified.

The appeal is formed by the deposit of a request to the district court, which will have, except for the state’s prosecutor, being signed by a lawyer at the Court. Within eight day delay, the file is transmitted to the Court of Appeal, which will convene the parties other than the state’s prosecutor by registered mail within fifteen day. The Court informs the affair in a council room in the same forms as the court, in the presence of the state’s prosecutor general. The parties can appear in person or represented by a lawyer at the Court. The Court of Appeal states urgently and in any case in the two months of the convocation of the parties. The judgement is not opposable but it may be subject of an appeal in cassation.

4. The international adoption proceeding :

The procedure of international adoption is different according to whether the Hague convention of May 29, 1993 on the protection of the children and the matter co-operation of international adoption, signed in The Hague, is or not in force in the country of origin of the child. The Hague convention was approved in the Grand Duchy of Luxembourg by the law of April 14, 2002.

a) When the Hague convention is in force:

5. The different steps:

First of all, the future adoptive parents contact an adoption service in order to announce their will to adopt a child, and they are registered on one or several waiting lists. The recourse to an adoption service is not legally obligatory, but the majority of the adoptions are held by the way of an adoption service. The future adoptive parents are then directed towards the Centre of Resources in adoption matters in order to follow a preparation course for the candidates to the adoption. This formation is also not imposed by the law, but is followed by the majority of the candidates to the adoption.

Following this cycle of preparation, the multi-disciplinary team of the adoption service (welfare officers, psychological, lawyers and doctors) carry out several discussions with the future adoptive parents and established a report for those. If this report is favourable, the adoption service constitutes with the future adoptive parents their file. The request for adoption accompanied by the report of the adoption service and the file of the future adoptive parents is then transmitted to the central authority.
The future adoptive parents contact a Court lawyer to this one seizes the district court to state about the aptitude to adopt of the future adoptive parents. The article 5 of The Hague convention provides indeed the adoptions envisaged by the convention may take place only if the qualified authorities of the reception's State noted the future adoptive parents are qualified and ready to adopt, they are ensured themselves the adoptive parents were surrounded of the necessary councils, and noted that the child is or will be authorized to enter and remain in a permanent way in this state.

The Article 1045-3 of the New Code of Civil procedure provides the qualified authority in the sense of the article 5 of the Hague convention is the district court of the residence place of the future adoptive parents. The Court lawyer indicated by the future adoptive parents thus seizes either the district court of Luxembourg or the district court of Diekirch according to the place of residence of the parents.

The procedure is implemented by the means of a request, which must be also signed by the future adoptive parents. (article 1045-3 of the New Code of Civil procedure). The request and the parts are communicated to the State's prosecutor taking written conclusions. (article 1045-3 of the New Code of Civil procedure). The examination of the application and the debates take place a council room, in presence of the Public Ministry, and the procedure is oral except for the parts that should submit the notes. (articles 1038 and 1045-3 of the New Code of Civil procedure)

The court is surrounded by all the useful information and can ask to the parties the documents considered necessary. It can proceed to investigations and order the personal appearance of any interested part, including the parents of the adoptee. (articles 1038 and 1045-3 of the New Code of Civil procedure). The court states an order about the aptitude to adopt of the future adoptive parents.

This order is notified with the parties by the clerk's office, and a copy is transmitted to the central authority by the clerk's office after the expiration of the recourse's delay. (article 1045-3 of the New Code of Civil procedure). Following the order given by the district court, the central authority draws up a report about the future adoptive parents aptitude to adopt, which is transmitted with their file to the central authority of the country of the child.

The Central authority of the child’s original country proceeds then to “matching” between the future adoptive parents and the child, and transmits the child’s file to the adoption service which communicates this one to the future adoptive parents. The last ones must then give their assent for the adoption of the child proposed to them. If necessary, they sign a document confirming their agreement to continue the adoption procedure.

When this document is signed, the central authority gives its authorization to the continuation of the procedure that it sends to the central authority of the child’s original country. The future adoptive parents contact the Ministry for the Foreign Affairs in order to obtain a visa for their future child, and go to the child’s original country where the adoption will be pronounced. The central authority of the child’s original country gives to the parents, the adoption judgement and a compliance certificate. The parents return to the Grand Duchy of Luxembourg with their child, and transmit these documents to the central authority. Once the child is on the territory of the Grand Duchy of Luxembourg, the parents proceed to the transcription of the foreign decision.

6. The courts decisions:
A decision of the Luxembourg jurisdictions intervenes the adoption before, as for the aptitude to adopt future adoptive parents. One second court decision will be granted in the child's original country aiming pronouncing the adoption.

7. The recourse:

(articles 1045-4 and 1041 (3. to (12. new Code of Civil procedure). The order according the aptitude to adopt of the future adoptive parents granted in the Grand Duchy of Luxembourg by the district court is not opposable but it is subject of appeal by the State's prosecutor and for any part in question. The delay to submit the appeal is forty days and runs for the state's prosecutor from the day of the pronounced judgement and for the other parties from the day when the judgement their was notified. The appeal is formed by the request application to the court of district, which will have, except for the State's prosecutor, being signed by a Court lawyer. Within eight day, the file is transmitted to the Court of Appeal, which will convene the parties other than the state's prosecutor by registered mail within fifteen day.

The Court of Appeal informs the affair in a council room in the same forms as the court, in the presence of the state's general prosecutor. The parties can appear in person or represent by a Court lawyer. The Court of Appeal states urgently and in any case within the two months of the convocation of the parties. The judgement does not accept opposition but can be subject of an appeal in cassation. Regarding the decision granted in the child’s original country, the possibility and the methods of a recourse against this decision are different according to the child’s original country.

8. When the Hague convention is not in force:

The procedure is more or less identical until the evaluation of the future adoptive parents by the multi-disciplinary team of the adoption’s service. If the evaluation is favourable, the adoption's service transmits the file of the future adoptive parents to the child’s original country. The file will contain a legal certificate of legal capacity of the future adoptive parents, emitted by the parquet judge of the residence place of the parents, which proves that they meet the conditions of their adoption national law. The child’s original country proposes a child to the future adoptive parents, transmitting them his file. If the future adoptive parents accept the proposed child, they travel to the child’s original country where the adoption will be pronounced.

Once the appeal delay against this decision run out, they returns with the child to the Grand Duchy of Luxembourg. They will reach a Court lawyer that requests the exequatur of the foreign judgement or launches an adoption procedure in front of the Luxembourg jurisdictions according to the procedure envisaged in articles 1035 and following of the civil code. (cf. not I.)

B. The different bodies and services taking part in the adoption process

1. The Ministry for the Family and Integration:

a) Nature:

The Ministry for the Family and Integration is the central authority of the Grand Duchy of Luxembourg as envisaged in article 6 of the Hague convention.

- Intervention in the procedure:

It receives the adoption request for the future adoptive parents, it emits a report regarding the aptitude to adopt of the future adoptive parents following the order of the district court, it
It authorizes the continuation of the procedure of adoption when the parents accept the child proposed to them,…

It plays the part of intermediary between the future adoptive parents and the central authority of the child’s original country throughout the procedure of adoption.

- Missions:

The central authority fills the unit of the missions entrusted by the Hague convention. It is also present for the future adoptive parents before, during, and after the adoption procedure. The central authority determines and controls the operation of the different adoption’s services.

- Composition:

The person in charge of the central authority in adoption matters in the Grand Duchy of Luxembourg is Mr Jacques KÜNTZINGER, Adviser of Direction First Class within the Ministry for the Family and Integration. This last is not affected full-time with the operation of the central authority.

There does not have the social assistants

- Specific Formation:

The Ministry for the Family and Integration and the Luxembourg Red Cross organize training formations for the adoptions services, in which the members of the personnel of the central authority also take part.

2. Resources centre regarding adoption:

a) Nature:

The Resources centre regarding adoption has a social nature since it is composed of a nurse, two psychologists and a secretary. The resources Centre exists since June 2007.

b) Intervention in the procedure and missions:

The Resources Centre before intervenes the adoption procedure by organizing a cycle of preparation of the candidates to the adoption. This cycle of preparation is not imposed by the law but is followed by the majority of the candidates to the adoption. It is held in eight hours, that is to say twice four hours Saturday morning, in group of more or less twenty adoptive parents. Following the participation in this cycle of preparation, the candidates to the adoption receive a participation certificate. The resources Centre does not carry out any evaluation of the candidates to the adoption. It is also a place of exchange and continuous training with the professionals concerning the adoption. The resources Centre proceeds in addition to individual consultations or in a family request for the adoptive parents or children. It constitutes finally a documentation centre.

c) Composition - social assistants:
The resources Centre is composed of a nurse, two psychologists and a secretary working all of them part-time. The resources Centre is not a service approved by the Ministry for the Family and Integration.

d) Specific Formation:

The members of the Resources Centre follow the training formations organized by the Ministry for the Family and Integration and the Luxembourg Red Cross.

e) Adoption Services:

There exist in the Grand Duchy of Luxembourg five adoption services:

- Friendly International of Assistance to Childhood (AIAE) asbl, which carries out adoptions in South Korea and India;
- The Luxembourg Red Cross, which carries out adoptions in Bulgaria, in Colombia, in Ukraine as well as national adoptions;
- Luxembourg-Peru asbl, which carries out adoptions in Peru;
- NALEDI asbl, which carries out adoptions in South Africa;
- S.O.S sorrowful children asbl, which carries out adoptions in Brazil.

- Nature:

The adoption services are of social nature. It is about officially agreed and approved asbl by the Ministry for the Family and Integration. (article 1er of the law of January 31, 1998 approving the agreement of adoption services and definition of its obligations). The approval of the Ministry for the Family and Integration is granted for one three years period. (article 2 of the law of January 31, 1998). To be able to obtain approval, the services of adoption must meet the following conditions:

- the individual authorized to manage the affairs of the legal entity must have a diploma of teaching post-secondary in legal sciences, medical, teaching, psychological or social, and a six months experiment in the field of the adoption; or an experiment of at least five years in the field of the adoption;
- to prove the collaboration of a multi-disciplinary team including at least a welfare officer or an assistant of social hygiene, a psychologist, a doctor and a lawyer;
- to establish that the representatives of the legal entity and the individual authorized to manage the affairs of the legal entity provide the necessary guarantees of standing. (article 3 of the law of January 31, 1998)

They call upon professionals working as freelances worker (psychological, doctors, lawyers) who must them also be approved by the Ministry of the Family and Integration.

- The Intervention in the procedure:

The adoption services intervene as well before, during, and after the adoption procedure. They are contacted by the people wishing to set in an adoption procedure, they accompany them throughout the adoption procedure, and they also ensure a post-adoptive follow-up.
- Missions:

According to article 4 of the law of January 31, 1998, the adoption services must satisfy the following obligations:

- to provide to the adopting candidates the necessary preliminary information relating to the nature, the conditions and the effects of the adoption;
- to make sure that the people and the institutions whose assent is necessary for the adoption were surrounded of the necessary councils and duly informed on the consequences of their assent, in particular on the maintenance or the rupture of the bonds with the child;
- to constitute about the adopting parents a file including at least:
  - the useful information of marital status,
  - an extract of the criminal record,
  - a social investigation which relates in particular to the personality, the health and the economic situation of adopting, his family life, his aptitude to educate the child,
  - an evaluation of the file by the multi-disciplinary team;
- in case of international adoption, to provide to adopting parents a biographical note accompanied by all supporting documents, specifying:
  - identity of the institutions or organizations where the children are possible to be adopted;
  - the approval of those, if a certification is envisaged in the aforementioned countries;
  - to constitute on each minor a file including the results of a medical examination and a psychological examination if it’s necessary;
  - to draw up a written agreement within the adopting candidates, specifying the procedure, the probable duration, the costs and the guaranteed services.

The adoptions services in addition assist the future adoptive parents throughout procedure of adoption, such as for example at the time of the proposal and the reception of the child. They also are intermediary between the future adoptive parents and the contact person they have in the child’s original country. They ensure finally a post-adoptive follow-up.

- Composition - social assistants:

Certain adoptions services lay out welfare officers within their establishment. The whole of the adoption services call nevertheless upon professionals (psychological, doctors, lawyers,…) as freelance worker.

- Specific Training:
The members of the adoptions services as well as the people working as freelance worker within the adoptions services follow the training formations organized by the Ministry for the Family and Integration and the Luxembourg Red Cross.

- Post-adoptive follow-up:

The post-adoptive follow-up differs according to child’s original country. Indeed, the countries of origin requires that after the adoption procedure, of the reports regarding the adoptive families be established and are transmitted to them by the adoption services. The number of reports and the number of years during which the reports will be benches are different according to child’s original country. Certain adoption services proceed though a post-adoptive follow-up without regarding the child’s original country. In addition, after the adoption procedure, the adoption services, the central authority and the resources Centre regarding adoption matters are regularly consulted by the adoptive parents or by the children about several councils and advises.

3. European Adoption:

According to article 370 of the civil code, the adoption is opened to the Luxemburgers and the foreigners. The adoption procedure is identical either the future adoptive parents are from Luxembourg nationality or are residents in the Grand Duchy of Luxembourg but from another European original country.

No number of years of residence is imposed before or after the procedure of adoption. however, according to article 370 of the civil code, the requirements to adopt are controls by the national law of the future adoptive parents, of kind that differences can intervene on this level.

4. The conditions to adopt:

According to article 370 of the civil code, the requirements to adopt are controls by the national law of the adopting parents. In the event of adoption by two husbands of different nationalities or stateless people, the applicable law is that of the usual residence common to the moment of the request. If adopting them are both from Luxembourg nationality, or are different nationalities or stateless people but reside at the Grand Duchy of Luxembourg, the conditions to adopt are controls by articles 343 and following of the civil code. In Luxembourg law, the conditions to adopt are different according to whether the adoption is a simple adoption or a plenary adoption.

a) In a simple adoption case:

The adoption cannot take place that if there are right reasons and if it has advantages for the adoptee. (article 343 of the civil code). The future adoptive parents must be older than 25 years. (article 344 of the civil code). When the adoption is required by two married people, one must be 25 years old, the other at least 21 years old, but no condition of age is necessary when it is about the adoption by one of the spouses of the legitimate, natural or adoptive child of the other one(article 345 of the civil code). Adopting parents must in addition be 15 years older than the child to adopt. However, if this one is his spouse’s child, the difference required is only ten years. nevertheless, the court can, if there are right reasons, pronounce the adoption when the age difference is lower than required. (article 346 of the civil code). The simple adoption can be carried out only by married people (article 349 of the civil code ).

b) In a plenary adoption case:
The plenary adoption cannot be carried out by a person alone, but only by married people. (article 367 of the civil code). One of the two spouses must be 25 years old, and the other at least 21 years, but no condition of age is necessary when it is about the adoption by one of the spouses of the legitimate, natural or adoptive child of the other one. (articles 367, 367-3 and 345 of the civil code). The future adoptive parents must be 15 years older than the child to adopt.

However, if this one is the spouse’s child, the age difference required is only ten years. though, the court can, if there are right reasons, pronounce the adoption when the age difference is lower than 15 years (article 367-1 of the civil code). The adoption cannot take place that if there are right reasons and if it has advantages for the adoptee. (articles 367-3 and 343 of the civil code)

5. The conditions to be adopted:

Which are the conditions to be adopted? Distinguish, if necessary, the national and international adoption. According to article 370 of the civil code, the requirements to be adopted are controls by the national law of the adoptee, except if the adoption decision give to the adoptee the adopting parents nationality in which case they are controls by the national law of adopting parents. If the child is from Luxembourg nationality, the conditions to be adopted are controls by articles 343 and following of the civil code. The adoptee cannot be adopted that if he reaches the three months of age. (article 350 of the civil code). In the event of a plenary adoption, the child to be adopted must be less than 16 years old. (article 367 of the civil code).

6. Hearing of the child:

Within the framework of an international adoption, it belongs to the original country to determine if it is necessary to hear the child. Within the framework of a national adoption, no hearing of the child is envisaged by the texts of law. In principle, no hearing of the child is carried out. However the hearing of the child could be considered if the child is older.

7. Assent with the adoption:

a) In cases of international adoption:
This point is regulated by the Child’s original country law.

b) In case of national adoption:

   **The adoptee:** If the adoptee is older than 15 years, he must grant his adoption personally. (article 356 of the civil code)

   **Legal parents:** When the filiation of a minor is established regarding his father and his mother, both those must grant the adoption. If one of both died or is unable of expressing his will, or if he lost his parental authority rights, the assent of the other is enough. (article 351 of the civil code). When the filiation of a minor is established only in the connection of one of its authors, this one only gives the assent to the adoption. (article 351 of the civil code)

   **Biological parents:** When the minor’s father and mother died, if they have no possibility to express their will, or if they lost their parental authority rights, the assent is given by the family counsel, after opinion of the person who in fact takes care of the child. (article 351.2 of the civil code)
Other members of the family: When the filiation of the child is not established, the assent is given by the public administrator, after opinion of the person who in fact takes care of the child. (article 351.2 of the civil code). The people entitled pursuant to articles 351, 351.1 and 351.2 to grant the adoption can, by declaration to be made in front of the guardianship judge of their residence or in front of a notary, to renounce his right in favour of a social assistance service or a work adoption created by the law or recognized by large-ducal decree. (article 351.3). A married person cannot be adopted without the assent of his spouse, unless this one does not have possibility to express his will or that there are not judicial separation. (article 355 of the civil code). If adopting is married and non separate of body, his spouse’s assent is necessary, unless than this spouse does not have possibility to express his will. (article 348 of the civil code).

8. The mother’s assent

Within the framework of a national adoption, no delay is given to the mother to emit her assent. In theory, the assent intervenes at the time of the childbirth. Within the framework of an international adoption, this point is regulated by the Child’s original country law.

9. Assent in white

Within the framework of a national adoption, the parents give in theory their assent to the adoption without knowing the future adoptive parents. It is indeed very uncommon that the parents know the future adoptive parents before giving their assent to the adoption.

Within the framework of an international adoption, this point is regulated by the Child’s original country law.

10. Refusal of assent:

When the adoption can take place only with the assent of the two legitimate or natural parents and one of them wrongly refuses to give it, the other one who authorizes can require to the court to ignore this refusal and to pronounce the adoption. (article 354 of the civil code).

When the adoption can take place only with the family assent or with the invested third person having the right to grant the adoption, and that this family or this person wrongly refuses to give it, the person who proposes to adopt can ask the court to ignore this refusal and to pronounce the adoption. (article 354 of the civil code).
2.18. MALTA

A. INTRODUCTION

The adoption process has been up until the 30th April 2008 regulated by the Civil Code, Chapter 16 of the Laws of Malta and the Regulations issued there under, as well as the Overseas Adoption (Definition) Order, which was introduced under Maltese law, following Malta’s ratification of the Hague Convention on the Protection of Children and the Co-Operation in Respect of Inter Country Adoption.

The 1st of May 2008 brought about an overhaul in the past legal regime through the coming in force of a new Act, The Adoption Administration Act, Act No 1V of 2008. This Act brought significant amendments to the Civil Code provisions on adoption and significantly amended the procedures for adoption which were to a large extent not codified, by introducing new bodies as part of the adoption process.

In view of this significant legal reform, the analysis will give a background of what have been the national adoption process under the previous legal regime as well as the process which was adopted as a practice, and will detail the new adoption process under the legal regime which is currently being implemented. The relevant legislation for the purposes of this legal analysis is the following: the Civil Code, Adoption Regulations, Adoption (Definition) Order and the Code of Organisation and Civil Procedure.

1. Question: Briefly describe the national adoption process

a) The Stages of the national adoption process adopted under the previous legal regime.

Prior to the coming into force of the Adoption Administration Act on the 1st May 2008 the procedure for national adoption and inter-country adoptions under Maltese law had to a large extent not been established by law. For the most part the adoption procedure adopted was a procedure which developed through practice. Despite it not being enshrined in the law, this procedure became in time a formal procedure which was followed rigorously by the ad hoc bodies and authorities forming part of this Adoption Process.

Until recently, therefore, the adoption procedure followed from the application stage to the matching stage, was not established at law, and the only stage of the procedure which was provided for at law, was the final stage, the judicial stage. Moreover, one of the only bodies which participated in the adoption process which was specifically set up at law was the Civil Court (Voluntary Jurisdiction Section) which was empowered to issue adoption decrees. The
other bodies which were involved in these mentioned stages of the adoption process were largely ad hoc bodies.\textsuperscript{473}

Therefore, although the procedures from the application stage until the judicial stage, which developed through practice, were to a large extent followed by prospective adoptive parents, in effect there were still no legal impediments to impede the prospective parents from bypassing those ad hoc procedures.

The stages adopted for national adoptions under the previous legal regime, were as follows:

b) Application Stage

Persons interested in adopting a child, whether through a national adoption or an international adoption were firstly required to initiate the process by contacting the Department of Social Welfare Standards and then filing in an application form requesting to be declared eligible and suitable for a national / inter-country adoption.\textsuperscript{474} This application was to be submitted to the Department of Social Welfare Standards.\textsuperscript{475}

c) Training/Assessment

Once a prospective adopter filled in the Application form, and was considered to meet the legal criteria for adoption, the prospective adopter/s were placed on a waiting list, in order to attend preparatory classes consisting of six to seven (6 to 7) group sessions organized and conducted by two social workers from the Adoption Unit, Department of Social Welfare Standards. The aim of these group sessions was to help the prospective adopter/s:

- Learn about themselves, their motives for adopting and needs;
- Benefit from information and exploration of ideas about adoption;
- To explore their ideas and feelings about adoption;
- To examine their motivation and readiness to parent other people’s children.\textsuperscript{476}

Following the conclusion of these group sessions, the prospective adopter/s then had to signify their interest in pursuing the adoption, keeping it on hold, or stopping the process altogether.

Applicants interested in continuing with the Adoption, had to then be further assessed with regard to their eligibility and suitability to adopt. A number of aspects needed to be taken into consideration for the applicant to adopt: psychological, medical, financial, social etc.

For this reason the applicant was required to undergo an assessment which took place by a social worker, from the adoption unit, who assessed the suitability of the applicants to adopt by visiting them at home to discuss the motivation and reason for wanting to adopt, personality, stability of marriage (if married), lifestyle and hobbies, home environment, health conditions, prospects for the child, gender and age of the child and possibility of adopting siblings or children with a disability.

Furthermore, applicants had to undergo medical and physiological tests, as part of process. Moreover the applicants were required to provide the relevant documentation for the

\textsuperscript{473} It is important to note however, that the Department of Family Welfare, (now known as the Department of Social Welfare Standards) which was the main body involved in adoption proceedings prior to the judicial stage, became recognized as the central authority empowered with the functions as provided for under the Hague Convention in accordance with Legal Notice 398 of 2004.

\textsuperscript{474} http://www.msp.gov.mt/documents/family/adoption_enquiry.pdf

\textsuperscript{475} The Department for Social Welfare Standards is the designated National Central Authority, according to the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.

\textsuperscript{476} Refer to http://www.msp.gov.mt
adoption take place e.g. a certificate of conduct of the applicant/s from Police; results of blood tests for HIV and Hepatitis B of the applicant/s; a consent form allowing the Social Worker to request medical information from the applicants’ General Practitioner; a statement showing the income of the applicants; a psychological assessment of the applicant/s from a qualified psychologist 477.

Following the assessment, and the provision of the said documentation and the undergoing of the afore-mentioned tests a Home Study Report 478 was drawn up, in accordance with international standards by the warranted social worker.

d) Approval

The Home Study Report was presented to the Adoption Panel, which was appointed by the Ministry for the Family and Social Solidarity. This Panel examined the Home Study Report and made its recommendations to the Director of Social Welfare Standards. Upon a positive recommendation by the Panel the Director of Social Welfare Standards, took the final decision as to whether the applicant/s is/were suitable to adopt.

e) Matching

Once the applicant/s had/ been declared suitable to adopt, the matching process commenced. In national adoptions the Department of Social Welfare Standards assisted in the matching of the child with his/her prospective adoptive parents. In foreign adoption, this was done by the adoption agency responsible for placing children for adoption or any other competent authority in the sending country. In this regard the Department assisted the prospective adoptive parents in the matching process by putting them in contact with agencies etc.

f) Waiting Stage

Once a child was matched, the child was placed in the custody of the prospective parents for a minimum of three months. This was an obligation which arose at law. Article 116(1. of the Civil Code stated that an adoption shall not be made unless the person to be adopted has been continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of the adoption decree 479. If the child was placed with the adopters at birth, the child must have been in their possession for three months and six weeks before a decree was issued. The exception to this requirement was when the applicant or one of the applicants was a parent of the person to be adopted 480.

g) Judicial Stage

The stage at which judicial decisions intervene in the process of adoption was expressly regulated under the Civil Code. In terms of Article 114(1. of the Civil Code an adoption may only take place with the authority of the competent court granted by decree (hereinafter referred to as ‘an adoption decree’) made on the application of a person of either sex.

Therefore, once an adoptable child was matched with the prospective parents 481, an application by the prospective adopter/s was made before the Civil Court (Voluntary Jurisdiction Section) (hereinafter referred to as the

477 Refer to http//www.msp.gov.mt
478 It is important to note that although it was established procedure for the Home Study Report to be drawn up, there was no legal requirement for such Home Study Report.
479 This is still a requirement under the new legal regime.
480 This is still a requirement under the new legal regime.
481 It is important to note that Article 116(1. of the Civil Code required that “an adoption shall not be made unless the person to be adopted has been continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of the adoption decree.” To this effect the application for the issuing of the decree could be made once the child was placed in the custody of the prospective parents, provided that the decree authorising the adoption was not issued before the three months has elapsed.
‘Court’), providing it with the relevant documentation for the adoption decree to be issued by the Court.

In accordance with Article 120 of the Civil Code once an application was made for an adoption decree to be issued by the Court, the Court appointed a person to act as a special curator of the person to be adopted with the duty of safeguarding the interests of the person to be adopted before the Court. In practice the curator would assess the particular case in question by obtaining a copy of the Home Study Report and examining same and then visiting the prospective adopters at their home. Following this the curator would draw up a report of his findings and conclusions on whether the adoption is in the interest of the child and submit same to court.

The role of the Court in the proceedings before it was ultimately to assess the suitability and eligibility of the adoptive parents and to assess whether the adoption was in the best interests of the child. In doing so the Court was obliged to hear, in the case of a person conceived and born out of wedlock, the natural father provided such father acknowledged the person to be adopted as his child or if the Court was satisfied that he had contributed towards the maintenance or had shown a genuine and continuing interest in him. Under Article 115 (4. (b) the Court was also obliged to hear the tutor, in the case of the person to be adopted being under tutorship or to hear the person who has the care and custody of the person to be adopted, in the case that the person to be adopted lived with a person who was not his parent but had his care and custody.

Furthermore, the Court when issuing an adoption decree was obliged to ensure that the necessary consent was obtained from the persons required at law to give such consent. To this effect Article 119(1. of the Civil Code stipulated that:

“The court, before making an adoption shall be satisfied —

(a) every person whose consent is necessary for the making of the adoption decree and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption decree for which application is made; and in particular in the case of any parent that he understands that the effect of the adoption decree will be permanently to deprive him or her of his or her rights in respect of the person to be adopted;

(b) that the decree if made will be for the welfare of the person to be adopted;

(c) that the applicant has not received or agreed to receive, and that no person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the court may sanction.”

Furthermore in terms of Article 119(2. which further explained the notion of “the welfare of the person to be adopted” the Court, in determining whether the adoption decree would be for the welfare of such person, was obliged to have regard (among other things) to the health

482 Regulation 2(e) of the Adoptions Regulations provide that: for the purposes of Article 120, the person who may be appointed by the Court as special curator of a minor shall be a person who has attained the age of thirty five years and is, by reason of his experience or office, a fit and proper person to act as such a curator.
483 The Civil Code specifically regulates which persons are eligible to adopt. The eligibility of otherwise of a person to adopt law is dependent on various factors including: the age difference between the person to adopt and the person to be adopted, the sex of the person to adopt and the person to be adopted, the marital status of the persons to adopt, and the length of time they’ve been married etc.
484 It is important to note that although the Court was under no legal obligation to consider the Home Study Report provided by the Social Worker, it was the practice that the Court generally referred to this Home whether not the parents were suitable to adopt.
485 See Article 115(4) (a) of Chapter 16 of the Laws of Malta
486 In terms of Article 117(1. the Court may dispense with any consent required at law (under Article 115(3) or hearing (Article 115(4)) in the instance there under provided.
487 To this effect, the natural parents are clearly informed of the effects, including legal effects, of adoption particularly that the adoption will give rise to a severance of the ties between them and the person to be adopted.
of the applicant and was obliged to give due consideration to the wishes of the person to be adopted (having regard to his age and understanding, as well as the religious persuasions of such person and his parents).

Once the Court was satisfied that the applicants were eligible and suitable to adopt in view of the requirements at law, it issued the adoption decree. It is important to note that in issuing the adoption decree the Court had the competence in terms of Article 119 (3) of the Civil Code to impose in the decree such terms and conditions it deemed fit and could require the adopter to make such provision for the child to be adopted, as was deemed “just and expedient”.

2. Description of the Stages of the national adoption process adopted under the new legal regime

a) Application stage

Persons interested in adopting a child are now firstly required to initiate the process by applying with an accredited agency, as established under the Adoption Administration Act (hereinafter referred to as the “Act”). The accredited agency is in terms of Article 21(b) of the Act the new body competent to “to receive and process applications from persons to adopt a child”.

b) Assessment Stage

In terms of Article 21 of the Act, the accredited agency has the role of training the prospective parents and assessing their suitability or otherwise to adopt.

In this regard, it is important to note that although the new framework is still in the process of being implemented, APPOGG, is the accredited agency under the new legal framework which is undertaking the “service-provision” aspect of adoption, previously undertaken by the Department for Social Welfare Standards. This agency has already commenced with its first training programme for prospective parents. The objective of this programme is to guide prospective parents, offering them the required support, explaining better the whole adoption procedure, going over the difficulties that adoptive parents might encounter during the upbringing of an adopted child, supporting these applicants and offering them the necessary guidance.

There is now a legal obligation for a Home Study Report to be drawn up. Such a report is drawn up by a social worker from the accredited agency. It is important to note that the new Act expressly provides the manner in which the Home Study Report must take place. Article 22(2) states that:

“In order to draw up the Home Study Report and the Post Adoption Reports, the social worker authorised by the accredited agency shall carry out the necessary home visits. These visits may be unannounced and the prospective adoptive parents shall not refuse entry, shall co-operate with the social worker and shall provide correct information to the best of their knowledge.”

c) Approval Stage

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488 In accordance with Regulation 2(d) of the Adoption Regulations, for the purposes of Article 119(2) of the Civil Code, the certificate of a registered medical practitioner was required in all cases except where the applicant or one of the applicants is the mother or the father of the person to be adopted or where the Court deems proper to exempt the applicant from such a requirement.

489 “Accredited agency” is defined under Article 2 of the Adoption and Administration Act as “an organisation which is accredited by the central authority, in accordance with the Hague Convention, to carry out local and, or intercountry adoption”

490 This is the state of affairs as of 30th April 2008

491 Refer to www.appogg.gov.mt
In accordance with Article 22 (3) once the Home Study Report is concluded it shall be forwarded to the Adoption Board which shall examine the Home Study Report, determine the eligibility and suitability of the prospective adoptive parent and shall issue the final recommendation to the Court. In issuing its recommendation to Court, the Board is to ensure that the Adoption is in the best interests of the Child.

The Adoption Board shall then in accordance with Article 5(1) send a copy of its decision, containing its recommendations, by registered mail to the prospective adoptive parent and to the accredited agency. The prospective adoptive parent shall have the right to appeal before the Adoption Appeals Board in accordance with Article 6 of the Act.

Article 6 of the Act provides that a prospective adoptive parent may appeal from a decision delivered by the Adoption Board, by filing an application in front of the Board of Appeal by not later than twenty days from the date of service of the decision by registered mail. Further to this, the recommendations made by the Adoption Board are not be forwarded to the Court prior to the decision of the Board of Appeal or prior to the lapse of the twenty days if no appeal has been filed in front of the Board of Appeal.

d) Matching Stage

With regards to national adoptions it is the accredited agency which has the role of matching prospective parents with a person to be adopted and this in accordance with Article 24 of the Act. In doing so the accredited agency is under an obligation to “make all reasonable efforts to match prospective adoptive parents with children who need an adoption placement.” Furthermore the accredited agency is to ensure that the matching will be “in the best interests of the child to be adopted and that all social workers who are assigned to carry out duties of matching with regard to the adoption proceedings are adequately trained to carry out this function.”

e) Placement Stage

Once a child is matched, the child is placed under the care and possession of the prospective parents for a minimum of three months. This practice is adopted since in terms of Article 116(1) of the Civil Code the Court may not issue an adoption decree in respect of a person to be adopted unless such person has been continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of the adoption decree. During this period the prospective parents may file an application with court asking for a court decree to authorize the adoption.

The amended Article 116 (2) of the Civil Code establishes that during the three month period the accredited agency responsible for the adoption placement is empowered to take any measures it deems expedient to ensure that the placement with the applicant or applicants is in the best interests of the child. Furthermore, if the placement is not deemed to be in the best interests of the child, the accredited agency is to ask the Adoption Board to seek authorisation from the Court for the removal of the child from the placement.

An important introduction with regard to this three month care and possession period is that under Article 116 (3) which states that, where an application for adoption is pending in any court, any parent of the person to be adopted who has signified his consent to the making of an adoption decree in pursuance of the application and any tutor shall not be entitled, except with the leave of the Court, to remove the person to be adopted from the care and possession of the applicant without the consent of the applicant.

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492 In terms of Article 22(3) of the Adoption Administration Act, this report has a validity period of two years, following which a new Home Study Report shall be required.
493 See Article 24 of the Adoption Administration Act
494 It is important to note that the application for an adoption decree before the Civil Code of Voluntary Jurisdiction can be made during this period.
495 The decree however will not be issued before the lapse of the three month period.
possession of the applicant; and in considering whether to grant or refuse such leave the court shall have regard to the welfare of the person to be adopted.

f) Judicial Stage

In both national and international adoptions decisions by the Maltese Courts intervene at the final stages of the adoption process. Once the matching has taken place and the person to be adopted is in the care and possession of the adoptive parents, then the prospective parents apply before the Civil Court (Voluntary Jurisdiction Section) asking the Court to give its authorization (by means of a decree) for the adoption.

One of the first powers which the Court exercises once the application for an adoption decree is made, is the appointment of a person to act as a special curator, on its own motion or upon a request to this effect, and this in terms of Article 120 of the Civil Code. Furthermore in accordance with the new amendments to Article 120, on the application of an interested person, the court may appoint a child’s advocate and, or a social worker to ensure that the child is adequately represented and his best interests safeguarded.496 This is an important amendment as under the previous regime the child did not have the right to be represented in the court proceedings.

Another important power exercised by the Court is, prior to the adoption decree being issued, the power to grant the applicants, upon their request, temporary “care and custody” of the person to be adopted. The Court’s main role is to assess the eligibility and suitability of the applicants. In doing so the Court is guided by the provisions at the law which provide various restrictions as to which persons are eligible to adopt.497 It also plays an important role in assessing whether the adoption is in the best interests of the child. In doing so the Court must:

Hear the persons which the Court is obliged at law to hear prior to consenting to the adoption

In terms of the new amendments to Article 115(4. the Court is obliged to hear:

(a) any person who has been entrusted with the care and custody of the child to be adopted;

(b) in the case of a person conceived and born out of wedlock, hear the natural father if he has acknowledged the person to be adopted as his child and if the court is satisfied that he has contributed towards his maintenance and has shown a genuine and continuing interest in him;498

(c) where the person to be adopted is under tutorship or is living with a person who is not his parent but who has his care and custody in fact, hear the tutor or the person who has such care and custody in fact, as the case may be;

(d) hear the child’s advocate and, or social worker appointed by the court to protect the best interests of the child and to secure his representation.499

The Court however is empowered to dispense with any such hearing should the person who is required to be heard not be found, or if such person is incapable of expressing his

496 An exception to this general rule is provided for under Article 114 (5) of the Civil Code which states that in the case of a person who has attained the age of eighteen years and who is to be adopted in accordance with Article 115(2)(a) no social worker and or child’s advocate shall be appointed.

497 See Article 115 of the Civil Code sub-articles (1., (2) and (3)

498 It is important to note that the amended Article 115(4) (a) of the Civil Code now requires cumulatively that the natural father has contributed towards the maintenance of the child to be adopted and has shown a genuine and continuing interest in him. Under the unamended Article 115(4) (a) the requirements where alternative not cumulative.

499 Under the previous legal regime there was no such requirement at law for such persons to be heard.
views. The Court is also empowered to dispense with such consent if in view of special and exceptional reasons and taking into account the interests of all those concerned, it is proper for it to dispense with any such hearing or consent.

Ensure that the required consent at law is given or dispensed with

The Court also plays an important role in ensuring that the consent of the persons required at law for the adoption to go through, if not dispensed with, is given. It is moreover bound to ensure that the person who has given his consent understands the nature and effect of the adoption decree for which application is made; and in particular in the case of any parent that he understands that the effect of the adoption decree will be permanently to deprive him or her of his or her rights in respect of the person to be adopted. An important introduction under the new regime is that the consent of the child to be adopted is required, provided he has attained the age of eleven. Such child whose consent is required, moreover has the right to be represented in the court proceedings through a child advocate.

The Court is specifically empowered to dispense with consent in accordance with Article 117 (a) if it is satisfied that:

“(i) the person who is required to give his consent is incapable of giving such consent; or

(ii) the parent cannot be found or has abandoned, neglected or persistently ill-treated, or has persistently either neglected or refused to contribute to the maintenance of the person to be adopted or had demanded or attempted to obtain any payment or other reward for or in consideration of the grant of the consent required in connection with the adoption; or

(iii) either of the parents are unreasonably withholding their consent; or

(iv) either of the parents may be deprived of parental authority over the child to be adopted in accordance with article 154(1 or

(v) the child to be adopted is not in the care and custody of either of the parents and the Adoption Board declares that there is no reasonable hope that the child may be reunited with his mother and, or father; or

(vi) the parent or parents have unjustifiably, not had contact with the child to be adopted for at least eighteen months; or

(vii) it is in the best interests of the child to be adopted for such consent to be dispensed with;”

Consent may also be dispensed with in the instances contemplated under Article 117(1. (c), Article 117(2. and Article 117(3. of the Civil Code.

To give due consideration to the recommendations of the Adoption Board.

In accordance with the newly amended Article 119(1.(d) the Court is obliged, before making the adoption decree to give due consideration to the recommendations of the Adoption Board. Furthermore, in terms of the amended Article 114(1. of the Civil Code an adoption may only take place with the authority of the competent Court granted by a decree following
a recommendation made by the Adoption Board,\(^\text{505}\) made on the application of a person of either sex.

Therefore whereas under the previous regime, the Court was not legally bound to follow the recommendation of the Adoption Panel and the finding of Director of Social Welfare Standards in relation to the suitability and eligibility of the applicants to adopt, under the new legal regime the Court is now legally bound to consider the final recommendation made by the Adoption Board, with regards to the eligibility and suitability of the prospective adoptive parents to adopt.

Power to authorize open adoptions

Under Article 119 (4, in the case of a child who has attained eleven years of age and if it is in his best interest, the Court may, in making the adoption decree, authorize an agreement of open adoption which has been approved by the Adoption Board, whereby the parents and, or the natural family shall maintain contact with the child. Provided that the Court shall ensure that an agreement of open adoption was entered into after the child and the parties had given their consent thereto. Provided further that any amendments to the agreement of open adoption shall not have any effect before they are authorized by the Court.

Duty of Court to ensure that adoption decree is in the welfare of the person to be adopted.

In accordance with Article 119 (b) of the Civil Code the Court is to ensure before making the adoption decree, that the decree, will be for the welfare of the person to be adopted. Furthermore in terms of Article 119(2, which further explained the notion of “the welfare of the person to be adopted” the Court, in determining whether the adoption decree would be for the welfare of such person, was obliged to have regard (among other things) to the health of the applicant and was obliged to give due consideration to the wishes of the person to be adopted (having regard to his age and understanding, as well as the religious persuasions of such person and his parents).

Once the above-mentioned process and consideration take place, the court then issues, the adoption decree.

3. Indicate at which steps judicial decisions intervene and what is (are) there object(s) (aptitude to adopt, confirmation of the preparation to adopt, creation of adoptive relationship)

Under both the new legal regime as well as the previous legal regime, in both national and international adoptions, judicial decisions (decisions by the Courts of Malta) came into play at the final stages of the adoption process. To this effect Maltese Courts play no role in the initial stages of the process (ie. preparation stage to the matching stage).

The role of the Maltese Courts under the old regime with regards to national adoptions, and the instances it intervenes, is explained under Question 1(a) (i) “the judicial stage”.

The role of the Maltese Courts under the new amendments with regards to national adoptions, and the instance it intervenes, is explained under Question 1(a) (ii) “the judicial stage”.

4. The recourses.

Under the new legal regime the following recourses are available:

a) Recourse from the decisions of the Adoption Board

\(^{505}\) An exception to this general rule is provided for under Article 114(5) of the Civil Code which states that in the case of a person who has attained the age of eighteen years and who is to be adopted in accordance with Article 115(2)(a) no recommendation shall be required from the Adoption Board.
In accordance with Article 4(1) of the Act, the Adoption Board determines the eligibility and suitability of the prospective adoptive parent and shall issue the final recommendations to the Court to this effect. In doing so, the Adoption Board, in accordance with Article 5(1), sends a copy of its decision, containing its recommendations, by registered mail to the prospective adoptive parent and to the accredited agency.\footnote{306}

The prospective adoptive parent shall have the right to appeal before the Adoption Appeals Board in accordance with Article 6 of the Act. Article 6 of the Act provides that a prospective adoptive parent may appeal from a decision delivered by the Adoption Board, by filing an application in front of the Board of Appeal by not later than twenty days from the date of service of the decision by registered mail. Further to this, the recommendations made by the Adoption Board shall not be forwarded to the Court prior to the decision of the Board of Appeal or prior to the lapse of the twenty days if no appeal has been filed in front of the Board of Appeal.

The Board of Appeal is competent in accordance with Article 17(1a) to review decisions of the Adoption Board, upon the appeal filed in accordance with Article 6 of the Act. In doing so, the Board is endowed with the powers as are by the Code of Organization and Civil procedure vested in the Civil Court First Hall,\footnote{307} and in the exercise of its functions, the Adoption Board may summon any person to give evidence and produce the necessary documentation.\footnote{308} The Board of Appeal shall decide the appeal application within four months from the date of filing of the application,\footnote{309} and the decision of the Adoption Board shall have immediate effect, unless the Board of Appeal decides to suspend it until it has given the final judgement.\footnote{310} The decision of the Board of Appeal together with the reason thereof are to be sent by registered mail to the applicants, the Adoption Board and the central authority, within three working days from the date of judgement.\footnote{311}

An appeal on a point of law is available from decisions of the Board of Appeal, in accordance with Article 17(8) of the Act. Such an appeal is available to the aggrieved applicants for up to twenty days from the date of the decision of the Board of Appeal. Such appeal shall be made by application to the Court of Appeal (Inferior Jurisdiction) in accordance with Article 41(6) of the Code of Organization and Civil Procedure.\footnote{312}

b) Recourse from decisions of the Civil Court (Voluntary Jurisdiction Section)

In terms of Article 35 of the Code of Organisation and Civil Procedure, there is no appeal from any decree of the Civil Court (Voluntary Jurisdiction Section). For this reason, any party who considers himself aggrieved by the decree of the Court in relation to adoption, is not entitled to file an appeal before the Courts of Appeal. It is lawful however, for any party, who deems himself aggrieved, to bring an action before the Civil Court, First Hall, for the necessary order. It is important to note that the Civil Court First Hall is not an appellate court but a court which has the general competence to determine contentious matters.

5. Question: Briefly Describe the International Adoption Process

a) The different stages

- The stages of the international adoption process adopted under the previous regime.

\footnote{306}{In the case of inter country adoptions, the recommendations of the Adoption Board are submitted to the Central Authority for its written approval prior to proceeding with the inter country adoption.}
\footnote{307}{Article 17(3) of the Adoption Administration Act}
\footnote{308}{Article 17(4) of the Adoption Administration Act}
\footnote{309}{Article 17(5) of the Adoption Administration Act further provides that The Chairperson may determine that a longer period is necessary for a valid reason, which reason must be stated and registered in the proceedings of the case.}
\footnote{310}{Article 17(6) of the Adoption Administration Act}
\footnote{311}{Article 17(7) of the Adoption Administration Act}
\footnote{312}{Chapter 12 of the Laws of Malta}
Article 113 (2. (d) held that “An overseas adoption means an adoption of such class or description and effected under the law of such country outside Malta as the Minister responsible for Justice may be order specify”. Thus whilst Maltese law on adoption made no specific reference to inter country or international adoptions and their regulation or otherwise, the law spoke of overseas adoption.

The procedures described above prior to the recent amendments, from application stage to placement stage apply in the same manner to “international adoptions”, with some minor divergences. One of these divergences is that the matching was not carried out by the Department of Social Welfare Standards, as was the case with national adoptions. In foreign adoption, this was done by the adoption agency responsible for placing children for adoption or any other competent authority in the sending country.

Moreover, it is important to note that once the child was matched with the prospective parents, these would travel to the sending country to meet the child and finalise the adoption process in accordance with the law of the sending country. Upon their return to Malta, the parents would then inform the Department of Social Welfare Standards of their intention to commence legal proceedings in Malta to adopt the child, and in fact start legal proceedings in Malta. The decree authorizing the adoption could not be issued before the lapse of three months from such communication of the prospective parents with the department.

Following the ratification of the Hague Convention, in cases where the person to be adopted came from one of the countries that ratified the Hague Convention the procedure in Court became different in that the Court in these cases was requested to recognize by operation of the law the adoption certified by the competent authority of the sending country as done in accordance with the Hague Convention and therefore valid and effective as though done in Malta for all intents and purposes. According to The Hague Convention the recognition of the adoption could only be refused if contrary to Malta’s public policy, however taking into account the best interests of the child.

-The stages of the international adoption process adopted under the new regime.

Under the new regime all references to overseas adoptions have been deleted and instead today our law speaks of an “inter country adoption”. An “inter country adoption” is defined as an adoption effected in accordance with the provisions of the Civil Code relating to adoption, the provisions of this Act and the new law of a foreign country:

in accordance with the Hague Convention or any other International Treaty to which Malta is a party; or

in Malta, in respect of a child not habitually resident in Malta, or in favour of any person not habitually resident in Malta\(^{514}\).

Again under the new adoption the procedures described from application stage to placement stage for national adoptions are also equally applicable to intercountry adoptions.

Article 5(3. of the Adoption Administration Act states that “In the case of intercountry adoptions, the recommendations of the Adoption Board shall be submitted to the central authority for its written approval prior to proceeding with the intercountry adoption. After the intercountry adoption has been authorized by the foreign competent authority, a prospective adoptive parent shall file an application to the court requesting recognition for all intents and purposes of the law. In reaching its decision the court shall take into consideration any recommendations of the Adoption Board”.

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\(^{514}\) Article 2 of the Adoption Administration Act. The Civil Code under Article 113 (g) in turn refers to the same Article 2 of the Adoption Administration Act for a definition of intercountry adoption.
- Indicate at which steps judicial decisions intervene and what is (are) there object(s) (aptitude to adopt, confirmation of the preparation to adopt, creation of adoptive relationship).

Under the both the new legal regime as well as the old legal regime, in both national and international adoptions, judicial decisions (decisions by the Courts of Malta) comes into plays at the final stages of the adoption process. To this effect Maltese Courts play no role in the initial stages of the process (i.e. preparation stage to the matching stage).

The role of the Maltese Courts under old regime with regards to international adoptions, and the instances it intervenes, is explained under Question 2. The role of the Maltese Courts under the new amendments with regards to international adoptions, and the instance it intervenes, is explained under Question 2.

- What are the possible recourses and at which steps to they occur.

The types of recourse referred to in Question 1 Section 1 (c) which refer to national adoptions are equally applicable to international adoptions.

6. Question: The various organs that partake in the adoption process.

a) The previous legal regime

Department for Social Welfare Standards and the Adoption Unit

- Nature of the body

The Department for Social Welfare Standards is a department within the Ministry of Family and Social Solidarity set up by the relevant Minister. The general function of this body is to act as a regulatory body in the Social Welfare sector. Under the previous legal regime the Department also had the following functions in relation to adoption:

Through one of Department’s sections, the Adoption Unit, it provided support, advice giving and assistance to prospective adoptive parents who applied for local or inter-country adoptions. These services included counseling, information, group meetings for training/preparation purposes, as well as assessments of suitability, as well as post-adoption follow up reports.

Under the previous legal regime and under the new legal regime the Department was and still is the designated National Central Authority for inter-country adoption, according to The Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.  

- At which stage is the Body involved

Under the previous legal regime the Department through the Adoption Unit was involved throughout the Adoption Process, both as a regulator and as a service-provider. To this effect, the role it carried changed in accordance with the stage the process of adoption was at.

The Department was involved in the following stages of adoption:

At the application stage of the adoption process the Department (Adoption Unit) served as guidance to the adopting parents, by meeting with prospective parents, informing them on the process involved, giving them counseling services etc. It also conducted the preparation group sessions, and an initial informal assessment of the prospective parents.

515 The Hague Convention was ratified by Malta on the 13th October 2004
At the Assessment/Approval Stage, since the Home Study Report and an assessment were carried out by a Social Worker from the Adoption Unit, which fell under the Department of Social Welfare Standards. The Home Study Report was then presented to the Adoption Panel, appointed by the Ministry for the Family and Social Solidarity, which examined the Home Study Report and makes its recommendations to the Director of Social Welfare Standards. The Director then took the final decision as to whether the applicant/s was suitable to adopt.

At the Matching Stage the Department through the Adoption Unit, in national adoptions did the matching of the child with his/her prospective adoptive parents. In foreign adoption, this was done by the adoption agency responsible for placing children for adoption or any other competent authority in the sending country. In this regard Department assisted the parents in the matching process by putting them in contact with agencies etc.

In foreign adoptions the Department also assisted when necessary by forwarding the relevant documentation to the relevant national authorities of the countries concerned. In this regard Department as the Maltese Central Authority for adoption contacted the Central Authority in the State where the applicants wished to adopt (if that State is party to the Hague Convention) and their application, together with the Home Study Report and all relevant documents, were be sent by the Maltese Central Authority to the foreign Central Authority.

The Department as the Maltese Central Authority for adoption also assisted in foreign adoptions after the matching took place by granting the necessary recommendation to the Maltese Authorities for the issuing of the Visa for the child to enter Malta.

At the Court Decree Stage the Department (Adoption Unit) was only involved, if necessary, when the Home Study Report drawn up by the Social Worker was required by the Court of Voluntary Jurisdiction.

Post-Adoption Stage - Post-adoption assessments were carried out by a social worker from the Adoption Unit. The post adoption report was then sent to the child’s country of origin according to the requirements of the Hague Convention on the Protection of Children and Co-operation in respect of Intercountry Adoption to monitor the best interest of the child.

- **What is its mission?**

The Department of Social Welfare Standards had various functions and objectives with regards to adoption as described in Section 3.1.1 (a). The functions of the Department as a Central Authority were those as described in the Hague Convention.

- **Composition of the Organ**

The Department consisted of the Director of Social Welfare Standards, heading the department, a legal office and an administration office. The Adoption Unit was the Unit within the Department which was in charge of the adoption services and regulatory functions as described above.

a) **Social Intervenants**

The persons involved in the adoption services and regulatory functions are largely warranted social workers. These persons have the required degree/diploma to be so warranted and also regularly attended training courses on the matter.

b) **The Adoption Panel**

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516 Refer to <www.msp.gov.mt>
The adoption panel under the old regime was not regulated by law but was set up as an ad
hoc body by the Minister for the Family and Social Solidarity.

- At which stage is the Body involved

The Adoption Panel was involved in the assessment stage.

c) What is its mission

The role of the Panel was to examine the Home Study Report and make its
recommendations to the Director of Social Welfare Standards. Upon a positive
recommendation from the Panel the Director of Social Welfare Standards took the final
decision as to whether the applicant/s was/were suitable to adopt.

d) Composition of the Organ

The panel was made up of 6 members including the Chairperson who was a professional
social worker. The other members include a medical doctor, an adopter, a priest, a nun and
a secretary.

e) Social Intervenants

The panel was made up of 6 members including the Chairperson who was a professional
social worker.

7. Civil Court (Voluntary Jurisdiction Section)

a) Nature of the body

Adoption falls under the jurisdiction of the Civil Court (Voluntary Jurisdiction Section)
previously known under our system as the Second Hall Civil Court. The Civil Court
(Voluntary Jurisdiction) is one of three sections of the Civil Courts namely the First Hall
Civil Court (a general jurisdiction section), the Family Court (has competence over personal
separations, maintenance orders, child abduction cases) and the Civil Court (Voluntary
Jurisdiction Section). As its general function this Court has the competence to take
cognizance of applications with regards to the tutorship of minors, adoption, the interdiction
and incapacitation of persons, the opening of succession etc.

b) At what stage is the body involved.

Under the old legal regime the role of the Court came into play towards the end of the
adoption process. When the applicants would have gone through the application stage up to
the matching stage and once the child is in their care and possession. They would then
apply to the Court for the issue an of adoption decree in favour of the applicants in relation to
the child they would have been matched with.

c) What is its mission?

As the competent court with regards to adoptions, the objective of the Civil Court (Voluntary
Jurisdiction Section) is to issue adoption decrees.

d) Composition of the organ

The Civil Court (Voluntary Jurisdiction Section) is presided over by one Judge.

517 See Article 33 of the Code of Organisation and Civil Procedure which provides that “The exercise of voluntary jurisdiction in
matters of a civil nature shall be assigned to the Civil Court.”
e) Social Intervenants

The Judge presiding over Civil Court (Voluntary Jurisdiction Section) presently has vast experience in the areas which fall under its competence and in matters falling under the jurisdiction of the Family Court. In order to qualify for the appointment of a Judge, a person must have practiced for not less than twelve years as an advocate in Malta or served as a Magistrate in Malta as required by our Constitution.518

B) ORGANS SERVICES PARTICPATING IN THE ADOPTION PROCESS : the new legal regime

1. Department for Social Welfare Standards

a) Nature of the body

The Department for Social Welfare Standards is a government department within the Ministry of Social Policy set up by the relevant Minister. The general function of this body is to act as a regulatory body in the Social Welfare sector.

Under the new legal regime the Department in relation to its role on Adoption, has retained the function of a regulator of adoptions in Malta,519 and is the National Central Authority authorized to perform its functions under the Hague Convention for inter-country adoptions, as well as any other functions that the Minister may authorize.520

b) At which stage is the Body involved

The central authority has a regulatory role with regards to the national adoption process. It is not directly involved at any stage of the process and is involved largely in the accreditation of accredited agencies etc.

With regards to inter-country adoptions, the central authority is specifically involved at the assessment stage/ approval stage. In terms of Article 5(3. of the Act, in the case of inter-country adoptions, once the Adoption Board takes a decision determining eligibility and suitability or otherwise of adoptive parents, the recommendations of the Adoption Board are submitted to the central authority for its written approval prior to proceeding with the inter-country adoption. Therefore the proceedings for inter-country adoption may therefore only be processed once the authority has approved. The central authority is also involved at the matching stage, since it is specifically empowered to monitor all the proceedings for the inter-country adoption.521

The central authority is also involved when required in terms of the Hague Convention as the National Central Authority for inter-country adoption.

c) What is its mission?

The Adoption Administration Act generically provides that the functions/objectives of the Department as a central authority for inter-country adoptions are those as described in the Hague Convention, as well as those described under Title III of the Book First of the Civil Code, and those described under the provisions of the Act.522

The Act then specifically describes some of the main functions of the central authority. The central authority has the function of receiving all applications for accreditation from

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518 Article 96(2) Chapter VIII of the Constitution of Malta.
519 See Article 7(2) of the Adoption Administration Act whereby the central authority is authorized to delegate to an accredited agency any of its functions, duties and responsibilities which are not regulatory.
520 Article 7(1. Adoption Administration Act.
521 Article 8, Adoption Administration Act
522 See article 7(1. of the Adoption Administration Act
organizations that apply to carry out local and, or intercountry adoptions. The central authority has the power to refuse / grant revokes accreditation in accordance with the provision under the Act and under the Hague Convention.\(^{523}\)

The central authority is also empowered to keep a register known as “the Reunion and Information Register” with the contact details of persons over the age of eighteen years who have been party to adoption proceedings or who are relatives by consanguinity up to the third degree inclusively, of a person who was a party to adoption proceedings, who request to be included in this registry.\(^{524}\)

d) Composition of the Organ

The Department presently consists of the Director of Social Welfare Standards, heading the Department, a legal office and an administration office.

e) Social Intervenants

Up to the present day, the previous person who worked in the Department under the previous legal regime work there. Therefore the Department is equipped with warranted social workers.

2. Accredited Agency

a) Nature of the body

An accredited agency is an organization defined under Article 2 of the Adoption Administration Act which is accredited by the Central Authority, in accordance with the Hague Convention, to carry out local and, or intercountry adoption. It is important to note that in terms of Article 11 of the Act, the central authority may accredit an organization to give adoption services if it is satisfied that such organisation has the sufficient expertise and experience in dealing with children and family matters, has an adequate number of staff who are trained to carry out local and or, intercountry adoption, has the administration and legal competency to carry out the functions according to the adoption procedures and complies with the accreditation criteria specified in the Hague Convention.

At present APPOGG is the accredited agency under the new regime authorized to carry out the adoption process from the application stage to the matching phase. This agency is an organisation which forms part of the Foundation for Social Welfare Services\(^{525}\) which was set up in 1994 by the Ministry for Social Policy, so as to work for the improvement of the Social Welfare Sector as well as community development.

b) At which stage is the Body involved

The present accredited agency APPOGG is involved from the application phase right up to and including the matching stage. Therefore it receives applications from persons wanting to adopt a child, provides training to prospective parents, has qualified social workers to draw up the Home Study Report and assesses the suitability of prospective adoptive parents,\(^{526}\) and in local adoptions it matches the prospective parents with the child ensuring that the matching is in the best interests of the child.\(^{527}\)

The accredited Agency is also responsible for drawing up the post adoption reports.

c) Composition of the Organ

\(^{523}\) See Article 9 of the Adoption Administration Act  
\(^{524}\) See Article 7(3) of the Adoption Administration Act  
\(^{525}\) See <http://www.appogg.gov.mt/aboutappogg_overview.asp>  
\(^{526}\) See Article 22(1. of the Adoption Administration Act  
\(^{527}\) See article 24 of the Adoption Administration Act
The present accredited agency APPOGG which carries out various functions other than adoption services is led by an Operations Director, three Managers and a group of Service Area Leaders - one for each service. APPOGG is in fact composed of three main pillars of services - the Children Services, the Adult and Family Services and the Community and Generic Services, which are continuously supported by the Administration Team.

d) What is its mission?

The accredited agency’s functions are set out under Article 22(1. of the Act. Its functions are to:

Provide a service according to the standards, criteria and procedure established by the central authority;

Receive and process applications from persons who would like to adopt a child;

Provide training to prospective parents;

Have qualified social workers to draw up the Home Study Report;

Assess the suitability of prospective adoptive parents;

Match the prospective parents with the child;

Ensure the placement is in the best interests of the child

Draw up post-adoption reports;

Report to the central authority at the end of each calendar year on the performance of its functions;

Comply with any duties or functions specified by the Central Authority.

The primary mission statement of the present accredited agency APPOGG in all the services that it gives, including services regarding children and families is to: To provide, develop and promote social welfare services, in a coherent and integrated manner, reflecting the real and emerging needs of the service users, in order to enable them to enhance their potential.

e) Social Intervenants

The Act requires that in order for an organisation to be authorized as an accredited agency it must have sufficient expertise dealing with children and family matters. Moreover, the staff must be trained and the organisation must be competent to carry out functions pertaining to the adoption procedure.528

Further to these requirements, APPOGG, the accredited agency, has qualified social workers which have experience dealing with children and with family matters who are now in charge of the adoption process.

3. Adoption Board

a) Nature of the body

528 See Article 11 of the Adoption Administration Act
The “Adoption Board” is a government appointed body which is mainly empowered to examine the Home Study Reports drawn up by the Social Worker of the accredited agency, to determine the eligibility and suitability or otherwise of prospective adoptive parents and to make its recommendations in this regard to Court or to the Central authority, as the case may be.

b) At which stage is the Body involved

The Adoption Board’s main involvement is in the assessment/approval stage.

c) What is its mission?

One of the main functions of the Board is to assess the suitability and eligibility of the prospective parents to adopt. In accordance with Article 22 (3) of the Act, once the Home Study Report is concluded it is forwarded to the Adoption Board which examines the Home Study Report, determines the eligibility and suitability of the prospective adoptive parent. In the case of national adoptions it issues the final recommendation to the Court. In the case of inter-country adoptions, it issues its recommendation to the Central Authority. In issuing its recommendation, the Board is to ensure that the Adoption is in the best interests of the Child.

The Adoption Board is also empowered to make recommendations to accredited agencies and to the Minister on training programmes and counselling sessions to prospective parents.

d) Composition of the Organ

In terms of Article 3 of the Act, the Adoption Board is composed of a Chairperson and a minimum of another four members which persons are appointed for a minimum period of two years. This Board is to be composed of the following:

- professionals representing different disciplines and
- a person who, in the opinion of the Minister, has adequate knowledge and is proficient in the area of adoption.

Furthermore the Minister is obliged to endeavor to have a person over the age of eighteen years who is adopted and a person who is or was an adoptive parent as part of the Adoption Board and such persons may be appointed at any time during the term of office of the Adoption Board.

A person is qualified to be appointed or continue to hold office as a member of the Adoption Board if that person is a Judge, a Magistrate, a member of the House or of a Local Council, or a candidate for election to the House or a Local Council. Furthermore any member of the Adoption Board may be removed from office by the Minister on grounds of inability to perform the functions of their office or of misbehaviour.

e) Social Intervenants

There is not such requirement for the persons composing the Adoption Board. It is important to note however that the Board is empowered to consult persons having relevant knowledge and experience in the field of adoption.

4. Board of Appeal

529 In terms of Article 22(3) of the Adoption Administration Act, this report has a validity period of two years, following which a new Home Study Report shall be required.
530 See Article 4(e) of the Adoption Administration Act
531 At the time of writing the Adoption board was not et composed.
a) Nature of the body

The “Adoption Appeals Board” is a review body which is government appointed, and is vested with the same powers of the First Hall Civil Court. It is mainly empowered to review decisions of the Adoption Board following an appeal filed in accordance with Article 6 of the Act, and to review decisions of the central authority filed in accordance with Article 13 and 14 of the Act.

b) At which stage is the Body involved

When an appeal is filed under Article 6 of the Act, the Adoption Appeal Board intervenes right after the assessment/approval stage.

c) What is its mission?

Its function is to review decisions of the Adoption Board following an appeal filed in accordance with Article 6 of the Act, and to review decisions of the Central Authority filed in accordance with Article 13 and 14 of the Act.

d) Composition of the Organ

The Board of Appeal consists of a Chairperson and two other members. One of these must be a person who has held a warrant to practice the profession of advocate for at least seven years. The members of the Board of Appeal shall be appointed by the Minister for a period of three years, and may be removed from office by the Minister on grounds of proved inability to perform the functions of their office or of proved misbehavior. A person shall not be qualified to be appointed or continue to hold office as a member of the Board of Appeal if that person is a Judge, a Magistrate, a member of the House or of a Local Council, or a candidate for election to the House or a Local Council.

e) Social Intervenants

There is not such requirement for the persons composing the Appeals Board.

5. Civil Court (Voluntary Jurisdiction Section)

a) Nature of the body.

Adoption falls under the jurisdiction of the Civil Court (Voluntary Jurisdiction Section) previously known under our system as the Second Hall Civil Court. The Civil Court (Voluntary Jurisdiction) is one of three sections of the Civil Courts, namely the First Hall Civil Court (a general jurisdiction section), the Family Court (has competence over personal separations, maintenance orders, child abduction cases) and the Civil Court (Voluntary Jurisdiction Section). As its general function this Court has the competence to take cognizance of applications with regards to the tutorship of minors, adoption, the interdiction and incapacitation of persons, the opening of succession etc.

b) At what stage is the body involved

Under the new legal regime the role of the Court comes into play towards the end of the adoption process. When the applicants would have gone through the application stage up to the matching stage and once the child is in their care and possession they would then apply to the Court for the issue of the adoption decree. Once the adoption decree is given by the Court then the adoption is legally authorized.

c) What is its mission?
As the competent court with regards to adoptions, the objective of the Civil Court (Voluntary Jurisdiction Section) is to issue adoptions decrees. The Court in doing so is to ensure that the adoption is in the best interests of the child.

d) Composition of the organ

The Civil Court (Voluntary Jurisdiction Section) is presided over by one Judge.532

e) Social Intervenants

The Judge presiding over Civil Court (Voluntary Jurisdiction Section) presently has vast experience in the areas which fall under its competence and in matters falling under the jurisdiction of the Family Court. In order to qualify for the appointment of a Judge, a person must have practiced for not less than twelve years as an advocate in Malta or served as a Magistrate in Malta as required by our Constitution.533

Question 4: The existent post-adoption follow-ups.

Under the previous legal regime there was no legal obligation for post adoption follow ups to take place. However, as a matter of practice the Department of Social Welfare standards carried out a post-adoption report within one year from the adoption.

Under the present legal regime, it is an obligation under Article 23 of the Adoption Administration Act that all adoptions are subject to “Post Adoption Reports”. In accordance with Article 22(h) it is the accredited agency which has the obligation and role of drawing up Post Adoption Reports on the situation of the parents and the child. In order the draw up these reports the social worker authorized by the accredited agency carries out home visits. These visits are unannounced and the adoptive parents are obliged not to refuse entry. Furthermore the adoptive parents are to co-operate with the social worker and provide correct information to the best of their knowledge534

In local adoptions the Post Adoption Reports are drawn up for a period of two years form the date of adoption,535 whereas in intercountry adoptions, the Post Adoption Reports are drawn up for a period in accordance with the requirements of the country of origin and are forwarded to the relevant country of origin according to the requirements.

Question 5: The different treatment in international adoptions.

Firstly under both the new and previous regime, no distinction is made at law between a European adoption and an international adoption. In fact there are no specific provisions on European Adoptions. Our law at present only distinguishes between national and intercountry adoptions.

Secondly, it is important to note that our law does not (and neither did it under the previous regime) define what constitutes a “national adoption”, for this reason it is unclear and it is open to interpretation whether a national adoption is limited to Maltese citizens or whether it also includes European citizens resident in Malta. For this reason it is not clear as to whether a European citizen resident in Malta will be considered eligible for a national adoption.

Question 6: The conditions to adopt? Distinguish as required between national and international adoptions.

532 See article 32(1) of the Code of Organisation and Civil Procedure
533 Article 96(2) Chapter VIII of the Constitution of Malta.
534 See Article 22(2) of the Adoption Administration Act
535 See Article 23(2) of the Adoption Administration Act
There is no distinction under our law, as far as conditions to adopt are concerned between national and international adoptions. This applies both under the previous regime and under the new regime.

6. Conditions to adopt: The previous regime

Under the previous regime, the requirements stipulated by law for a prospective adopter or adopters were mainly the following:

a) Age:

In terms of what was Article 115 an adoption decree could not be made unless the applicant or, in the case of a joint application, one of the applicants:

- had attained the age of thirty years but had not attained the age of sixty years and was at least twenty-one years older than the person to be adopted; or
- was the mother or father of the person to be adopted and has attained majority.

Apart from this, a sole applicant who was the mother or father could adopt their natural child who attained the age of eighteen years of age.

b) Married years

Under Article 114 (2. an adoption decree could be made on the application of two spouses, who had been married for a period of not less than five years and were living together, authorizing them jointly to adopt a person and could not be made on the application of one only of such persons. A proviso to this article provided for an exception to the five year requirement in the case where the person to be adopted was the natural offspring of one of the applicants.

c) Consent

Prior to the recent amendments in virtue of section 115 (3. of the Civil Code an adoption decree could not be made –

in any case, other than the case of a person conceived and born out of wedlock, except with the consent of every person who was a parent of the person to be adopted and is alive;

in the case of a person conceived and born out of wedlock, except with the consent of the mother if she is alive;

on the application of one of two spouses under the provisions of sub-article (2. of article 114, except with the consent of the other spouse;

when the person to be adopted had attained the age of fourteen years, except with his consent.

7. Conditions to adopt: The New regime

The recent Adoption Administration Act brought with it various changes in this regard:

a) Age

The age requirement of the applicant or applicants has been revised so that under Article 115, the applicant or one of them is now required to have attained twenty eight years of age and be twenty one years older than the person to be adopted though not more than forty five years older that the same subject of adoption. A proviso has also been included so that in the case of an applicant or applicants requesting to adopt siblings, the restriction of age
above mentioned is deemed to be satisfied if there is the required age difference at least with regards to one of the children, of course if this is in the interest of all the siblings involved.

By virtue of Article 115 (1. (b) an adoption may be issued if an applicant or in the case of a joint application, if one of the applicants, is the mother or father of the person to be adopted and has attained majority.

The case of a sole applicant who is the mother or father being able to adopt their natural child who attained the age of eighteen years of age has been retained under article 115 (2. (a) (ii).

b) Married years

Under Article 114 (2. a couple is no longer required to be married for a period of five years in order to apply for an adoption decree but the term has now been reduced to three years. Moreover in the case of the natural parent, an adoption decree may be issued even if the couple has been married for less than three years and the court shall not be bound to request or to review the recommendation of the Adoption Board.

c) Consent

In the light of the new amendments in the case of a legitimate subject of adoption, the consent of both parents is required unless they have died even if the mother or the father has not attained eighteen years of age.

In the case of an subject of adoption who is illegitimate, only the consent of the mother is required even if she has not yet attained the age of 18 years.

Similar to the position obtaining prior to the recent amendments, under the present legislation if the adopter is married, the consent of his or her spouse is required.

The age when the child’s consent is required has been reduced so that where the person to be adopted has attained the age of eleven, then his consent is required for the adoption to take place after having been assisted by a children’s advocate.

Under the previous regime, according to article 115 (2. an adoption decree could not be made-in respect of a female in favour of a sole applicant who was male, unless the court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption decree; or

in favour of a person who was in holy orders or bound by solemn religious vows; or in favour of a tutor in respect of the person who was under his tutorship, except after having rendered an account of his administration or given adequate guarantee of the rendering of such account.

when the person adopted had attained the age of fourteen years, except with his consent.

By inference there were another two situations where an adoption could take place given that the conditions required above were met:

in the event that the Court was satisfied that there were special circumstances which justified the making of an adoption decree in respect of a female in favour of a sole male applicant;

in the event that a tutor rendered account of his administration, an adoption decree could be issued in favour of a tutor in respect of the person under his tutorship.
The new Article 115 (2.) has retained some of the above situations and catered for new ones so that an adoption decree shall not be made:

in respect of a person who has attained the age of eighteen years except:

- in favour of a sole applicant who is the mother or the father of the person to be adopted.
- in favour of the parent and the spouse, if the person to be adopted has lived with such parents and spouse for at least five consecutive years and consents to the adoption.
- in favour of a foster carer who has fostered the person to be adopted for at the previous five consecutive years to the adoption.
- in favour of a person who is in holy order or is bound by solemn religious vows; or
- in favour of a tutor in respect of the person who is or was under his tutorship, except after having rendered an account of his administration or given adequate guarantee of the rendering of such account.

Question 7: The different conditions to be adopted between national and international adoptions.

1. Conditions to be adopted: Old regime

a) According to Article 115(2.) of the Civil Code an adoption decree could not be made in respect of a person who has attained the age of eighteen years except in favour of a sole applicant who is the mother or father of the person to be adopted.

b) In terms of Article 115 (3.) of the Civil Code an adoption decree could not be made when the person to be adopted had attained the age of fourteen years except with his consent.

c) In the light of Article 116 (i) of the Civil Code, the person to be adopted was required to have been continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of the adoption decree as one of the conditions for the issue of the adoption decree. This means that if a child was placed with the adopters at birth then the adoption decree could not be issued before three months and 6 weeks. The exception to this was in the case of when the applicant or one of the applicants is the natural parent of the person to be adopted.

2. Conditions to be adopted: New regime

As has already been mentioned above Article 115 (2.) has been amended and two different situations apart are being envisaged:

An adoption decree shall not be made in respect of a person who has attained the age of eighteen years except:

- in favour of a sole applicant who is the mother or the father of the person to be adopted; or
- in favour of the parent and the spouse, if the person to be adopted has lived with such parent and spouse for at least five consecutive years and consents to the adoption; or
In favour of a foster carer who has fostered the person to be adopted for at least the previous five consecutive years, if the person to be adopted consents to the adoption.

With the introduction of (ii) and (iii), a person who has attained eighteen years of age may be adopted if the subject of adoption consents. The situation envisaged in (i) above was similarly provided for under the previous regime.

(i) Article 115 (3) has been amended so that in terms of Article 115 (3)(d) an adoption decree shall also not be made when the person to be adopted has attained the age of eleven years, except with the child’s consent and after having been assisted by a children’s advocate. The age requirement therefore when the child’s consent is necessary has been reduced from 14 years to eleven years and the child now has a right to be represented by a children’s advocate.

(ii) While the provision of Article 116 (i) above is still a requirement, the new law has introduced a proviso so that prior to the making of the adoption decree the applicant or applicants may request the court to grant temporary care and custody of the child to be adopted.

A new sub article 9(2) has also been introduced which holds that during the three month period specified in sub-article 1, the accredited agency responsible for the adoption placement shall take any measures it deems expedient to ensure that the placement with the applicant or applicants is in the best interests of the child and if the applicant is not deemed to be in the best interests of the child, the accredited agency shall ask the Adoption Board to seek authorization from the court for the removal of the child from the placement.

Question 8: The process hearing the child.

Both under the previous regime and under the new regime the law does not expressly state that the child to be adopted must be heard. The law does however provide that over a certain age the child’s consent must be given for the adoption to take place, the law does not stipulate however, the manner in which such consent is to be given, that is, whether the child needs to be heard before the court and give its consent.

It is important to note under the previous regime in the case of a child who had attained the age of fourteen years, his or her consent was required. Under the new regime and as has already been explained above the child’s consent is required if the child has attained eleven years of age. In this case the child has a right to be assisted by a children’s advocate.

1. What are the effective practices?

Both under the previous regime and under the new regime the law does not regulate the manner in which the child’s consent is to be given and it is not clear whether the Judge is obliged to hear the child for the child to give its consent.

The situation obtaining prior to the recent amendments was that in practice the Judge exercised his discretion in choosing to hear the children or otherwise. In exercising his discretion the Judge gave regard to various factors such as the age of the child and his psychological well being before choosing to hear the child. Under the new regime the Court is still not expressly required to hear the child, therefore it still needs to be seen as to how the Judge will exercise its discretion in this regard. It is important to note however that the child’s social worker or child’s advocate appointed by the Court is heard to protect the best interests of the child and to secure his representation. In practice the Judge is likely to enjoy

536 It is important to note however that under the new regime the child’s is to be represented by a lawyer or a social worker.
discretion whether to hear the child to obtain his / her consent or whether other evidence shall be deemed sufficient proof of the child's consent.

Question 9: Who gives consent to the adoption

a) Subject of adoption

As above explained under the previous regime the subject of adoption’s consent was required at age fourteen; whereas under the new regime the child's consent is required at age eleven.

b) Legal parents (holders of parental authority)

Both under the previous and the present regime our law does not make express provision for this.

c) Biological parents

Under the old regime and under the new regime the consent of the biological parents is required in the manner above explained.

d) Other members of the family

Both under the previous and the present regime our law does not make express provision for this.

Question 10: The moment after child’s birth authorizing the mother to give her consent to adoption.

Under the old regime and the new regime Article 118 (2) requires that the document signifying the consent of the mother of the person to be adopted is executed when the subject of adoption is at least six weeks old and is attested by the appropriate authority according to whether it is a local or inter county adoption.

Question 11: The consent to the adoption.

Under the old and new regime Article 118 of the Civil Code states that a document signifying consent shall not be evidence under this section unless the person in whose favour the decree is to be issued is named in the document.

However it is interesting to note that under both regimes Article 117 which lists the situations where the court has the power to dispense with consent, subsection (3) holds that the consent of any person in accordance with article 115 sub-article (3) para (a) [the requirement of consent by both parents - even if the parent has not attained the age of eighteen years under the new law - in the case of a child born in wedlock] may be given without knowing the identity of the applicant for the decree.

Question 12: Possibility to ignore the refusal of consent required.

The position obtaining prior to the recent amendments was regulated by virtue of Article 117 whereby the court had the power to dispense with the requisite of consent if it was satisfied:

that the person who was required to give his consent was incapable of giving such consent; or

in the case of a parent, that he could not be found or had abandoned, neglected or persistently ill-treated, or had persistently either neglected or refused to contribute to the maintenance of the person to be adopted or had demanded or attempted to obtain any
payment or other reward for or in consideration of the grant of the consent required in connection with the adoption; or

that in view of special and exceptional reasons and taking into account the interests of all persons concerned, it was proper for it to dispense with any such (hearing) and consent.

The court could also dispense with the consent of the spouse of an applicant for an adoption decree if it was satisfied that the person whose consent is to be dispensed with could not be found or was incapable of giving the consent, or that the spouses had separated and were living apart and that the separation was likely to be permanent.

Notwithstanding the above the need was felt to increase the situations where the court, if it deemed to be in the interests of the child, can dispense with the requisite of consent. The position remains regulated under Article 117 so that today the court may dispense with any consent (or with any hearing) required if it is satisfied –

in the case of a dispensation with any such consent, that:

- the person who is required to give his consent is incapable of giving such consent; or
- the parent cannot be found or has abandoned, neglected or persistently ill-treated, or has persistently either neglected or refused to contribute towards the maintenance of the person to be adopted or has demanded or attempted to obtain any payment or other reward for or in consideration of the grant of the consent required in connection with the adoption; or
- either of the parents are unreasonably withholding their consent; or
- either of the parents may be deprived of parental authority over the child to be adopted; or
- the child to be adopted is not in the care and custody of either of the parents and the adoption board declares that there is no reasonable hope that the child may be reunited with his mother and, or father; or
- the parent or parents have unjustifiably, not had contact with the child to be adopted for at least eighteen months; or
- it is in the best interests of the child to be adopted for such consent to be dispensed with.

And a new sub-article (4. has also been introduced so that the court may dispense with any such consent (or hearing) required for an adoption following a request by a children’s advocate on behalf of a child who has attained eleven years of age and who would like to be adopted.
2.19. NETHERLANDS

1. National adoption

a) Introduction

Since November 1st, 1956 it has been possible in the Netherlands to adopt a Dutch child. Adoption has been introduced into Dutch law as a measure for child protection. This measure for of child protection was to protect the interests of the child. At that time it happened from time to time that parents were not able to take care of their children and wanted to give their child up for adoption.

The adoption law was introduced in the interest of the persons being adopted. Children, the subject of adoption, were able to use this law to create security in the context of the family where the child was placed as foster child.537

b) Short description of the national adoption process

The adoption of a child, is regulated by the Dutch Civil Code, book 1 title 12.538 The adoption law has been changed significantly and the new adoption legislation has been brought into force on April 1, 2000 by law of December 21, 2000539 and only concerns adoption of Dutch children. The most important change from the previous legislation is that this new adoption law enabled persons of the same sex and a single person (one parent adoption) to adopt – the need to be married has been eliminated - and the requirements of adoption have been added to by the condition that the child cannot expect anything anymore from his birth parents.

In practice the possibilities of adopting a child that was born in The Netherlands are limited, because there are few Dutch children who are put up for adoption after their birth, as a result of which a lot of childless couples turn to foreign countries for adoption.

Stepparent adoption, a form of one parent adoption, happens from time to time in The Netherlands.

c) The different stages

- Waiver540

In case a mother (possibly together with her partner) wishes to give up her child for adoption, she can go to “Stichting Ambulante FIOM”541 or “VBOK”542. These organisations help parents by finding a solution and taking decisions about their future and the future of their child. One can only give up a child for adoption after it has been born. The child will first be placed with

537 J.H. Nieuwenhuis, C.J.J.M. Stolker, Tekst & Commentaar Burgerlijk Wetboek, Boeken 1,2,3 en 4, Deventer Kluwer 2007, p 283
539 Staatsblad 2001, nr 10.
541 www.fiom.nl: Fiom is a national institution specialising in psychological help, information and advice concerning unintentional pregnancy, teenage pregnancy, loss of pregnancy, unintentional childlessness, giving a child up for adoption, adoption aftercare and (inter)national search for family. Fiom also tries to prevent problems or to reduce them, stimulates expertise and transmits expertise.
542 www.vbok.nl: VBOK is the association for the protection of the unborn child.
a crisis shelter family by the “Raad voor de Kinderbescherming”\textsuperscript{543}. In this way the parent(s) will (have) time to think over what the consequences are of giving up the child. Contact between the child and parent(s) is possible during this time, but is not mandatory. The “Raad voor de Kinderbescherming” will ask the juvenile court magistrate for a temporary custody order for the first three months, so the custody of the child will be given to an institution for custody, in most cases “Bureau Jeugdzorg”\textsuperscript{544}. During this period the parents can change their intention to give up the child. If this does not happen the “Raad voor de Kinderbescherming” will ask the parent(s) to sign a waiver.

- Selection\textsuperscript{545}

The “Raad voor de Kinderbescherming” will look for an adoption family using a list of prospective adoption parents. During the selection attention will be paid to the requirements that Dutch law makes for adoption\textsuperscript{546}, which will be described below. About three prospective adoption parents, who have said to the “Stichting Adoptievoorzieningen” and during the family investigation that they want to adopt a Dutch child, will, after the information is made anonymous, be introduced to the institution that has custody, in most cases “Bureau Jeugdzorg”, which will take the final decision of who will be selected. It is possible that the biological parents may be involved in this decision.

At first there is no separate procedure for registering as parents those who want to be adopting parents of Dutch children. The different stages that have to be followed are the same as the stages for adopting children from abroad\textsuperscript{547}. However there are separate provisions about the nature of adoption of a Dutch child.

- 1 respectively 3 years of caring and raising\textsuperscript{548}

Before an application for adoption can be made to the Dutch court, the future adopting parents will, in order to meet the legal requirement of having taken care of the child for one year, have to take care of the child as a foster child for one year. With single parent adoption the parent has to take care of the child for three years before the application for adoption can be made to with the court\textsuperscript{549}.

- Request for adoption

Adoption takes place by means of a judgment of the court at the request of two persons together or at the request of one person alone\textsuperscript{550}. The applicant(s) need(s) to present a petition for adoption. A judgement of the court has to follow.

The conditions for granting the application are\textsuperscript{551}:

- In case of adoption by two persons together: the applicants are required to have lived together for at least three consecutive years prior to the request and to have taken care of and raised the child for at least one year.

\textsuperscript{543} Translation: Child Protective Services or Infant Welfare Centre.
\textsuperscript{544} Bureau Jeugdzorg is an institution that provides access to all the possible youth welfare work in The Netherlands.
\textsuperscript{545} http://www.kinderbescherming.nl/fbi/flexpage/flexpage.asp?id=4215, May, 29th, 2008.
\textsuperscript{546} Articles 1:227 and 1:228 BW (Dutch Civil Code, book 1, articles 227 and 228)
\textsuperscript{547} Chapter 2 of this report will explain these stages.
\textsuperscript{549} Article 1:228 lid 1 sub f BW (Dutch Civil Code, book 1, article 228 paragraph 1 subsection f).
\textsuperscript{550} The applicable law for this procedure is “Wetboek van Burgerlijke Rechtsvordering” (Dutch Code of Civil Procedure), articles 798- 813 and articles in book 1 title 3.
\textsuperscript{551} Articles 1:227 and 1:228 BW (Dutch Civil Code, book 1, articles 227 and 228).
In case of adoption by a spouse, registered partner or other lifelong partner of the parent: the applicant and that parent are required to have lived together for at least three consecutive years together prior to the request and to have taken care of and raised the child for at least one year, save where the child is born from the partnership of the mother with a companion of the same sex.

The adoption needs to be in the best interest of the child.

It is reasonably foreseeable that the child cannot for the future expect anything anymore of his parent (or parents) in their capacity as parents.

The person being adopted is a minor at the time of the first application.

If the child is 12 years or older on the day of the application it must be heard and confirm that it has no objections.

The child is not a grandchild of the adoptive parent.

(one of) the applicants has to be at least 18 years older than the child that will be adopted.

None of the parents oppose the request.

The potential mother of the child who is under age has reached the age of at least 16 on the day of the application.

That child’s parent(s) no longer has (have) custody of the child.

d) Judgment and legal consequences

If the application is granted the child, the adopting parent(s) and his (their) blood relatives will assume a blood relationship and at the same time the blood relationship between the child and its original parents and blood relatives will end552.

e) The bodies to which people can turn during the adoption process

The particular bodies involved with the adoption procedure are:

- FIOM
- VBOK
- Raad voor de Kinderbescherming
- Bureau Jeugdzorg
- Stichting Adoptievoorzieningen
- Court having jurisdiction where the prospective adoption parents live

2. International adoption

552 article 1:229 BW (Dutch Civil Code, book 1, article 229).
The adoption of children from abroad (international adoption) is dealt with in the Dutch law “Wet opneming buitenlandse kinderen ter adoptie”, in short: “Wobka”.

a) The different stages

- The application for and obtaining of the necessary principle permission

International adoption is only allowed with principle permission. This permission needs to be applied for by the “Stichting Adoptievoorzieningen” and addressed to the minister of justice with particulars of personal details, details of how the family is made up and any preference for a certain country.

The Minister of Justice decides in accordance with the recommendation of the “Raad voor de Kinderbescherming”, which has examined the applicant(s) suitability. The investigation of the family will take place in the interests of the child and needs to provide an answer to the question whether the applicant(s) is (are) able to bring up the child educationally. Sometimes it concerns the adoption of children with so called “special needs”, because the children are coping with problems of being handicapped. The results of the investigation of the “Raad voor de Kinderbescherming” will be contained in a family report in which rapport the advice of the “Raad voor de Kinderbescherming” is set out.

The conditions and grounds for grant of principle permission are:

- in case of one parent adoption: the applicant is single, living together or married;
- in case of joint applications: the applicants are married and of a different sex;
- the applicant(s) is (are) eligible;
- (both) applicant(s) has (have) at the time of the request not yet reached the age of 42.

The principal permission is valid for three years but may upon application, after a further family investigation, be extended for three more years. The principal permission is only valid for the adoption of one foreign child.

b) The phase of mediation and “match”

A mediation organisation, possessing the required permit under “Wobka”, may try to find a suitable foreign child for the adoption family to be, alternatively the adoptive parents to be may find a child through their own contact, also possessing the required permit under “Wobka”, which will lay the foundation of the adoption (partial mediation). In case of good “matching” the mediation organisation and the authorities of the country of origin the child will be introduced to the adopting parents and after a period of reflection the adopting parents to be will decide if they will or will not adopt the child.

c) The phase in the Netherlands
After the decision has been made the adopting parents will travel to the country where the child resides to collect the child. For returning to the Netherlands with the adoption child the following conditions must be met:\(^{558}\):

- the child must not have reached the age of six yet;
- a medical statement concerning the child needs to be presented;
- particulars of the contacts which have led to the adoption until entry into the Netherlands needs to be presented;
- the adopting parents have to provide satisfactory documentary proof that the birth parents gave the child up for adoption;
- the adopting parents have to provide satisfactory proof that the authorities of the country of origin of the child being adopted agree to their adopting the child;
- at the moment the relationship is concluded between the adoptive parents and child the age difference between them may not be more than 40 years.

For children from countries which have joined the Hague Convention the following applies:

- the child needs to be registered within five days after arrival in The Netherlands in the department of population affairs of the municipality where the adoption parents reside;
- the foreign adoption judgement will automatically be recognised and the child will become a Dutch citizen automatically.

For children from countries who have not joined the Hague Convention the following applies:

- there has to be a permit for temporary stay because the child will enter The Netherlands as a foreigner and the child has to be registered with the chief of police within three days after arrival;
- at the same time a request for a residence permit needs to be filed with the mayor of the municipality where the adoption parents reside. The residence permit will at first be issued only for one year. After that year the stay in The Netherlands will be permitted for an indefinite period.

\(^{558}\) **article 8 Wobka.**
2.20. **Poland**

**1. Domestic Adoption**

The normative model of adoption applicable in Poland has been established by the provisions of the code. The model specified in the Family and Guardianship Code (KRO) is based on three basic principles:

- Non-commercial character
- respecting the principle of the best interests of the child
- Equal treatment of adopted and natural children.

There is no homogenous notion of adoption in the Polish legal system. Three types of adoption are provided for in the Code:

- **Full adoption (adoptio plena)** – Full adoption (adoptio plena) is marked on the margin of the original certificate of birth; if the adoption was jointly performed by the spouses, only the adopting parents are listed as the child’s parents in the abridged copies of the birth, marriage and death certificates. The adopted child receives the surname of the adopting parents and acquires all rights and obligations resulting from kinship (Art. 121.122 of the Family and Guardianship Code), in the area of inheritance Article 937 of the civil code is applied. If one of the spouses adopts the child of the other spouse, both spouses shall have joint custody (Art. 123 (2.).

- **Incomplete adoption (adoptio minus plena)** – Incomplete adoption (adoptio minus plena), whose scope is narrower than that of full adoption, and whose consequences are limited, can only be ruled at the clear request of the adopting parent and with the consent of the persons whose consent is required in such situations (Art. 118 and 124 of the Family and Guardianship Code); it is treated as exceptional.

- **Complete adoption (adoptio plenissima)** – Full and irrevocable adoption is always adjudged if the parents express consent for adoption before a guardianship court without naming the future adoptive parents (consent ‘in blanco’) The original birth certificate of the child is then annulled and a new birth certificate is issued, where only the adopting parents are entered (Art. 48 of the Family and Guardianship Code).

Despite the lack of homogeneity it is possible to indicate the prerequisites which are common for all types of adoption and which must be fulfilled for the adoption to be performed. The most crucial prerequisite is the best interest of the child – only a minor person can be adopted, and the adoption can be performed only in the best interest of the child. As there is no legal definition of the best interest of the child, it is necessary to rely on the case law and on the doctrinal definitions. It is not possible to adopt adult persons.

As regards the case-law, in one of its statements the Supreme Court has concluded as follows: *'The best interest of the child is crucial for determining whether the adoption can be conducted*. The good (best interest) of the child is of fundamental importance and has to be considered in every guardianship case, which also applies to adoption cases'.

As far as the doctrine is concerned, the definition formulated by Professor Stojanowska is relevant, She defines the best interest of the child as ‘the set of material and spiritual values
necessary to ensure the proper physical and mental development of the child and to prepare the child for future employment suited to its abilities with the said values being predetermined by many various factors, whose structure depends on the content of the applicable legal norm and the specific situation of a child existing at a given time, which implies the interrelation between the best interest of the child, as interpreted here, and the public interest.

The other prerequisites can be divided into those relating to the adopted child and those relating to the adopting parent, with the former being the minority, the fact of being alive and the consent of the minor. The prerequisites relating to the adopting parent include the declaration of will to adopt a child, the occurrence of the age difference, full capacity to enter legal transactions and personal qualifications. There are also other prerequisites, independent of the will of the parties, including among others the consent of the parents.

The adoption process in Poland is coordinated by the adoption and guardianship centres and legally executed by the family courts.

a) Stage 1 – adoption centre.

The first stage of the adoption procedure comprises a preliminary meeting in the adoption centre and the registration of the persons willing to adopt a child. The next step involves the submission of all required documents and the establishment of files for new applicants. Subsequently the psychologists and pedagogical counsellors talk to the prospective parents about the child, its needs, the motivation for adoption, the candidates' health condition, marital bonds, wealth status etc. This is followed by a community interview, which is conducted within the family and does not involve interrogation of neighbours. After the community interview the applicants participate in meetings, workshops and discussions on adoption issues. This stage of the procedure is concluded with the parents' acceptance by the Qualification Board.

b) Stage 2 – adoption centre.

After the spouses (or unmarried persons) have been prepared and qualified by the adoption centre, the child is 'presented' to the parents, based on the opinion of teachers, doctors, and the psychologists, which is followed by a discussion of the child’s family and legal status. As the child doesn't participate in this stage of the procedure, the parents can get to know him or her only by viewing the child’s file. If the parents accept the child, they are invited to visit him or her at the child’s place of residence. The parents meet the director of the institution, the psychologist, the child's tutor and the doctor. This meeting is aimed to introduce the child to its potential parents and to give the parents a possibility of knowing the child better.

c) Stage 3 – adoption centre

The first meeting of the child and the parents takes place at an orphanage, in the visitor’s space or in a group. The child may not accept its new parents straight away. Therefore before taking the child home the parents visit him or her in the orphanage, play and talk with the child etc. All these activities serve the creation of the initial bond between the parents and the child. Simultaneously, the child's legal guardian files with the court a request to give approval to the change of the child’s place of residence, indicating the prospective adopting parents’ address, whereas the adoption centre submits a relevant opinion on the applicants. After obtaining the approval of the court the child can be taken home.

d) Stage 4 – the court
Subsequently the motion for adoption and the entire documentation filed in at the adoption centre are to be submitted to a Family Court – Family and Minors Division, which starts a period of waiting for the case to be heard. In the meantime the court trustee and an employee of the adoption centre pay a home visit, in order to check how the parents are coping with looking after the child. Subsequently, the adoption case is heard by a family court, under the participation of the child’s legal guardian. After the approval for adoption is granted, it is necessary to wait 21 days for the ruling to take legal effect.

e) Stage 5 – The Register office

The last stage is a visit to a register office at the child’s place of birth, where the parents receive a new copy of the child’s birth certificate featuring their name and the annotation saying that they are the child’s new parents.

In accordance with Art. 117 of the Family and Guardianship Code ‘effect on adoption by virtue of the ruling of the guardianship court upon the request of the adopting parent’. The competent court for adoption cases is a district court, which is the court of local jurisdiction for either the adopted parent or the adopted child. The adopting parent can decide to choose one of these courts. No court fees are charged for submitting a motion for adoption.

The adoption causes the termination of personal and property rights resulting from kinship between the child and his family and the establishment of such rights and obligations in an adopting family (with some exceptions applying to incomplete adoption). As regards cases related to property rights, the above applies mainly to the obligation of maintenance and inheritance issues.

Upon the request of an adoptive parent the court may rule that the performed adoption shall have the effects of joint adoption, even though it is pronounced upon the motion of one person. This applies to a situation where the motion for adoption is filed by a spouse of the previous adoptive parent, but the marriage was terminated due to the death of the adopter (adoption of the child previously adopted by the deceased spouse by the widow/the widower).

The court may pronounce joint adoption after the death of one of the spouses - the applicants - if both spouses filed the motion for joint adoption with the court and one of the spouses died after the proceedings have been initiated, whereas the other spouse has supported the request for joint adoption. This is an exception from the rule stipulating that adoption cannot be conducted after the death of a person filing the motion for adoption (as the aim of adoption is the upbringing of the child). The court may consider – taking into account the best interest of the child – the possibility of such an adoption only after it has been established that the child remained under the care of both spouses – the applicants – or of the deceased applicant only – for a longer period prior to the initiation of the proceedings, which resulted in the creation of bond akin to this between the parents (the parent) and the child.

In this situation the legal effects of adoption are identical to those of adoption effected prior to the death of the spouse – the applicant. This entails the establishment of family bonds between the child and the relatives of the applicant who died before the court ruling, granting the child the right to be one of the distributees of the deceased, to receive a dependents’ pension etc.

If the court adjudges a full dissolvable adoption of the child by the current spouse of one of its parents in a situation where the other parent has died, the court may establish that the mutual rights and obligations resulting from kinship between the adopted child and the relatives of the deceased parent shall not be terminated. This means that the child remains a member of both of his parents’ (the living and the deceased one) families as well as a
member of the family of the stepfather or stepmother, who has performed the adoption. Thus, the valuable bonds between the family of the deceased parent (usually the grandparents) can be protected, resulting however in the arising of an untypical situation, increasing both the rights and the obligations towards a higher than typical number of relatives.

f) Revocation

A natural mother has the right to revoke her decision to renounce parental authority only until the adoption applicants have filed a motion for adoption. If the will to revoke the decision is declared later, it shall have no legal effect.

After the judgment is pronounced, the only available way of appeal will be to file an appeal pursuant to Art. 518 of the Code of the Civil Procedure, since, in accordance with the Polish law, adoption cases constitute non-litigious proceedings. Pursuant to Art. 510 of the Code of the Civil Procedure any person whose rights are affected by the outcome of the proceedings can participate therein.

2. FOREIGN ADOPTION

Is allowed by the Polish law, in contrast to establishing a foster family by foreigners. Polish citizenship is one of the preconditions for becoming a foster family. This issue is governed by the Regulation on Social Assistance.

The foreign adoption procedure is similar to that of domestic adoption. However, the fulfilment of additional prerequisites, introduced by the amendment of 1995 is required.

Article 114² (1. reads as follows: “adoption which brings about a change of the domicile of a child adopted in the territory of the Republic of Poland to a domicile within the territory of a different state can be ruled if it is the only way to ensure an appropriate substitute family environment for the adopted child”. However, Article 114² (2. provides for a following exception “The provision of article 1 shall not be applicable if there is a relation of kinship or affinity between the person being adopted and the adopting parent or if the adopting parent has already adopted a sister or a brother of the person adopted”. It has to be added here that the above does not apply to the citizenship of the adopted child, but to his or her staying or living abroad. Therefore the due preparation of foreign adoption is of particular importance.

Pursuant to the laws and regulations in force local adoption centres cannot directly arrange an adoption of foreign children. An international adoption is of the competence of the Ministry of Economy, Labour and Social Policy, Department of Social Assistance, 00-513 Warsaw, ul. Nowogrodzka 1/3/5, which acts as a Central Authority, being a coordinating and a decision making body. The Polish adoption centre authorised by the Minister to qualify children for foreign adoption is exclusively the Public Adoption-Guardianship Centre in Warsaw at ul. Nowogrodzka 75.

Exclusively the following centres are authorized for cooperation with organizations and adoption centres licensed by the governments of other countries in the scope of foreign adoption:

- Public Adoption-Guardianship Centre in Warsaw at ul. Nowogrodzka 75
- Catholic Adoption-Guardianship Centre in Warsaw at ul. Ratuszowa 5
- National Adoption-Guardianship Centre of the Society of Children's Friends (TPD) in Warsaw, ul. Krakowskie Przedmieście 6
a) Stage 1

The court deprives the child's parents of parental authority and designates a legal guardian to represent the interests of the child.

b) Stage 2

The court (or the orphanage) notifies the adoption centre of a possibility to adopt a child. The adoption centre looks for a substitute family for the child for one month. If such a family is found, domestic adoption follows, if not, the adoption centre transfers the information on the child to 16 adoption centres in the territory of Poland which run Voivodship Databases on Children. If one of these centres finds a family in Poland, adoption is effected, if the Polish adoption centres fail to find a family for the child within one month, the information on the child is transferred to a Central Database (run by the aforementioned adoption centres in Warsaw).

c) Stage 3

The child is qualified for foreign adoption by one of the designated adoption centres.

The Warsaw adoption centre running the Central Database looks for a foreign family, using the database of already qualified families.

d) Stage 4

The foreign family is directed to the adoption centre and to the orphanage being the child's domicile for a personal contact with the child. If the outcome of such visits is positive, the adoption of a child is effected before a Polish court (and subsequently before a court in the adopting family's country of origin).

The role of the court in the foreign adoption procedure is similar to its role in the domestic proceedings. The court may adjudge a foreign adoption only after it has established that the domestic adoption cannot be performed. Therefore the cooperation between the courts and the adoption-guardianship centres becomes an important issue. The Ministry of National Education has authorised (on 17 August 1993) the two biggest public adoption-guardianship centres to act as intermediaries for international adoption.

- The Public Adoption-Guardianship Centre in Warsaw,
- National Adoption-Guardianship Centre runs by the Main Board of the Society of Children's Friends.

The activities undertaken by these two centres include close cooperation in conducting the adoption procedure with the respective licensed centres in other countries. Only one centre, namely the Public Adoption Centre, is authorized to qualify children for foreign adoption. Such qualification can only take place if the attempt to find a Polish family for the child has failed for at least 6 months. The data of such children are transferred to the Central Database on Children currently run by the Public Adoption-Guardianship Centre in Warsaw. For the court to adjudge foreign adoption it is therefore necessary to submit a “databank statement” indicating that despite the undertaken efforts (during a period of 6 months) it was impossible to find a family in Poland for the child. Only in this case can the court adjudicate on foreign adoption. Adjudication of foreign adoption must be preceded by personal contact of both parties of the intended adoption in the territory of Poland.

Similarly as in the case of domestic adoption the court ruling is constitutive and effective \textit{erga omnes}. 
After the judgment is pronounced, the only available way of appeal is to file an appeal pursuant to Art. 518 of the Code of the Civil Procedure, since in accordance with the Polish law adoption cases constitute non-litigious proceedings. Pursuant to Art. 510 any person whose rights are affected by the outcome of the proceedings can participate therein.

3. BODIES PARTICIPATING IN THE ADOPTION PROCEDURE

a) Adoption – Guardianship Centres SOCIAL BODY

In accordance with the Social Assistance Act adoption-guardianship centres undertake diagnostic and consulting activities aimed to recruit, train and qualify the people willing to provide substitute family care. The centres are also supposed to provide psychological and counselling support for foster families, natural parents and children placed in foster families and educational care facilities (Art. 33 item 1 of the Act). Such centres can be divided into public – run by the poviat authorities - and non-public centres run, under the order of the poviat authorities, by other institutions (for instance by associations, foundations, churches).

In accordance with this regulation the adoption-guardianship centres can be established and run by associations and foundations registered and acting in the Republic of Poland if their bylaws stipulate providing assistance to children and families. The above-mentioned right is vested also in churches and other religious unions acting and registered in Poland and having regulated legal status if their bylaws stipulate providing assistance to children and families.

The legal persons of the aforementioned churches and religious unions can run these centres provided that the charity or care activities they have conducted so far guarantee their due fulfilment of the centres’ mission.

A public or non-public adoption-guardianship centre can be led by a graduate of master studies in pedagogy or psychology or by a graduate of other master studies who has completed a postgraduate course in psychology or pedagogy. The director of such a centre should also specialize in the organisation of social assistance and have at least 3 years work experience acquired in institutions whose scope of activities encompass child care or work with the families.

The employees of the said centres should be recruited from among graduates of master studies in psychology, pedagogy, sociology, law, political sciences (specialization: social work) or master studies in the field of medicine. Furthermore at least one year of training in working with children in institutions is required. The scope of activities in these institutions should include child care or work with family. However it does not apply to law and medicine graduates.

b) Guardianship Court/JUDICIAL AUTHORITY

The most significant body in the entire proceedings the motion for adoption is filed with the court and it is the court that establishes the relation of adoption by issuing a constitutive decision. The guardianship court also conducts supervision over the personal contact between the parties to the prospective adoption.

The activities of the guardianship court are usually conducted by a district court. A locally competent court is the court competent for the place of residence of the person being the subject of the proceedings or, if there is no such venue, the court competent for the place of stay of this person. In all other cases the competent court shall be the District Court for the City of Warsaw. A guardianship court determines the following cases:

- [Kuratela](http://pl.wikipedia.org/wiki/Kuratela) guardianship
- [Rodzice](http://pl.wikipedia.org/wiki/Rodzice) cases between parents and children
- [Opieka](http://pl.wikipedia.org/wiki/Opieka) custody
- [Przysposobienie](http://pl.wikipedia.org/wiki/Przysposobienie) adoption

This authority acts in the interest of the adopting parents and the child.

c) Court-appointed custodian / JUDICIAL AUTHORITY

This is an authority whose help may be requested by the court. The custodian is entitled to visit a domicile of the adoption applicants. If his help is requested by the court, the custodian participates in the obligatory pre-adoption process in the foreign adoption procedure.

The custodian is an auxiliary body to the guardianship court.

d) Children’s Homes / SOCIAL BODY

The regulation of the Minister of Labour and Social Policy of 01.09.2000 on educational care facilities (Journal of Laws, No 80, item 90) regulates the types, rules of activities and organisation of such facilities, the qualifications of their employees, the conditions of employing volunteer workers, the rules governing qualifying of children and referring them to such facilities, the applicable standards of upbringing and care as well as other child care and upbringing services performed by these institutions.

The specific tasks and organisation of the facilities as well as the nature and scope of the exercised care are defined in the internal regulations. The regulations are drawn up by the director of the facility in consultation with a poviat family aid centre (Powiatowe Centrum Pomocy Rodzinie, PCPR). The children staying in the facilities should be familiar with the regulations.

The work with the fostered children is organised according to individual work schedules developed by a tutor and modified in consultation with the psychologist, counsellor, and a social worker.

Due to the varied scope of duties the staffs is divided into the following categories:

- Counselling employees (the director – appointed by the body running the institution; in charge for managing the institution, and the director’s deputy).
- Tutors – responsible for organizing group activities and also for working individually for a child.
The tutors guide the process of the child’s upbringing, are directly responsible for the execution of tasks included in an individual work schedule and remain in permanent contact with the children's families. A tutor should have a university degree, preferably in pedagogy, psychology, political sciences or social sciences with a specialization in resocialization.

The persons employed in these facilities as social workers are responsible for working with the child’s family, conducting family background interviews, maintaining communication with family support institutions, initiating activities necessary to stabilize the child’s family situation and enabling the child’s return to its family.

The persons employed in these facilities as psychologists or counsellors are responsible for preparing an individual opinion on the child, conducting therapeutic activities and offering psychological and pedagogical counselling for the parents of children staying in the facilities. One psychologist has around 50 up to three-year-old children under his care or, alternatively, 100 children in facilities intended for older children. The psychologists should be recruited from among graduates of master studies.

The institution should employ therapists (having documented training in conducting therapies corresponding to the profile needed by the institution), baby sitters (graduates of medical schools preparing for employment as baby-sitters), as well as doctors and nurses.

e) Family children’s homes/SOCIAL BODY

Family children's homes are educational care institutions aiming to create bonds between the employees (spouses or an unmarried person) and the children akin to those existing in families with many children.

The persons in charge of the facilities live together with the fostered children and maintain a common household. One of the employees is a director. If there are many children or the children require special care, it is possible to employ an additional person. The family children’s homes are usually intended for children having many siblings. The applicants willing to establish family children’s homes are obliged to fulfil the same criteria as the foster families.

f) Prosecutor/JUDICIAL AUTHORITY

Pursuant to Art. 127 of the Family and Guardianship Code the prosecutor have the right to file a suit to dissolve the relation of adoption. It is a prosecution body.

g) The child’s legal guardian/SOCIAL BODY

If the parents refuse to give their consent for a child's placement in an adopting family or for its full adoption or due to arising of special circumstances, the court shall appoint a Legal Guardian. The legal guardian may be the same person as the one previously acting as the Child's and Family's Representative. The Legal Guardian represents the interests of the child and is responsible for:

- checking all the documents relating to the child’s placement in an adopting family or its full adoption;
- conducting his own examination of the case;
• making sure that the child has a lawyer;
• preparing a report for the court.

The report for the court shall include the opinion of the Legal Guardian on whether the child's placement in an adopting family or its full adoption are in the child's best interest as well as all the other information relevant for the court. The parents are not automatically entitled to view the content of this report, but the court often gives approval thereto provided that the data on the adopting parents are removed from this report. The report is confidential. Therefore the persons granted the permission to obtain an insight into the report shall not disclose its content to third parties.

h) Foster families /SOCIAL BODY

A foster family is established where a married couple or an unmarried person take into care not more than three children, with the possibility of the number of children being higher in case of siblings, and where the legal effects of the bonds established between these persons and the children are different from those established in the case of adoption.

The term „foster families” is used to describe the families that undertake to care for and educate an orphan child or the child living in the conditions threatening its health or its moral and social development during a specific period of time, usually till the child completes its education, comes of age or becomes independent.

A foster family can be established by a married couple or by an unmarried person. The child’s relatives and kindred or the persons indicated by the parents shall have the priority right to establish a foster family. The applicants for foster parents shall guarantee the due performance of missions that have been entrusted to them, have appropriate residential conditions and a stable source of income sufficient to support a family. They should also have Polish citizenship, a place of residence in Poland and enjoy full civil and civic rights.

The foster parents cannot be chosen from among the persons who were once deprived of parental or custodial rights or the persons suffering from a disease that would prevent them from providing appropriate care over the child.

There should be an appropriate age difference between foster parents and a fostered child, which does not however apply in a situation where a foster family is established by the siblings of the fostered child. Under optimal circumstances the age difference between the child and the applicants corresponds to the age difference between natural parents and their children. This is also aimed to give the foster parents a chance to care for the child till it becomes independent, should this be necessary.

I) The Children Villages/SOS SOCIAL BODY

The Children Villages SOS is a customary name used to describe a housing estate consisting of 12.15 small houses and administration facilities. The villages are not enclosed or enclosed with a very low fence. In the area of these Villages there are children's playgrounds as well as basketball and football pitches. As the Villages are the only venues of this kind in the vicinity, you can hear not only their little residents happily laughing there, but also their friends living in the neighbouring houses and blocks of flats. The children attend local state schools and participate in the social activities of the local community.
The houses are inhabited by SOS parents and by 6 to 8 children. The children are often siblings who were previously living in different children’s homes. The SOS FAMILIES bring the children up, functioning in the same manner as foster families, with the children staying there till they become fully independent.

4. THE SITUATION AFTER ADOPTION

One of the tasks entrusted to the adoption-guardianship centre after the completion of the whole procedure is to remain in contact with the adopting family and provide assistance in solving the reported problems.

After conducting adoption, the adopting parents are entitled, just as the natural parents, to maternity and child care leave.

The adopting parents, as the legal guardians, are entitled to receive a maternity allowance paid due to giving birth to a child, the so called “becikowe”.

The Polish law provides for a possibility to dissolve incomplete or full adoption. The complete adoption, for which the natural parents have given their blank consent without naming the adopting parents remains irrevocable (pursuant to Art. 125 of the Family and Guardianship Code).

The dissolution of adoption is the only possible way to terminate the relation of adoption. The law does not provide for a possibility to annul adoption even if very serious procedural infringements were committed during the adoption proceedings. The legislator assumes that adoption brings about the establishment of permanent and essentially irrevocable family bonds.

The dissolution of the adoption by a voivodship court can be effected upon the request of the person adopted, the adoptive parent and the prosecutor. The child’s natural parents are not entitled thereto. The dissolution of the adoption can be ruled only for significant reasons. It is vital to establish whether there occurred a complete and irretrievable breakdown of family bonds which should exist between the parties to adoption. The dissolution of adoption is not admissible, in spite of the complete and irretrievable disintegration of family bonds if the best interest of a minor child could be negatively affected (Art. 125-127 of the Family and Guardianship Code). Educational difficulties, inflicting damages and committing criminal offences by the child, similarly as the negligence of parental obligations by the adoptive parent, do not constitute grounds for dissolving adoption, but should - in the period of the child’s minority - result in the family court’s interference in the exercise of parental authority.

Therefore, the relation of adoption can only be dissolved upon occurrence of „significant reasons“. The Act (within the meaning of Art. 125 (1. of the Family and Guardianship Code) does not expressly specify those "significant reasons". However, the Supreme Court has emphasized that “the occurrence or non-occurrence of these reasons is established based on the factual circumstances in the specific case”.

The complete disintegration of family bonds undoubtedly constitutes a significant prerequisite, since in such case the adoption does not fulfil its functions and its negative consequences outweigh the positive effects. The “significant reasons” constituting grounds for the dissolution of adoption may (apart from the breakdown of the family bonds) include the occurrence of the following circumstances:

- the feelings arising between the adopted child and the adoptive parent justify the contracting of marriage,
- the child’s natural parents were found, provided that their identity was unknown at the time of adoption or it was not certain if they were alive,
• The adoptive parents divorce, especially if one of them, who are to be entrusted with the parental authority, contracts a new marriage, which will make it possible for an adopted child to live under normal conditions of development in a new family.

• The adopted child practically continues to live with his natural parents, despite the effected adoption.

The dissolution of adoption may be justified if there are tangible prospects of ensuring the best possible upbringing conditions in the child's natural family (which happens very rarely) or in another family willing to adopt the child.

It is not possible to dissolve the adoption after the death of the adopted child. This possibility exists however in the event of the death of the adoptive parent, but only if the death has already occurred during the court proceedings. In these circumstances (Art. 12 of the Family and Guardianship Code) the legal effects of adoption cease to exist upon the death of the adoptive parent. Therefore the adopted child no longer has the right of inheritance, since it ceased to be a child of the adoptive parents. The dissolution of adoption results in the termination of any kinship bonds between the adopted child and both the adopted parent and his family. This also entails the termination of the obligation of maintenance and the right of inheritance. Upon the dissolution of the adoption the child returns to its former origin and the kinship with the natural family is re-established (in the legal sense).

As regards the new surname of the adopted child, there is a possibility to keep it, despite the dissolution of the adoption. The court's justification for granting this possibility is the fact the adopted child got accustomed to the new surname. However, upon the request of the adoptive parent or the person adopted and upon considering their arguments, the court may annul the acquisition of the new surname by the adopted child and order a return to the former surname, belonging to the natural parents. The same procedure is applied by the court if the adopted child submits a motion for having its first name changed.

5. The circumstances of the adoption:

The ADOPTION can only be performed in the best interest of the child. The adoption can be conducted if the child's parents:

• are dead,
• have been deprived of parental authority by a final court ruling,
• expressed consent for the child's adoption without naming any specific persons – so called consent "in blanco";
• are legally incapacitated by a final court ruling.

Only a minor person can be ADOPTED; if the child has turned 13, its consent for adoption is required.

The child can be ADOPTED by the persons who:

• have a full capacity to enter legal transactions;
• are physically and mentally fit;
• are at an appropriate age;
• have a professional and financial situation that guarantees their ability to provide for and to raise the child;
• have appropriate residential conditions;
• can guarantee appropriate care;
• have the best interest of the child in mind;

and furthermore:
• live in a stable and firm marriage relationship, based on respect and love;
• are guided by valuable motives for adoption;
• are unanimous in their decision to adopt a child.

Accordingly, ADOPTION can be performed by:
• a childless married couple;
• a married couple having their own children;
• an unmarried person;
• joint adoption is open exclusively to the spouses (Art. 151 (1. of the Family and Guardianship Code).

5. CONDITIONS TO BE FULFILLED BY THE ADOPTING PARENTS

a) Domestic adoption

- Formal conditions for adoption to be fulfilled by adoption applicants:

• Age of 25-40 for applicants willing to adopt an infant and the age of over 40 for applicants willing to adopt an older child 2. good physical and mental health 3. income per family member significantly exceeding the social minimum 4. good residential conditions 5. unpunishability.

• If a family or a single person considers adopting a child, they should first contact the nearest Adoption and Guardianship Centre. A telephone conversation is usually followed by a meeting with a person in charge for adoptions, arranged by the centre’s employee. At the first meeting the adoption applicants receive detailed information on the further procedure. The basic requirements to be fulfilled by the applicants are defined in the Family and the Guardianship Code, which provides as follows: “Adoption can be performed by people with full capacity to enter legal transactions, if their personal qualifications justify the belief that they will properly discharge their responsibilities as adopting parents” and “there should be an appropriate age difference between the adopting parent and the child subject to adoption”. These very general requirements are verified by the Adoption and Guardianship Centre and, subsequently and finally, by the Court. During the first meeting with the Adoption Centre's employee the applicants are informed of all the documents which have to be submitted for the adoption procedure to be initiated in this Adoption Centre. Most Adoption Centres in Poland require the submission of the following documents and certificates:

➢ a complete copy of the marriage certificate;
police clearance certificate in form of an extract from the register of convicted persons;

medical clearance confirming the absence of counter indications for adoption issued by a general practitioner separately for both applicants;

medical clearance confirming the absence of counter indications for adoption issued by a psychiatrist separately for each applicant, a medical clearance issued by a doctor having a private practice is also acceptable;

certificate of employment and income, as aforesaid, in case of persons conducting business activity an extract from the register and a personal income tax statement for the previous year;

opinion issued by the employer; and

recommendations handwritten by friends and acquaintances and including their contact addresses.

Some of the Adoption Centres require also the submission of an infertility certificate, or, as is the case in Catholic Adoption Centres, certificates from the rector of the parish of residence of the adoption applicants.

During the first meeting it is also customary to fix the date of the community interview in the family's domicile in order to check the residential conditions of the applicants. A family willing to adopt a child should realize that before the child is taken to their home place, they need to undergo a preparation procedure as well as the assessment of their qualifications conducted by the people acting in the best interest of the child. After a community interview has been conducted, the family is notified of the form of the preparation procedure. The most commonly applied procedure is grouping training covered by one of the programs approved by the Ministry of Social Policy, the most popular of which is the PRIDE program. In certain cases, due to the specific recommendations regarding the child and with a view to the child’s best interest, the applicants are prepared individually. During the procedure preparing for taking over custody over a child the applicants also undergo psychological tests, whose results are included in an opinion issued by a psychologist from the Adoption Centre.

After the applicants have completed the training and have been qualified by the Adoption Centre, they can start the actual process of applying for adoption. During this procedure the applicants may rely on further help from the Adoption Centre’s employees or look for a child on their own in institutions having custody over children from the whole country whose parents have been deprived of parental authority. After a suitable child has been found, the family files a motion for its adoption accompanied by all obtained certificates with the court locally competent for the child’s domicile.

6. FOREIGN ADOPTION

The court may pronounce a foreign adoption only after it has established that the domestic adoption cannot be performed. Therefore the cooperation between the courts and the adoption-guardianship centres becomes an important issue. The Ministry of National Education has authorised (on 17 August 1993. the three biggest public adoption-guardianship centres to act as intermediaries for international adoption.

- The National Adoption-Guardianship Centre in Warsaw, ul. Nowogrodzka 75,
- The Public Adoption-Guardianship Centre of the Society of Children's Friends (TPD)
The activities undertaken by both centres include close cooperation in conducting the adoption procedure with the respective licensed centres in other countries. Only one centre, namely the Public Adoption Centre, is authorized to qualify children for foreign adoption. Such qualification can only take place if the attempt to find a Polish family for the child has failed for at least 6 months. The data of such children are transferred to the Central Database on children currently run by the Public Adoption-Guardianship Centre in Warsaw.

For the court to adjudge foreign adoption it is therefore necessary to submit a “databank statement” indicating that despite the undertaken efforts (during a period of 6 months) it was impossible to find a family in Poland for the child. Only in this case can the court adjudicate foreign adoption. A ruling authorizing foreign adoption must be preceded by personal contact of both parties to the intended adoption in the territory of Poland.

7. CONDITIONS RELATING TO THE PERSON ADOPTED

The most crucial prerequisite is the regulated legal status of the child – renouncement or deprivation of parental rights.

It is possible to adopt only a minor person, who is under 18 and has not contracted a marriage yet. The prerequisite relating to minority results from the objective of adoption, which is aimed to ensure family development and upbringing conditions for a child. This prerequisite is deemed as fulfilled if the child is minor on the day of the adoption motion. The court proceedings may be concluded with an adoption ruling after the person adopted has come of age. Furthermore, a subject of adoption must be alive when the adoption is effected. Adoption cannot be pronounced after the death of the child being subject to adoption even if the death occurred during the adoption proceedings. In contrast, the health condition of the adopted child is not regarded as a prerequisite. It is also vital that the minor child has Polish citizenship although it is not a statutory requirement.

8. “HEARING OUT THE CHILD”

With children over 13, their own consent is required. The court should also hear out a younger child provided that he or she is able to understand the meaning of adoption, unless the child believes to be a natural child of the adoption applicants and revealing the adoption secret would be in contradiction with its best interest. In such cases the court may exceptionally adjudge adoption without requesting the child’s consent.

9. THE CONSENT OF THE CHILD

The adoption requires the consent of the child’s parents unless the parents are unknown, have been deprived of parental authority, are fully incapacitated or the agreement with the parents is hindered by obstacles that are difficult to overcome. The consent of the father is not required if the fatherhood has been established by the court and the parental authority wasn’t attributed to him.

The court may also, due to special circumstances, pronounce adoption without the consent of the parents who have limited capacity to enter legal transactions (minors over 13 and partially incapacitated), if the refusal of consent to adoption is in contradiction with the best interest of the child. This may apply to a situation where the parents fail to care for the child or their behaviour poses a threat to life or health of the child, but they refuse their consent to adoption.
With children over 13, their own consent is required. The court should also hear out a younger child provided that he or she is able to understand the meaning of adoption, unless the child believes to be a natural child of the adoption applicant and revealing the adoption secret would be in contradiction with its best interest. In such cases the court may exceptionally adjudge adoption without requesting the child's consent.

If there is no parental authority over the child, the consent should also be expressed by the child’s legal guardian. However, unlike the consent of the child or the parents, the opinion of the guardian is not ultimately binding for the court and the adoption can be pronounced without the consent of the legal guardian, if the best interest of the child so requires.

Where the child is adopted by only one of the spouses, the consent of the other spouse is required unless he or she is fully incapacitated or reaching agreement with him or her is hindered by obstacles that are difficult to overcome.

In practice, the most important is the adoption consent of the natural parents, expressed during the court trial. The parents may not give their consent to adoption earlier than 6 months after the birth of the child. The parents may also express their consent to adoption before a guardianship court without naming the adopting parents. This consent is known as blank or anonymous consent.

10. MOTHER’S CONSENT

Pursuant to the provisions of the Family and Guardianship Code after the birth of the child a biological mother has 42 days to take a decision regarding the renouncement of parental rights. During this period the child remains in the Preadoption Ward or with a Foster Family acting as an Emergency Care Family. The biological mother has the right to communicate with the child, to visit him or her and to receive information on the child’s health condition and development. After the lapse of 6 weeks the mother can make a statement before the District Court, expressing her consent to the future adoption of the child without naming the adopting parents.

This statement is commonly referred to as anonymous consent or blank consent. It is possible to revoke this decision until the adoption applicants file a motion for adoption. Where the parental rights are renounced in blanco, all the legal bonds between the child and its biological family cease to exist and the adoption pronounced following the renouncement is irrevocable. The biological mother is not allowed to meet the adopting parents.

11. CONSENT IN BLANCO

The consent of the parents may be expressed in blanco, which involves giving consent to the child’s adoption before a court without naming the future adopting parents (art. 1191 (1. of the Family and Guardianship Code). Should the parents express their consent in blanco, the child to whom the said consent refers cannot be the subject of incomplete adoption (Art. 124 (2. of the Family and Guardianship Code)

12. OMISSION OF THE CONSENT

The guardianship court may, due to special circumstances, pronounce adoption without the consent of the parents with limited capacity to enter legal transactions (minors over 13 and partially incapacitated), if the refusal of the adoption consent is in contradiction with the best interest of the child. This may apply to a situation where the parents fail to care for the child or their behaviour poses a threat to life or health of the child, but they refuse their consent to adoption.
First of all, it is important to note that the institution of adoption is something that has existed, throughout history, in most societies. This means that adoption is almost as old as Humanity itself, and the first law in its respect comes from 2.800 B.C, with the Hammurabi Code.

Throughout history, adoption has had many different goals and motivations. Therefore, it has been considered in a selfish way, defending only the adopting parent's interests; and it has also been considered in a selfless way, defending, mostly, the child's interests. The concept and practice of adoption has always accompanied the evolution of societies, as though as the concept of families and the importance of the child in them.

From the Roman civilization until nowadays, the institution of adoption was always present. Although it was mostly forgotten and abandoned in the Middle Age, it returned, in great force, with the French Revolution as an integrant part of the law. The big innovation, then, was the protection of the child’s needs but, also, the solution of couples who were unable to have their own biologic children.

But it was only in the 20th century that the institution of adoption was truly revitalised (starting specially, from Word War I and II). There was, at this time, a profound change in the spirit of adoption, as, instead of the search for guaranteeing the family's name and property perpetuation, the main goal started to be the concern for the child’s well being, allowing it to
have an environment that it didn’t find within the biologic family. This having been said, we can now, in this context, analyse what happened in the specific case of Portugal.

Adoption institution in Portugal was no big exception to the general picture described above. Even though, there are some particularities that make a deeper analyses be worthy.

Middle Ages

As in the rest of the world, adoption was forgotten. However, a considerate amount of children were abandoned. Therefore, by 1543 the institution Santa Casa da Misericórdia had the function of receiving, protecting and raising the abandoned and excluded children, to avoid infanticide. This practice was extinguished in 1870, because it had no success in achieving its goal.

19TH Century – Civil Code 1867

Even though, as we said already, the spirit of the French Revolution was changing the concept of adoption, the Portuguese Civil Code of 1867 - known as the Seabra Code - did not include the institution of adoption. This was due to its main author, the Viscount Seabra, who believed that adoption was nothing but an imitation of the biologic and real bonds and, therefore, it was not a reasonable concept. He went to the point of believing that adoption, as a concept was an aberration.

1. National Procedure

a) Civil Code of 1966

The great historical mark of the legislative evolution of adoption was this Code. Adoption was recognized as "source of family juridical relations", as much as the institutions of marriage, parenthood and filiation. By this time, adoption was viewed with the main goal of protecting the child that didn’t have a normal family environment or that was physically abandoned. Even so, the institution of adoption was introduced with some cautions: restricted adoption was the rule and full adoption was the exception. It was a very shy system, because the requirements for the establishment of such a bond were very severe, in the perspective of the adopting parents, as much of the adopting child.

b) Legislative reform of 1977

Until this moment, as we said, the full adoption institution was very rare. Adoption was, therefore, very restricted. With the reform of 1977, the law also started giving it an importance that it didn’t have before. The requirements for adoption opened and became much more flexible:

When adoption was obtained by a couple, the child’s minimal age and the marriage duration period were reduced. The couple could also have biologic children;

Full adoption was admitted to everyone, even single parents not only the children of the consort or of dead parents could be adopted, now, also abandoned children and children that lived with the adopting parent for more than one year, could be adopted; The judicial declaration of abandonment was created, so that the consent of the biologic parents was dispensed. The figures of previous consent and consent’s dispense were introduced, to make the adoption process easier;
The Civil Code of 1977 introduced the obligation of an enquiry regarding the applicant couple and minor’s situation; In 1978, it was also created an important legislation, by the Executive Law nr 314/78, of October 27th, which contains the process rules that regulate the constitution of the adoption relation 559 - OTM;

c) Legislative Reform of 1980

The Executive Law nr 274/80, of the 13th of August, established the rules that concern the Social Security organism’s part in the adoption process. Therefore, having in mind, always, the main goal of protecting the child’s interests, the social security organisms were now responsible for:

The enquiries; The definition and execution of the social protective policy concerning the child’s well being;

Supplying the judge with the all the information needed for the practice of adoption. The social security services would be the judge’s great co-operators.

d) Legislative Reform of 1982

It was added an article in the Portuguese Constitution, which said that adoption was now regulated and protected in the law terms 560. Adoption was, now, a constitutional guarantee.

e) 1990 – important changes in the international law.

On February the 20th, Portugal signed the European Convention on the Issues of Adoption and Children; The UN Convention for the Child’s Rights was signed by Portugal in September;

f) The reform of 1993 – A New legal impulse to adoption

By this time, adoption was such an important institute for the unprotected children, that its regime was worthy of an update. This happened with the Executive Law nr 185/93, of the 22nd of May. With this revision, the legislator renewed, adapted, the instruments to dignify the child (influenced by the European Convention on the Affairs of Child Adopting):

The institute of the minor’s trust with the goal of a future adoption was created and made possible by the institution of judicial trust; Therefore, the judicial trust aims to come to the minor’s defence, avoiding the extension of serious situations of need that happen as consequence of the lack of a familiar relationship;

The judicial trust comes when the minor’s parents do not exist or are not willing to give their consent to adoption, and do not keep a presence or an interest in giving their child the relationship that he needs for a harmonious development;

The requirements for full adoption were, once again, opened and more flexible, in terms of the child’s minimal age, the marriage duration period, the minimal age for single adopting parents; The consent’s regime was adapted to changes introduced with the institution of the minor’s trust with the goal of a future adoption;

The Tutelary Minors Organization suffered some alterations, as a consequence of its progressive experience. The court started to have an obligation of consulting the social

559 OTM means Minor’s Tutelary Organization. Although it has suffered several changes (introduced by the Laws nr 133/99; 147/99; 166/99 and 31/2003);
it still continues to regulate the court’s process of adoption;

560 Nr 7 of the Article 36º
security service from the area of the minor’s residence; The adopting process starts having a secret character, with some exceptions; The social security services started having competence to decide about the minor’s administrative trust and legitimacy to require its judicial trust to the court; With this Executive Law, the location of Portuguese resident minor’s in foreign countries to be adopted there was regulated. It created rules that guaranteed safety and transparency in such procedures; In this context, the main change was the creation of the subsidiary principle; Concerning the international law level, also in 1993, May 29th, it was signed the Convention of The Hague about the Minor’s Protection and International Co-operation in the Adoption Issues;


It was created by a resolution signed in the 18th of March 1997. It was based on the idea that it is society’s responsibility to protect children, specially the ones that suffer from bad treatments, abandonment or orphanhood, who are sheltered and supported by the structures financed by Social Security.

With the establishment of this principle, the program was based on a renovation over the adoption legislation, a revision of the Social Security adopting service’s structures and an articulation between public and private services.

The program was reviewed by the Executive Law nr 120/98, of the 8th of May. The changes made were based under the intention of protecting the child’s interest, always, and the idea that the whole community has a responsibility among all children.

Here are some of the changes:

- Introduction of the possibility that, after the appointment of the minor’s administrative trust to the applicant adopting parent, he becomes the temporary curator of the child being adopted. It also becomes possible that, by requesting the minor’s judicial trust with a view to a future adoption, he can become the temporary ward of the applicant (only if it is possible to anticipate that the adoption will take place);
- Clear definition of what can be qualified as the minor’s guard for a fact;
- Special attention given to the issues related with the consent;
- The foremost innovation introduced by this revision was the possibility that allows the private social care institutions to act like Social Security organisms in the development of the adoption process;

In conclusion, the legislator reorganized the adoption by giving consistency to the minor’s protection system and, mostly, to the institute of adoption.

With the changes introduced, specially, by the Executive Laws nr 185/93 and 120/98, the legislator intended to simplify the adoption process, by giving the adopting children more safety against possible vindications from the biologic family. Therefore, the biologic parent’s willing to give their child to adoption should reassure their consent as real and definitive.

h) The last reform – law n° 31/2003, 22ND august

This last reform had the acknowledged purpose of increasing the nr of adoptions and also reducing the average time of the adoption procedure. The intention was to prevent the poor
consequences of the long duration of the process both on children and applicants for adoption, as well as on the future families\textsuperscript{561}.

In fact, Portugal had more than 11,300 children “waiting” for an official decision on their project of life\textsuperscript{562} - living either in institutions or foster families - and the average time for the procedure was more or less 3 years. The attention to the child’s rights was for sure the main concern of the last reform.

Therefore, the most important measures executed by this legislative reform were:

- The superior interest of the child was implemented as the most important standard for de pronouncement of an adoption;
- This notion was definitely assumed as the most important rule for every decision – administrative or judicial – in the procedure - Article 1974\textsuperscript{nº 1 CC}.
- The concept of manifest disinterest by the biological parents towards the child is clarified – the scrutiny depends on the quality and continuity of the child / parent bonds;
- Hence, the relevant period for the determination of that disinterest was reduced to 3 months, witch allows a faster procedure (diminishing in 3 months the procedure – Article 1978.º nº 1 e) CC;
- The inhibition of paternal authority arises as consequence of Judicial Award, as the serious commitment of the child / parent bond is essential for the decision of this kind of Care - Article 1978\textsuperscript{A CC};
- The age limit up to what one can adopt a child – fully or restrictively - is elevated to 60 years old - Article 1979º nº 3 CC;
- In over 50 years old candidates the age difference between the adoptee and the adopting parent shouldn’t be more than 50 years;
- It is also eliminated the possibility of parents revoking the consent given, independently of an adoption procedure being in course or not;
- One of the important practical innovations of this reform was to equalize the effects of the measure of promotion and protection - the minor’s care and control to a person selected for adoption or to an institution with the goal of future adoption to the judicial care;
- The pre-adoption period was reduced from 12 to 6 months\textsuperscript{563}, with the possibility of prorogation for another 6 months – Article 9 nº 2 of the Executive Law nr 185/93, of the 22\textsuperscript{nd} of May;

An important innovation of this reform was the approval of the National Lists for Adoption\textsuperscript{564}, counting with all the selected candidates and children in an adoptability situation; Naturally the intent to reduce the average time of an adoption procedure, stresses the need for more qualification of the experts working in this matters, for national guidelines and procedures, as well as for an additional follow up of this efforts. Consequently: The technical qualification of the human resources was one of the important aspects of the reform; A proceeding manual

\textsuperscript{561} Preamble of Law nr 31/2003, 22\textsuperscript{nd} August
\textsuperscript{562} Preamble of Law nr nº 31/2003, 22\textsuperscript{nd} August
\textsuperscript{563} During this period the Social Security Services should make the enquiry report, in 30 days after the verification that the conditions to set off an adoption request.
\textsuperscript{564} Regarding this important instrument, please see page 48 and following
for adoption was produced and good practice guides are expected; The annual report on this subject to be presented to the Parliament was also implemented;

Conclusion:

The historical evolution of the adoption system in Portugal allows us to say that this institute struggled for the last 4 decades to be put into force. In fact, due to the fact that it was withdrawn from our legal system for years (for one century), it caused an absence of a consolidated adoption tradition. Trying to improve and change this standpoint has been the main concern of all these last reforms.

The Permanent Observatory for Adoption's is an independent institution established in 11.04.2006 (as a result of the 2003’s reform) with purpose of monitoring the performance and results of the different public entities in this field. It should also develop proposals for administrative and legal changes, whenever needed. There is a great deal of expectations regarding this Observatory’s activity precisely in what regards the establishment of consolidated adoption tradition. Possibly the lack of a juridical culture in this area, associated with social and ideological resistances, may explain the difficulties that the legal system on adoption faces in Portugal.

2. Institutions And Services Involved In The Adoption.

The law defines the intervention of the competent entities in an adoption process in each different phase that the child and the candidate pass.

a) Intercountry Adoption.

- Portuguese Central Authority – Social Security Executive Department;
- Accredited mediators for intercountry adoption
- District Adoption Services;
- Courts;
- Civil Registry Services;

- Portuguese Central Authority: Social Security Executive Department:

Juridical Nature: it is a department of the central public administration;

Mission: it develops the mission designed by the Hague Convention for the Central Authority: it centralizes the information and process of international adoptions;

Level of intervention:

- PORTUGAL AS STATE OF ORIGIN
  - In these cases the Central Authority now only intervenes latter in process, when the local Adoption Service decides to present a specific proposal for an international adoption. In this case, the whole process is transferred to the Central Authority:
  - Is responsible for receiving the applications for international adoption coming from candidates resident in other countries;

565 Since the implementation of the National Lists of Adoption
Determined the ability of a candidate resident in a foreign country – previously selected by the competent authorities – to apply for international adoption in Portugal;

- Ensures the respect for the subsidiary principle;

- Guarantees that the adoptability requirements of that child are fulfilled;

- Prepare the report about the child and transmits it to the Central Authority of the receiving state;

- Takes all the necessary measures to assure that the child will be authorized to leave the State of origin and to enter and reside in the receiving country;

- Shall be informed about the situation of the child – after leaving the country – until the moment the adoption is decreed, watching over the child’s superior interest;

**PORTUGAL AS A RECEIVING STATE**

- Is responsible for receiving the applications for international adoption;

- Prepare the report about the child and transmits it to the Central Authority of the state of origin;

- Takes all the necessary measures to assure that the child will be authorized to leave the State of origin and to enter and reside in Portugal;

- Keeps the Central Authority of the state of origin up to date regarding the child’s situation during the pre-adoption period and about the pronouncement of the adoption when it occurs;

- Shall inform the situation of the child – after entering the country – until the moment the adoption is decreed, watching over the child’s superior interest;

**- Accredited Mediators For Intercountry Adoption.**

Juridical Nature: according to the law, these institutions must pursue non-profitable activities and must be accredited by the Portuguese Central Authority, for intercountry mediation purposes; Currently there are only three accredited bodies - Intercountry Adoption Mediation Agencies - for Adoption of Portuguese resident children by candidates resident in another country:

- The French Adoption Agency;

- Bras Kind (from Switzerland);

- Dan Adopt (from Denmark);

Bem Me Queres is a Portuguese institution still waiting to be accredited by the Portuguese Central Authority. Mission and level of intervention: Their responsibility is to provide the Central Authorities general evaluation reports as well as act as intermediary in these processes. These Agencies must therefore be accredited simultaneously in both countries.

**- District Adoption Services.**

Social security services from the residency area of the candidate or child – regional departments; According to the legal statements, in an adoption process there are two
diverse levels of intervention that have to be performed by two different multidisciplinary teams\textsuperscript{566}, constituted by experts from the various areas (social workers, jurists, psychologists, and others):

— The team that evaluates the child’s situation and defines the project of life, choosing therefore adoption as the project for the child;

— The Adoption team that is responsible for the selection and assessment of the candidates, which promotes the encounter between the child and the candidate(s), and evaluates the pre adoption period;

- Courts

The Portuguese adoption system lays all the crucial decisions upon the Courts responsibility, as it’s considerate that these important moments should have a higher level of independence.

- FAMILY AND MINOR’S OR COUNTY’S COURTS\textsuperscript{567}

  o As result all the decisive assessment are judicially decided:

  ➢ Pre permission – giving the consent for adoption purposes as well as deciding its dispense (when applicable);

  ➢ Adoptability conditions of the child whenever the consent was not given by the biological family: judicial care award and measure of promotion and protection of care award to a person or institution with the goal of future adoption;

  ➢ The appeal upon the administrative decision to reject the candidate’s candidateship for adoption;

  ➢ The judicial adoption process itself, leading to the final sentence (that constitutes the adoption);

  ➢ The revision appeal of the decision that pronounced the adoption;

  o In Portugal, not all districts have specialized courts in family and minor’s affaires, therefore in those cases the competence is from the County Court. In what concerns to the Department of Justice, the local Public Prosecutor has important competences, namely in representing the minor in court or promoting the judicial trust process.

- THE SECOND INSTANCE APPEAL COURT

  o It decides the revision of the foreign judgement that pronounced the adoption in another country

- Civil Registry Services

Juridical Nature: they are exclusive organisms of the official public civil register services. Mission and level of intervention: registering the act of adoption in itself and the occurring changes in the child’s name;

- National Adoption

  - ADOPTION SERVICES;

\textsuperscript{566} Article 11 of the Executive Law nr 185/93, of the 22\textsuperscript{nd} of May

\textsuperscript{567} Family and minor’s courts whenever they exist in the district, if not is competent the county’s court
- Social Security’s Institute - Iss

Mission and level of intervention: It was created in 2000 with the objective of coordinating the policies of family and social protection. This institution is organized by district centres of aid and social security. These are responsible for the affairs of minors in risk and adoption.

- Adoption Services

Juridical Nature: Social security services from the residency area of the candidate or child – regional departments.

Mission and level of intervention: to shelter and supervise the child; definition of its life project; administrative trust decision, judicial trust proposal; pre adoption period accompany; candidates selection; composing the main reports for the judicial adoption process. It’s important to remind that it’s mandatory the existence of 2 distinct teams working in adoption processes. Both these teams should be multidisciplinary and with a sufficient number of experts, which not always happens (due to a great lack of human resources). They have different levels of intervention:

- Adoption Team:
  - Candidates selection;
  - Administrative care award of the child;
  - Pre-adoption period accompanying;
  - Santa Casa da Misericórdia of Lisbon

The city of Lisbon lives a special situation, as these two teams are part of the public Social Security. In fact, Santa Casa da Misericórdia of Lisbon is legal institution with public administrative functions (approved by governmental decision), that performs the administrative activities of the adoption processes in this city.

In order to perform is competences, vis-à-vis the adoption process, the SCML has – as imposed by law – two different teams – one to study the child’s situation and the other one developing the adoption service (itself).

Refuge Aboim Ascenção, the experience of Faro district. It’s a private institution of social aid, recognized to work in adoption by a governmental decision. It works as an emergency foster centre for children from 0 to 5 years old. In 1988 it was created the Childhood Emergency Project, which operates through the cooperation between the Refuge, the Government, the City Hall of Faro and the citizens. Although the Executive Law n° 185/93 of 22nd May and Regulatory Order n° 17/98 of 14th August establishes that private institutions of social aid may be publicly recognized to work as an adoption service, the Refuge is, thus, the only private institution to which this status was granted.

568 In Portugal there are 21 adoption services.
569 A secular institution with the vocation, since its origin, of supporting social care institutions
570 See report about the Refuge’s interview
Without any intervention from the Social Security’s Services, the Refuge defines the child’s project of life and performs all the required diligences in order for the child to be adopted. At the level of the candidates’ selection and preparation, the Refuge has no intervention – only in what concerns the child’s adoptability.

- Courts

Family and minor’s or county’s courts

From the area of residency of the candidate. The Portuguese adoption system lays all the crucial decisions upon the Courts responsibility, as it’s considerate that these important moments should have a higher level of independence. As result all the decisive assessment are judicially decided:

- Pre permission – giving the consent for adoption purposes as well as deciding its dispense (when applicable);
- Adoptability conditions of the child whenever the consent was not given by the biological family: judicial care award and measure of promotion and protection of care award to a person or institution with the goal of future adoption
- The appeal upon the administrative decision to reject the candidate’s candidateship for adoption;
- foreign adoptions foreign adoptions The judicial adoption process itself, leading to the final sentence (that constitutes the adoption);
- The revision appeal of the decision that pronounced the adoption – full or restricted;
- The decision upon the restricted adoption’s revocation request;

In Portugal, not all districts have specialized courts in family and minor’s affaires, therefore in those cases the competence is from the County Court. In what concerns to the Department of Justice, the local Public Prosecutor has important competences, namely in the matters representing the minor in court or promoting the judicial trust process.

- Civil Registry Services

Juridical Nature: they are exclusive organisms of the official public civil register services;

Mission and level of intervention: registering the act of adoption in itself and the occurring changes in the child’s name;

4. Definitions And Principles Of Adoption Under Portuguese Law

The Civil Code defines Adoption in its Article 1586º, as “The bond that, as well as biological filiation, but independently of ties of blood, is legally established between two people in accordance to the provision of Article 1973º and subsequent”.

This definition, as generally recognized by the Authors, does not comprise all forms of adoption accepted under Portuguese Law. In fact, it excludes restrictive adoption (Article 1994º of the Civil Code). Therefore, a better definition for Adoption is supposed to be “The bond that, independently of ties of blood, generates parental rights as well as obligations between two people in accordance to the provision of Article 1973º and subsequent”.

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foremost important principle of the current Adoption System is the superior interest of the adoptee\textsuperscript{572} - Article 1974º n° 1 of the Civil Code.

This principle is assured by general requirements needed to perform the adoption, and by the fact that any adoption is bindingly preceded by a socialization period between the child and the adoptive candidate (single or couple). Even though Portuguese Law recognizes two categories of adoption - full and restricted (or simple) – the large amount of adoptions registered in Portugal are full adoptions (96.9% in 2003).

\textbf{a) There Are Two Types Of Adoption In Portugal}

- **Full**
- **Restricted**

Each type of adoption may be singular or plural; Singular means that it is made by one person; Plural means that it is made by married or de facto married couples with different sex; Common Rules regarding full and restricted adoption

Goal: defence and promotion of the superior interest of the child, which means adoption shall present real advantages for the child, shall be based on legitimate reasons and shall assure that the bond to be created between the child and the adopting parents must be convenient to the child.

- **The adopted: Article 1980º CC.**

The child of the adopting parent's spouses'; The child who has been previously care awarded to the adopting candidate parent by administrative or judicial decision to avoid illicit and obscure situations; Differences between full and restricted adoption.

- **The Full Adoption - Candidate’s Pre-requisites – Article 1979º CC**

Married or de facto couples, living together for more than 4 years and not judicially separated. Each adopting parent should be older than 25 years; Single person should be older than 30 years or older than 25 if the child is the spouse’s child; The adopting parent could not be over 60, except if it is the spouse’s child;

The difference between the adopter and adoptee’s ages could not be over 50 years except if the adoptee is the spouse’s child;

Full Adoption – Effects: The adoptee acquires the situation of son of the adoptive parent(s), by entering its family (similar effects as biological child); Unless adopted by a relative, all family bonds’ of the child with previous (blood) relatives are completely dissolved – therefore the adoption process and preliminary procedures are secret; The adoptee loses his previous family name, receiving the name of his new family according to Civil and Registry law rules (Articles 1986º and 1988º CC)

Full adoption is never revocable not even with the agreement of all parties (Article 1989º CC); The identity of the adopting parents can only be disclosed to the child's family of origin if they specifically declare they don't oppose that revelation; Accordingly the identity of the biological parents can only be revealed to the child, as long as they expressly mention it; Successor’s rights of the adoptee are exactly the same of biological descendents; The child adopted by Portuguese adopting parents acquires Portuguese nationality;

- **Restricted adoption - Candidate’s pre-requisites – Article 1992º CC**

\textsuperscript{572} It is interesting to note that Portuguese Adoption Law does not recognize adoption of adults
Candidate should be over 25 years old and up to 60 years old, if completed up to the date when the child has been care awarded to the candidate (except if the adoptee is the spouse’s child); De facto married couples, living together for more than 2 years;

Restricted adoption – Effects: The legal effect of restricted adoption is limited, and that is why the requirements for it are much more undemanding than those for full adoption; Original filiation and adoptive relationship coexist: the adoptee is not considered - legally - as a child of the adopting parent(s); and all rights and obligations towards the biological family are preserved, with few exceptions specified by law; The parental authority is an exclusive right of the adopting parent, as it has the parental rights and obligations. Accordingly, the adopting parent(s) can make use of the child’s assets, but just in the amount that the Court settles as alimony for the latest; The adoptee can have the family name of the adopting parent, on request of the latest, by combining the biological family’s name with that of the adopting parent;

Restricted adoption can be converted into full adoption, by means of application of the adopting parent, given the fact that the demanded requirements are verified but the child needs to be necessarily less than 18 years old; The adoptee or its descendants and the adopting parent’s relatives, are commonly not considerate as each other's heirs, and they are not reciprocally entailed to alimony;

Restricted adoption could be revocable in particular situations such as by the adopting parent or child’s request; if the adoptee committed a crime against the adopting parent or his family, a slanderous complaint or by request of the natural parents, the Public Prosecutor, the person who took care of the child before the adoption; if the adopter doesn’t accomplish his duties regarding the child;

Restricted adoption – Particularities: Restricted adoption can however also be revoked in certain circumstances such as:

- Requested by the adopting parent or child
- If the adopting parent or child committed and was condemned for a crime against the adopter or adoptee, or his family;
- If the adopting parent or child committed and was condemned for a calumny accusation or a fake testimony against the adopting parent or child or his family;
- Unjust refusal of alimony when they are duded;
- Requested by the Public Prosecutor, the biological parents or the person to whom the child was care awarded to before, when the child is still a minor:
  - If the adopting parent doesn’t accomplish his paternal duties regarding the child;
  - If the adoption, for any reason, becomes inconvenient for the education or interests of the child;

- Conversion of the restricted adoption into a full adoption

Regarding this distinction is important to mention that it is possible to convert the restricted adoption into a full adoption, as long as all the requirements of the last one are verified – Article 19777/2 CC.

This conversion process can be done at any time – as long as within the age limits of the adopted child (18 years old) – and it is regulated in the Article 173º OTM. The conversion of a restricted adoption into a full adoption must be registered in the child’s birth certificate.
5. General Requirements For Adoption

a) General Requirements For Adoption From The Child's Perspective

For adoption to be legally decreed, there are a number of requirements without which it will not take place. These requirements are nominated in the Portuguese Civil Code\(^\text{573}\) (Articles 1974º and 1975º).

Nevertheless, before moving any forward, it should be said that there is a very important principle behind all these rules and conditions, which is enunciated in the Executive Law nº 31/2003 of August the 22\(^{\text{nd}}\). It shall be expressed by the sentence “adoption has the goal of satisfying the superior interest of the child”. Following this line, and always taking on board this main principle, we will now focus on the requirements that concern the child’s perspective.

The Article 1974º of the Civil Code submits adoption to the following requirements:

- It should present real advantages for the child;
- It should be based in legitimate motives and reasons;
- The bond to be created between the child and the adopting parents should be convenient to the child;
- The 2\(^{\text{nd}}\) part of this Article also demands that the child should have been at the adopting parents care during an appropriate period of time. This permits a safer evaluation of the real advantages, for the child, of the constitution of a bond between him the adopting parents;
- Although this precept does not establish a minimal time/term for the referred procedure, we know that it starts after the child has been delivered to the adopting parents through the institution of judicial or administrative trust, or other measure of protection. This leads to the pre-adoption period and it shouldn't last more than 6 months\(^\text{574} \, 575\);
- During this period, the social security organism in charge of the case, accompanies the minor’s situation.

There are other relevant Articles, in the Civil Code, that also contain important requirements on what concerns to the child’s part:

Except on the cases where the adopting parents are married with each other, or de facto married, the adoption cannot be constituted while another former adoption still exists. (Article1975º)\(^\text{576}\)

The adopting child, generally, cannot be more than 15 years old (Articles 1980º/2 and 1993º/1.;

6. General Requirements For Adoption From The Candidate's Perspective

Before moving any forward, it should be said that, even from the parent's perspective, the main principal behind all this requirements does not change: “adoption has the goal of

\(^{573}\) From now on named CC

\(^{574}\) According to the Articles 9º/1 and 2 and 10º of the Executive Law nº 185/93, of the 22nd of May (with the modifications introduced by the Executive Law nº 120/98, of the 8\(^{\text{th}}\) of May, and the Law nº 31/2003, of the 22\(^{\text{nd}}\) of August).

\(^{575}\) In the cases where the adopting child is the sun or daughter of the adopting parent's consort, that period should not last more than 3 months and I starts as soon as the adopting parent communicates to social security organism the will to adopt.

\(^{576}\) It is important to refer that the marriage or the marriage de facto is only heterosexual.
satisfying the superior interest of the child”. We should also keep present that most of the other requirements we have referred before, which concern to the child’s part, are also relative to the adopting parent’s side.

This been said, we may now analyse the requirements that weren’t, yet, referred and that consist in specific demands to the candidate adopting parents.

Therefore: It is indispensable that the adopting parent has the will to adopt – their lack of consent is a fundament to the adoption’s retroactive extinction, according to the Article 1990º/1. a) and 1993º/1 CC;

The will to adopt should be based on legitimate motivations (Article 1974º/1 CC);

The adopting parent should have the ability to raise and educate the adopting child (implicit on the Article 1973º/2 CC);

By rule, the adopting parent should not be more than 60 years old (Article 1979º/3,4 and 5, and Article 1992º CC);

In the cases where adoption is made by a couple / adoption is plural, both adopting parents have to be united by marriage (heterosexual, given the fact that there is no marriage between homosexuals, Articles 1577º and 1628º/e CC) or a heterosexual de facto marriage, which has last for more than 4 years (Article 1979º/1 CC; Article 7º of the Law nr 7/2001 of the 11th of May)

As for the adopting parent’s family, adoption should not impose an unjust sacrifice to other children (for this reason, the judge should listen to the adopting parent’s children over 12 years old);

To end this exposition concerning to the requirements for adoption, it should also be said that, in full adoption, the gap between the adopting parent and the adopting child age’s should not be superior to 50 years old.

7. The Consent For Adoption

First of all it is important to explain the consent’s relevance. As we have been analysing so far, and as we will also realise with the continuation of our study, the adoption process is very complex. Therefore, in certain cases, it is vital for the people directly involved to give their consent so that adoption can become possible.

Nevertheless, we will also see that in some of those cases where the consent is needed, it can be dispensed. It should also be said that the Article 1981º of the Civil Code, with some changes and remissions that will be appropriately signalised, mostly regulates this subject.

This been said, we can now proceed and analyse, in determinate cases, who are the exact people without whose consent adoption cannot move forward.

The Article 1981º/1 regulates the consent of: The adopting child older than 12 years old; The adopting parent’s consort non judicially separated of people and assets; The adopting child’s parents, even if they are minors and don’t have the paternal authority. This is a demand, except in the cases where there was a decision of judicial trust or promotion and trust’s protective measure to a person or an institution with the goal of future adoption. Even so, it should be said that this exception, basically, constitutes the rule because, in fact, it is something that happens most of the times. Therefore, the demand of the adopting child’s parents consent is only applied in the cases where there was administrative trust or when it
is the consort’s child. The ascendant, the collateral until the 3rd degree or the tutor when, having the adopting child’s parents died, he has the child at his care.

As we have said before, the consent is needed only in certain cases, which is the reason that leads us to mention the situations where the consent can be dispensed. According to the, already mentioned, Article 1981º CC, in its number 3, the consent can be dispensed by the court, in the process of adoption itself, in three cases:

When the people that should give the consent are deprived of the use of their mental faculties or if, by any other reason, there is a considerate difficulty in hearing them; When, in the terms of the Article 1978º/1. c), d) and e) CC, the judicial trust is permitted - In this case, the once eventually needed consent of the child’s parents, ascendant, collateral until the 3rd degree or the tutor that has the child in his care, can be dispensed; When the child’s parents are inhibited of the paternal power’s exercise, their consent can be dispensed. This dispense happens after the period of 18 months over the sentence of inhibition has transited in rem judicatam, if the Public Prosecutor or the parents didn’t request for its finding; After this enumeration of the situations where the consent is needed and can be dispensed, we shall now analyse a few more issues that the consent subject raises:

a) The previous consent

This process has the goal of finding the real will of the biologic parents, or other people whose consent is needed, in giving the child for adoption, with an almost definitive character - this figure is regulated by the Article 162º OTM. With this act, the judicial care award becomes useless, given the fact that the minors’ deliver to the adopting parent can (and should) be done through the administrative care award. This consent can be required in any court with competence in family and minor’s issues, by the people that should give it, the Public Prosecutor or the Social Security Service.

In order to the consent be a free and informed act, the judge should explain very well the meaning and its consequences to the declarant, specially the fact that it cannot be revoked after it is given and that it can lead to full adoption (if that is the case) with consequent integration of the child in the new family, losing all the bonds with the biologic parents (even the surname).

The previous consent can also be pronounced even without any instauration of an adoption process or an identification of a future adopting parent, and its process benefits from the urgent process statute.

b) The blank consent

In the Article 1982º/1 CC, the law permits that people, whose consent is normally needed, give it “in blank”, even without the instauration of an adoption process or without a reference to a future adopting parent (Article 1982º/2 CC). This has the goal to make adoptive relationship constitution easier.

This consent lapses if, within the period of 3 years, the minor was not adopted, or given in care through the administrative or judicial care award or the measure of promotion and protection of care award to a person or institution with the goal of future adoption.

c) Revocation and Lapse of the Consent

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577 Articles 1981º/1 CC an d13º/1 of the Executive Law nr 15/93, of 22nd of May
578 Department of Justice’s representative
579 Judicial guardianship
580 Article 1982º/1 CC
One of the most significant changes to the juridical regime of adoption introduced by the Law nr 31/2003 of August 22nd was the elimination of the possibility of revocation the consent pronounced regardless the fact that the adoption process is pending. This law gave a new text to the Article 1983º CC, which used to allow a period of 2 months after the pronouncement for the consent’s revocation. Therefore, the possibility of revoke the consent was eliminated, whether it was pronounced before or during the pending of the process.

However, the law establishes a maximum period of 3 years, during which the consent is valid and effective. After this time (that starts from the moment the consent was given), if the minor is not adopted, or given in care through the administrative or judicial guardianship or the care award to a person or institution measure of promotion and protection with the goal of future adoption, the consent lapses.

How, when and where the consent is given. For the consent to be valid, it has to be given personally, by oral declaration and in front of a judge, so that he can inform the declarant about the meaning and consequences of that act (Article 1982º/1 CC). The consent declaration is a simple receptive declaration as it doesn't need anyone else’s will, and it cannot be submitted to any term or condition. The consent must report specifically to full adoption, otherwise it will be considered as reporting to restrict adoption (Article 1993º/3 CC). On what concerns to the mother’s consent, after birth, the law establishes a limit of time. The goal of this rule is to avoid the risk of a precipitated consent, not informed or influenced by some eventual traumas or psychological disturb. Therefore, in these cases, the mother can only give her consent to adoption 6 weeks after the birth. As a consequence of this, the child can only be given in care through the administrative or judicial guardianship or the care award to a person or institution measure of promotion and protection with the goal of future adoption after being 6 weeks old581. The previous consent has, in this matter of how, when and where it should be given, its particularities, as we have analysed before.

d) Consent’s dispense

Although the legally stated consents are of extreme importance in an adoption process, it is possible, however, to dispense them. This can only occur under certain conditions that are to be analysed by the judge. The conditions or requirements that need to be verified so that the consent’s dispense is legitimate are:

Regarding the biological parents: if they are deprived of their mental faculties or if, for some other reason, it is very difficult to hear them in Court (if their whereabouts is unknown); If they have abandoned the child; If the child belongs to unknown or dead parents; If the parents, by action or omission (even if it is due to a situation of manifested inability caused by mental illness), put in great danger the safety, the health, the formation, the education or the development of the child; If the parents of a child who was fostered by a private or an institution have revealed a manifest disinterest for the child, seriously compromising the quality and stability of the typical filiation bonds’, during, at least, 3 months before the care award request582.

Regarding the biological grandparents, brothers, uncles or tutor:

- if they are deprived of their mental faculties or if, for some other reason, it is very difficult to hear them in Court (if their whereabouts is unknown);
- If they have abandoned the child;
- If the child belongs to unknown or dead parents;

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581 Article 8º/2, of the Executive Law nr 185/93
582 The concept of “manifest disinterest” is essentially about seriously compromising the quality of the filiation typical bonds (in opposition to the old redaction of the law that was referring to seriously compromising the filiation affective bonds. Now it is about their quality)
• If the parents, by action or omission (even if it is due to a situation of manifested inability caused by mental illness), put in great danger the safety, the health, the formation, the education or the development of the child;

• If the parents of a child who was fostered by a private or an institution have revealed a manifest disinterest for the child, seriously compromising the quality and stability of the typical filiation bonds’, during, at least, 3 months before the care award request.

8. Preliminary Proceedings

According to the proceeding manual for adoption, there are two subjects that are object of intervention: Child; Candidate to adoption; For that reason, these two processes are mandatory and must take place before to the judicial adoption process. As result, there are two distinct processes:

Judicial, proceedings to assess whether the child should be conducted to an adoption process – meaning, if the child’s project of life should be adoption; Consent; Care award measure: Administrative care award; Judicial care award; Measure of promotion and protection' care award to a person or institution with the goal of future adoption;

Administrative proceedings to evaluate if the candidate is competent for an adoption– selection of the candidates; The following description of these 2 proceedings is crucial to understand the difficulties that citizens find in the adoption process.

Verification of the child’s adoptability conditions

Judicial, proceedings to assess whether the child should be conducted to an adoption process – meaning, if the child’s project of life should be adoption

If the child was conducted for adoption by the parents, the adoptability status is definitively recognized, as long as the required consents are given, and the judge sentences it. This is the typical situation of a blank consent, however these are not the majority of the cases, and so there are preliminary procedures that must take place.

For the most part, in these cases, the child was not voluntarily given for adoption, but there was a decision of removing him from the biological family. This decision is fundamental in the danger / risk situation that leaving with the natural family means.

The decision process that follows it’s one of the most important difficulties that is faced in the adoption system in Portugal, and should be sustained in a study of the child’s social and juridical situation in order to define the life project, with the team that studies, defines and makes the decision is responsible for the 1st phase of an adoption process, and – as said before – should be independent from the team that makes the candidates selection;

The main principle in the matter is family’s primacy, which means that:

Whenever a child is taken from the biological family, the Commission for Children and Youngsters’ Protection (CPCJ) must try to create the required conditions for the return; or, if that is not possible, for the adoption of the child. This principle, or its excessive interpretations, postpones sometimes the decision about whether adoption is or not the

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583 The concept of “manifest disinterest” is essentially about seriously compromising the quality of the filiation typical bonds (in opposition to the old redaction of the law that was referring to seriously compromising the filiation affective bonds. Now it is about their quality)

584 For the consent’s detailed description see page 26 and following

585 The parents’ consent is – in general terms – mandatory; For detailed information about the consent, see page 26 and following
Deciding about an adoption’s project of life is therefore subsidiary when other protection and promotion measures can still be attempted\textsuperscript{586}. In these cases, the decision takes place after a study of the child’s situation and prospects; the project of life is discussed in a multidisciplinary team and then decided by the Technical Director of the centre where the child is (temporarily) leaving.

This decision must comprehend the adoptability requirements of the child, to make sure that they are fulfilled\textsuperscript{587}. Whenever it is decided that it is adequate setting out the child for adoption, the Commission for Children and Youngsters’ Protection (CPCJ) communicates that decision to the Adoption Service of the district (SCML in Lisbon or Refugee Aboim Ascensão in Faro) as well as to the Public Prosecutor.

From this point on, the adoptability procedures must be checked by the Court (Judge and Public Prosecutor), supported by the technical reports (from the psychologists and social assistants that participated in the life project definition).

This is an important moment as it assures the biological family the necessary possibility of contradicting. If the consent was not given before, it must take place in this phase. The ideal situation is for it to be voluntarily presented - previous consent; however if it does not happen, it is possible – under certain circumstances – to dispense it.

9. The Required Consents For Adoption

a) Care Award Measures

To the child, whose project of life was decided to be adoption, must be granted specific juridical status, which happens through one of the following three measures:

- Administrative care award;
- Judicial care award;
- Measure of promotion and protection’ care award to a person or institution with the goal of future adoption;
- Before moving any further and explaining the whole regime of these institutions, it is important to explain its context and importance in the entire adoption process.

As we have already referred to, one can only adopt after a decision of the minor’s care award to him, either through administrative care award or judicial care award, either through a measure of promotion and protection of care award to a person or institution with the goal of future adoption.

This been said, we can now expose the regime of each one of the institutions.

b) Judicial Care Award

The first and main goal of this institution is the minor’s defence, avoiding the prolongation of situations where it suffers from deep needs caused by the absence of a familiar relationship

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\textsuperscript{586} Supporting the biological parents or other family member; minor’s trust to a fit person; foster family or temporary foster care at centre

\textsuperscript{587} For detailed information about the child’s requirements, see page 23 and following
with a minimum of quality, in which the parents either don’t exist, either are not willing to give their consent for an adoption and show no interest or a distance that do not allow the possibility of providing their child, in useful time, the relation that it needs for an harmonious development.

It’s based on the general conscious that the child needs, since his birth and especially in his first stage of childhood, of a balanced relationship with both parents, which should happen without great oscillations. When this does not happen, for any reason, there is a situation of great risk for the child, which the other closest relatives should try to fix. Otherwise, this part has to be taken by society itself, which should, emergently, take all the needed measures to provide the child in risk a substitute relationship.588

The judicial care award is regulated by the Article 1978º of the Civil Code589, which defines the conditions590 for its decision and also the priority given always to the child’s interest. The conditions or requirements that need to be verified so that the judicial care award is legitimate are:

- If the child belongs to unknown or dead parents;
- If there was a previous consent for adoption;
- If the parents have abandoned the child: the concept of abandonment is related to the normal use of the word abandonment, to the radical and definitive cut from the parents part;
- If the parents, by action or omission (even if it is due to a situation of manifested inability caused by mental illness), put in great danger the safety, the health, the formation, the education or the development of the child;
- If the parents of a child who was fostered by a private or an institution have revealed a manifest disinterest for the child, seriously compromising the quality and stability of the typical filiation bonds’, during, at least, 3 months before the care award request591;

According to the Article 1978º/5 CC, the people / entities with legitimacy to request the judicial care award are:

- The Public Prosecutor;
- The social security organism of the area where the child lives;
- The person to whom the child was given in administrative care award;
- The director of the public establishment or the direction of the public institution that fostered the child;
- In the terms of the number 6592 of the same Article (1979º), the adopting candidate parent can also request it when:

588 See the Article 69º/1 of the Portuguese Constitution and Article 19º/1 of the Convention About Children’s Rights
589 Changed by the Law nr 31/2003 of August 22nd
590 One of the condition, which was, by the way, introduced by this Law 31/2003, can be questionable, since “the non existence or the serious danger of the typical bonds of filiation” is an autonomous requisite that needs proving
591 With the alterations to the Law nr 31/2003, this condition was distinguished from de abandonment one. In this case, the concept “manifest disinterest” is essentially about seriously compromising the quality of the filiation typical bonds (in opposition to the old redaction of the law that was referring to seriously compromising the filiation affective bonds. Now it is about their quality)
592 Added by the Law nr 3/2003
• It already has the child at his care due to a previous decision (whatever it was);

• Already having the child at his care, and also gathering all the conditions for the administrative care award, the social security services have not yet decided about the confirmation of the child's permanence, after the study about the ability for adoption or after the deadline for that effect has passed (maximum 6 months);

Thus, in order for the adopting candidate parent to be awarded with the judicial care award, verified, in alternative of those two situations, there are also two more conditions imposed:

• That the candidate was already selected for adoption by the social security organism, according the Articles 5º and 6º of the Executive Law nr 185/93, of May 22nd593;

• That the child is at the candidates’ care;

• About the Judicial Process of the judicial care award itself, we should, first of all, know that it is regulated by the OTM.

• Therefore, with no extensive details, here is the general frame of the process:

• It is initiated with the presentation, in court, of a requirement, which should contain all the facts that can sustain the judicial care award request, including the legal conditions that permit it which the Article 1978º of the CC referrers to (Article 164º OTM);

• The Courts of Family and Minor’s are the competent entities to know about the request (Article 146º/c) OTM);

• Consequently, the process will take place in the court of the child’s residence area (155/1 OTM);

• The people called to contest the request are the child's parents, except if they have given the previous consent, and, in that case, other relatives or the tutor, in the situations referred on the art. 1981º of the CC, and also the Justice Department, in the cases where it did not do the request;

• The general deadline for contesting is 10 days (Article150º OTM and 303º/2 and 1409º/1 of the Civil Process Code);

• It is a process with a secret nature, which consultation is only allowed, by the judge, in special cases (Article 173º-B OTM);

• In the phase of facts proving, the judge takes all the measures he believes to be needed, including the hearing of the social security organism of the child’s residence area;

• After a decision in favour of the judicial care award, it is ordered its communication to Civil Registry (Articles 68º/1.f9 and 78º of the Civil Registry Code);

Once the judicial care award is decided, the biologic parents are legally inhibited of making use of the paternal power (Article 1978º-A CC, with the changes of the Law nr 31/2003.

In the sentence that decides in favour of the judicial care award, the judge has to nominate a temporary curator for the child, who will make use of the paternal powers' typical functions until an adoption is decreed or the guardianship is instituted / Article 167º/1 OTM). This

593 With the changes introduced by the Executive Law nr 120/98, of May 8th and the Laws nr 31/2003 and 28
curator is the person to whom the child was awarded in care, and in the cases where it is an institution, it will be the person who deals more directly with the child;

The sentence that decides about the judicial care award, whether it is in its favour or not, has to be communicated to the social security organism (Article 12º of the Executive Law nr 185/93, of May 5th)

This process is free from any public tax and court charges\textsuperscript{594};

c) Measure Of Promotion And Protection Of Care Award To A Person Or Institution With The Goal Of Future Adoption.

The measures (of promotion and protection) of care award to a person selected for adoption or to an institution with the goal of future adoption were introduced in the LPCPJ\textsuperscript{595}, by the Law nr 31/2003, of August 22\textsuperscript{nd}. In its former composition, the LPCPJ regulated that these measure should still depend on the verification of the conditions for judicial care award (contained on the already mentioned Article 1978\textsuperscript{º} CC). Thus, it was not confused with the institution of judicial care award with the goal of future adoption due to the fact that the measures of promotion and protection have the goal of protecting the child, in the immediate moment, in dangerous situations for its health, safety, formation, education and development. Therefore, these measures would remain until the judicial or administrative care with the view of future adoption is not decreed.

Once one of these is decreed, the measure of promotion and protection would end. So even if an able person selected for adoption had the child at its guardianship, it still does not mean that the judicial or administrative care award is dispensed.

This been said, the legislator grew a conscious in terms of admitting the obstacles that all these proceedings lead to, introducing some new Articles to the LPCPJ, out of which we distinguish especially two:

Articles 38º-A and 62º-A. With these changes, the legislator accomplished the equalization of the measure of promotion and protection to the judicial and the administrative care award, consequently changing the Article 1980º/1 of the CC. This been said, we can now analyse the institution of measure of promotion and protection of care award to a person or institution with the goal of future adoption, as it is nowadays:

This institution can consist in one of two\textsuperscript{596}:

• In the child’s placement under the care of a selected candidate for adoption by the competent social security organism

• In the child’s placement under the care of an institution with the goal of future adoption;

This measure, according the permanence principle (which defines that the child should always stay with the biological family) can only be taken when there isn’t any chance left of the child coming back to the to its natural family and, also, after the verification of some of the conditions nominated by the Article 1978º CC;

About the specific measure of the child’s placement under the care of a candidate selected for adoption\textsuperscript{597}, and only this one, with the changes of the Law nr 31/2003, it started being equalized to the judicial (although this one follows the OTM rules) and administrative care

\textsuperscript{594} The recently approved legal diploma that regulates the judicial costs of the procedures altered this exemption; it is already in course an alteration to repose the exemption

\textsuperscript{595} Lei de Protecção de Crianças e Jovens em Perigo (LPCJP) – Law of protection of children and youth in danger

\textsuperscript{596} Article 35º/i- g) and 38º-A LPCJP

\textsuperscript{597} Article 38º-A/ a)
award due to the fact that the decision of this measure also involves the definition of adoption as the child’s life project in the sequence of a situation of risks’ detection (1981º/1 CC); Consequently, once this last measure is applied the next immediate stage is the pre-adoption period (not longer than 6 months) and the realization of the enquiry (previewed by the Article 1973º CC) done by the social security service organism, after which the adoption process itself should be installed with no further delays; Once the measure is decreed, the biologic parents are legally inhibited of the paternal powers’ use (Article 1978º-A CC, added by the Law nr 31/2003.; This specific measure will last until the adoption is decreed and presents no possibility of revision. The parents cannot visit the child (Article 62º-A LPCJP)598; If, in the moment when the measure of promotion and protection is to be applied, there is no knowledge of a person selected for adoption, then it will be applied the specific measure of the child’s placement under the care of an institution with the goal of future adoption599. Once an adopting candidate parent is found, the child will be delivered to him by the social security organism and the candidate will also be constituted as a temporary curator, through the requirement of the social security organism (Article 62º-A/2 of LPCJP and Article 167º/3 of OTM). Once this happens, the measure of the child’s care award to an institution with the goal of future adoption is converted into a measure of care award to a candidate selected for adoption, for this is the only one that the law equalizes with the judicial and administrative care award;

d) Administrative Care Award

It is a result of a decision of the social security organism (or the Santa Casa da Misericórdia of Lisbon) that delivers the child to the candidate adopting parent or confirms the child’s permanence at the candidates’ care;

For administrative care award to happen, the following conditions need to be verified:

When after the hearing of the legal representative and of the person that possesses the minor’s legal guardianship600 (and, also, as long as it is not older than 12, it can be determinate, with no doubts, that they do not oppose to it;

If a process of promotion and protection is still going on, it is also necessary that the court, at the Public Prosecutor or the social security organisms’ request, considers that the administrative care award is of the child’s best interest;

Once the administrative care award is decided, the social security organism, in the maximum period of 5 days, should communicate to the Public Prosecutor, before the family and minor’s court of the child’s residence area, that decision and its fundaments, as well as the opposition manifested against the administrative care award which kept it from being decreed – Article 8º/6 – a);

The social security organism should also emit and deliver a certificate with the date when the child was care awarded to the adopting parent candidate – Article 8º/6 – c). At last, it should also communicate it to the Civil Register Conservatory where the child’s birth was registered, so that the candidate or the natural parents’ identity secret can be preserved (Article 1985º CC);

These processes of administrative care award also have a secret nature and its consultation is only allowed by the judge, in certain cases (Article 173º-B of OTM);

598 Notice that from points 3 to 6 we are only talking about the measure of the child’s placement under the care of a candidate selected for adoption

599 Article 38º-A(b) of LPCJP

600 The law considers as person with the legal guardianship’s possession the one who, in the situations indicated by the Articles 1915º and 1918º CC, have been doing the typical and essential functions of the paternal power.
Once the administrative care award (of the child’s delivering to the candidate or of the confirmation of the child’s permanence) is decreed, the candidate can (and should) request of the court\textsuperscript{601} its designation as the child’s temporary curator (Article 163º OTM). In case the candidate doesn’t do this, the Public Prosecutor should do it, within 30 days after the administrative care award decision, as the social security organism was obliged to communicate it to the Public Prosecutor anyway (Article 163º/2 OTM). This measure intends to respond to the obstacles that would always exist between the one who has the administrative care award the one who has the paternal power.

After the administrative care award decision is made, its process is added to he judicial care award or adoption itself process;

At last, it should be said that the administrative care award raise some difficulties, therefore it is a institution hardly used due to its weak consistency based on its conditions (already mentioned). Especially on what it comes to the parent’s consent;

e) Administrative Proceeding To Evaluate If The Candidate Is Competent For An Adoption – Candidate’s Selection

This phase is also entirely dominated by public decisions, specifically related to the candidates’ suitability to adopt a child.

f) Whom to contact

The first thing the candidate (s) should do is to contact the Local Social Security’s Adoption Services\textsuperscript{602} or, if leaving in Lisbon, the SCML\textsuperscript{603} - Article 5 of the Executive Law nr 185/93 of 22\textsuperscript{nd} May;

Everyone – but the parents - that has a minor under their responsibility should also communicate the fact to the Local Social Security’s Services – to prevent ambiguous situations. It is then scheduled an interview– in a 15 days maximum\textsuperscript{604} – regarded as critical in this selection process.

In Portugal only public entities may provide applicant adoptive parents with information.

g) Informative interview

This meeting takes place in the Local Social Security’s Adoption Services, with the Social Assistant and the psychologist; It is a very important moment to understand the candidate’s motivations and wishes towards an adoption proceeding and the child they wish to adopt; In this interview the candidate is informed about:

- Reality of an adoption process and also it’s objectives;
- Adoptions proceedings– it is explained to the candidate the official procedure and also the difficulties of an adoption process;
- Legal requirements and conditions the candidate should fulfil, as well as forms and documents needed to the procedure;
- The informative questionnaire is given to the candidate. It should be filled and given to the Adoption Services along with the required documents, namely:

\textsuperscript{601} The one competent in the issues of family and minor’s of the child’s residence area
\textsuperscript{602} In Portugal only one Private Institution of Social Aid (IPSS), Refuge Aboim Ascensão can act as Social Security Service in Adoption matters, and it operates specifically in the Faro district (in the Algarve).
\textsuperscript{603} In Portugal there are 21 adoption services – one in each continental district (18) - in the municipality of Lisbon is competent the SCML - and then one in the Azores and another one in Madeira.
\textsuperscript{604} One week average delay, according to the Adoption Services interviewed
- Birth certificate;
- Copy of ID card;
- Marriage certificate;
- Certificate from district council, if de facto marriage candidates;
- Criminal Record;
- Medical certificate attesting state of health;
- Copy of the last payment receipt or declaration from the employer or copy of the last ISR declaration;
- Photograph;
- Social Security Number (NISS);
- Tax payer Number;
- The candidate’s children ID card;

The Social Security’s Adoption Services, after verifying the legal requirements, gives the candidate(s) a certificate of communication (of the communication of the adopting intention) and also of the registry in the Services.

- Evaluation of the candidateship

Afterwards the Social Security’s Adoption Services have a 6 months period to study and evaluate the candidateship - Article 6 of the Executive Law no 185/93 of 22nd May.605 With the intention of a more effective evaluation, it takes place, at the candidate’s residence, a 2nd interview – called the social interview. A 3rd interview is considered to be important and usually done - at the Adoption Services. During this investigation period, the Adoption Services study the candidate’s characteristics, through domiciliary visits, examinations and documents analysis.

- Specific criteria to evaluate the “suitability” of the candidate:
  - Personality;
  - Physical and mental health;
  - Aptness to raise and educate a minor;
  - Family and conjugal situation and stability;
  - Economic and social conditions;
  - House living conditions;
  - Most important (deep) motivations of the candidate’s request for adoption;
  - Realism of the adoption project according to the personal and couple (in applicable) history;

605 If the child is the partner’s sun or daughter there is no 6 month analysis period, because the pre-adoption period can begin immediately - Article 6 of the same Executive Law
606 Therefore a psychological and social assessment of the candidate(s) – it is mandatory
• “Psychological Adoption”\textsuperscript{607},

• Participation of the candidate’s (s) family to the adoption project;

• Among other aspects;

The candidate’s motivations are extremely important, as one of the general requirements for an adoption is the legitimate motivation for adoption – that should always be evaluated throughout the superior interest of the child’s perspective;

Accordingly, skilled and qualified professionals should carry out this social and psychological evaluation of the candidate (s)\textsuperscript{608}, as it is an exceptionally important moment of all the preliminary proceedings. A good and judicious selection of the candidate is essential, and there lies one of the most important difficulties the Portuguese adoption system faces – as there are not enough qualified professionals (due to the fact that there are not enough human resources) – See Enquiry results.

The candidate’s selection criteria follow some general guidelines – that result from the law – but mostly it depends on the Adoption Service’s exact determination. This procedure is frequently mentioned as one of the most problematic in an adoption process – See Enquiry results. In fact, there is as lack of human resources, which makes a proper and deep study hard to do. Nevertheless, improvements in these particular aspects were mentioned by almost all the relevant\textsuperscript{609} interviewed people - adopting parents and social services workers.

It’s important to remember that the technical teams that intervene in this selection are necessarily different from the one that studies the social and juridical situation of the child and that participates and accomplishes its project of life (when adoption is the choice).

During this period the candidates can (and should) express their expectations towards the child they intend to adopt; being therefore able to chose the physical characteristics of their future son / daughter (age, gender, race and health), that express the child they have imagined.

As above-mentioned, the Adoption Services must decide in 6 months the candidate’s (our candidates if it is a couple) pretension. This decision – whether of approval or rejection - must be notified to the candidate, as well as its fundaments, mentioning necessarily the possibility of appealing (if the candidateship is not accepted). In approval cases, the candidates are registered in the National List database, with indication that “waits for an answer”. In order to keep the National Adoption Lists\textsuperscript{610} up to date, the candidates must be asked about their will to maintain the candidateship every 18 months. The interviews performed showed us that the candidateship is not often rejected, and in those cases where it is, it is quite uncommon the candidate’s appeal to court. If the candidateship is rejected – appealing possibilities. In this case, candidates have 30 days – since the date of the notification - to appeal to the competent court in family and minor’s affairs\textsuperscript{611} of the Adoption Service area – Article 7 of the Executive Law nr 185/93 of 22\textsuperscript{nd} May. If though the appellant doesn’t necessarily have to be represented by a Lawyer – it is discretionary – it often is. In fact, it was mentioned in our interviews that it was convenient to be supported by a Lawyer throughout the appeal.

The process is available to be consulted in the Adoption Service that conducted the study, whenever requested by the candidates or their lawyer to sustain the appeal; Both the petition and the allegations are notified to the Adoption Service that pronounced the decision, which

\textsuperscript{607} As said by SEABRA DINIZ, psychologist and expert in adoption matters

\textsuperscript{608} As psychologist, psychiatrists, social assistants

\textsuperscript{609} Relevant in which candidate’s selection experience may concern

\textsuperscript{610} For detailed information regarding the National Lists for adoption see page 50

\textsuperscript{611} If the is no such court in that jurisdiction, for the appeal is competent the county court
has the possibility of repairing it or, if not, sending it to the court (in 15 days) along with any observations though to be relevant on the matter.

In the court, the judge may carry out all the necessary and adequate diligences, and decides on the matter in 15 days – during which occurs the Public Prosecutor’s examination of the appeal. The judicial decision upon the administrative decision to reject the candidateship does not admit other appeal.

10. National Lists For Adoption.

The next moment in the adoption process is the matching of the candidate with an adoptable child. And this procedure is done precisely through the recently created NATIONAL LISTS FOR ADOPTION\textsuperscript{612}.

This instrument, supported on an informatics data base, was one of the most important measures of the last reform – 2003 – if not the most effective in the purpose of increasing the number of adoptions and also reducing the average time of the adoption procedure;

Before the approval of these Lists, the choice / match of a child to a certain candidate (and vice versa) required communication between the various Adoption Services, witch was done via fax, e-mail, phone, etc;

Now this same work can be done by consulting the Lists that provide information regarding the adoptable children and selected candidates from all the districts.

The main concern is, for that reason, to guarantee permanently up dated information about the candidates and the adoptable children, in order to reduce the time between the definition of the adoptability and the adoption:

It is identified by the participants of the adoption system\textsuperscript{613} as a very important mechanism in the adoption process, both for the adopting candidates and the children, as it allows a quicker selection process and a more effective cooperation between the social services.

In force since January these Lists are working since June 2006, this Data Base can be used by the local social services, by SCML (in Lisbon) and by the Social Security Executive Department.

There are 3 National Lists:

- List of children in adoptability conditions;
- List of candidates for national adoption residents in Portugal;
- List of candidates for international adoption residents abroad;

a) Working method

When the candidate is selected the social services consult this List looking for a child for these candidates – 1\textsuperscript{st} at the district’s level, and only after in a national level;

\textsuperscript{612} Regarding the 2003’s legislative reform see page 7
\textsuperscript{613} See results of the survey
As well as when the project of life of child is determined to be adoption, and the adoptability condition is defined, the services also consult this List looking for a candidate for this child – the process is the same here: 1st at the district’s level, and only after in a national level;

As the international adoption is subsidiary towards national adoption, the social services should 1st consult the National List;

Thus they can only pass to the International List if its not possible to find a good solution among those candidates and those children;

b) Critics

The Commission that studied / implemented the 2003 Reform intended something different when decided to implement this National Lists;

The National Lists where supposed to comprehend all the adoptable children in a national level, preventing the regional choice of the candidates and children;

Witch means that the working method - the current one implies still a district’s adoption process level – would be truly different;

In fact, the Lists where (in a first moment) planed to allow both the candidate and the child should be chosen from all the existing candidates and children;

Another difficulty mentioned is the fact that Services can not “chose” the candidate for a certain child (and vice versa) without restraint, because it is obliged to chose the 1st on the list – and not a certain one that is already known;

11. Pre-Adoption Period

When the care award is established\textsuperscript{614} to a given candidate, and after the entailed observation period\textsuperscript{615}, the pre-adoption period is initiated. During this period the Adoption Services (or the SCML if the candidate is resident in the city of Lisbon) monitor the new family and evaluate the relations developed between the candidate and the child as well as the ones between the last one and the new family.

This analysis shouldn’t exceed the 6 months period, during which the Adoption Services elaborate the inquiry determined by Article 1973\textsuperscript{2} CC – note that this duration was reduced from 1 year to 6 months in the 2003’s legislative reform. If the adopted child is the spouses’ sun / daughter the duration is 3 months from the communication of the intention to adopt (to the district’s Adoption Services). This period should confirm the adjustment and integration of the child to the given candidate, and vice versa. It is to be accompanied by the Adoption Team, in order to:

- Protect the child and promote its adoption;
- Assess the integration of the child in the new family as well as the relation established between the last one with the child;
- Collect the relevant elements to evaluate the convenience of the adoption decision;

\textsuperscript{614} Either administrative care award, judicial care award or measure of promotion and protection
\textsuperscript{615} That occurs when the child and the candidate meet, in order to assess the mutual response to one another
Elaborate the inquiry;

Once the Adoption Service considerers the adoption requirements are already verified, or by the end of the 6 months period\textsuperscript{616}, it has 30 days to present the inquiry final report – Article 9\textsuperscript{o}/1 and 2.

The report must be based upon the following elements:

- Personality and health of the child and the adopting candidate;
- The candidate’s aptness to raise the child;
- The candidate’s family and economic conditions;
- The main motivations for the adoption application;
- This inquiry final decision is notified to the adopting candidate with a copy of the report.

After the report’s notification or after the pre-adoption period the candidate can request the adoption petition – it should be done in the next 12 months, if not the Adoption Services must re-examine the situation.

The report is of extreme relevance as of it depends the judicial decision required to pronounce the adoption: there is no judicial procedure without this inquiry report.

12. The Adoption Judicial Procedure

This process is essentially regulated by the OTM, in the Articles 168\textsuperscript{o} and following and it has the nature of a process of voluntary jurisdiction (Article150\textsuperscript{o}).

The adoption request can only be formulated after:

- The adopting parent candidate was notified of the inquiry report, by the social security’s Adoption Service;
- The enquiry, with a copy of the report that is to be elaborated during the pre-adoption period (Article 10\textsuperscript{o}/1.);
- The process begins with the initial request that should be presented on the competent family and minor’s courts’ secretary. In this request, the adopting parent should allege the facts and the fulfilment of all the requirements demanded by the Article 1974\textsuperscript{o} CC, as well as all the other conditions.

With the initial request, the candidate should also attach all the means of proof, including the documental and testimonial.

The initial request should also contain:

- The court’s identification;
- The candidate’s complete identification and residence;
- The process form (tutelary civil adoption process);
- Copies of both the candidate and child’s birth certificates;

\textsuperscript{616} Postponable if necessary
• Copies of the candidates marriage certificate, if that's the case;
• If the candidate has other children, copies of their birth certificates and
• The report of the inquiry preview by the Article 1973º of the CC617;

The court that is competent to constitute the adoption bond is, as well as, competent to revoke and review the adoption decision, demand and judge the adopting parent's account and set the amount of the alimony towards the adopting child, is the court of family and minors of the child’s residence area (Article 155º OTM). If there isn't one, then the district one will be the competent;

The verification of the requirements of which the consent’s dispense needs to be legitimate, in the cases previewed by the Article 1981º/3 can be done in the judicial process itself, officially or at the Public Prosecutor or the adopting parent’s request. In these cases, the judge demands the necessary diligences and reassures the possibility of opposition from the part of the people whose consent can be dispensed (Article 171º OTM).

According to the minor’s age and its level of maturity, the judge should hear it even if it isn’t still 12 years old618.

The judge should also hear the other adopting parents’ children when they are over 12, as well as the ascendants or, in its lack, the older brothers and sisters of the dead parents (of the adopting parents), if the adopting child is the candidate’s consort child and their consent is not needed, unless they are not in possession of their mental capacities or, for any other reason, there is a great difficulty in hearing them (Article 1984º CC).

At last, once all the diligences were made, and once the Public Prosecutor was heard, the sentence is dictated (Article 172º OTM). If, in this sentence, the adoption is decreed, a certificate should be sent to Civil Registry in which the child’s birth certificate is based (Civil Register Code, Article 78º).

It should also be said that, like the other preliminary procedures, the adoption process itself also has a secret nature (Article 173º-B OTM). Thus, the court may authorize its consultation to whom shows legitimacy to do it.

We should also do a brief reference to the urgent character of the processes related with the previous consent for adoption, the judicial care award and the adoption. The requests for these do not depend on a filing (Article 173º- D and 173 º-E OTM).

Finally, it is important to mention the Executive-Law nr 153/92, of July 23rd, that regulates the non existence of costs in the adoption process and made free the certificates needed for the processes’ instruction.

13. The Adoption Judicial Judgement

The juridical effects of the adoption judgement differ according to the type:

• Full adoption;
• Restricted adoption;
• Full adoption

617 If not, the court will ask for it to the social security organism (Article 169º OTM). With the report, the judge should hear the child and the people whose consent is demanded by the law and that haven’t given it yet
618 For detailed information about the child’s participation in the process, see page 67
By a full adoption, the adoptee acquires the situation of son of the adoptive parent(s), by entering its family (similar effects as biological child). All the relations with the origin family are extinguished, except for:

- Matrimonial purposes;
- Case of adoption of the spouses child;

Consequently, all the right and obligations of the child and of the adoptive parents towards the child are exactly the same as in a biological family:

- For succession purpose;
- For alimony purpose;
- For parental authority;
- Matrimonial impediments;

Etc;

The juridical effects of the judgement that decrees a full adoption are:

- Name
- The adopted child looses the surnames of the original family, and acquires the adoptive family’s ones – Article 1988º CC.
- As for the Christian name, the rule is that is not possible to change it, for identity of the child’s reasons.

Since 1993 is however possible that this name is also altered under certain exceptional circumstances:

- By request of the adoptive parents;
- As long as the child’s interests are protected:
  - personal identity right;
  - integration in the family;
  - It is a Courts decision;

Anyway it’s up to the Court to assess the specific circumstances of each case, always with the boundary of the exceptionality of the Christian name’s modification.

**Nationality:** The child adopted by a Portuguese national acquires the Portuguese nationality – Article 5º of the Nationality Law. It is a case of original acquisition of the nationality (not attribution).

**Irrevocability:** Full adoption is never revocable - Article 1989º CC - not even with the agreement of all parties. It is also not possible to request the annulment or the voidance declaration of an adoption – precisely because the effects are subtracted to the parties will.

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619 Introduced by the Executive Law nr 185/93 of 22nd May
620 Organic Law nr 2/2006 of 17th April, last emended by the Law nr 37/81 of the 3rd October
Prohibition of establishment of the natural filiation: In order to protect the stability of the adoption bound, after the adoption has been decreed the law prohibits:\(^{621}\):

The establishment of the natural filiation; The proof of the natural filiation out of the marriage process.

Prohibition of successive adoption: As long as an adoption subsists it is not permitted to establish another one regarding the same adoptee, except if the adoptive parents are married. That means that if the adoption no longer exists – see below revision of the adoption judicial judgement – it is possible for a new adoption to be established.

The juridical effects of the judgement that decrees a restricted adoption are:

Name: The adopted child doesn’t loose the surnames of the original family, however – if requested by the adoptive parent – the Court may decide to confer the child the adopting family’s ones – Article 1995º CC.

As for the Christian name, the modification is not at all possible, for obvious identity of the child’s reasons.

Nationality: The matter is not relevant as there are no restricted adoptions of children with other nationalities.

Revocability: Restricted adoption can however also be revoked under certain circumstances such as:

When requested by the adopter or adoptee – fundaments:

- If the adopting parent or child committed and was condemned for a crime against the adopting parent or child, or his family;
- If the adopting parent or child committed and was condemned for a calumny accusation or a fake testimony against the adopting parent or child, or his family;
- Unjust refusal of alimony when they are duded – Article 200.º-B of the CC;
- When requested by the Public Prosecutor, the biological parents or the person to whom the child was trusted to before, when the child is still a minor – fundaments:
- If the adopting parent doesn’t accomplish his paternal duties regarding the child;
- If the adoption, for any reason, becomes inconvenient for the education or interests of the child - Article 200.º-B of the CC;

The effects of the revocation only take place from the decision of revocation on - ex nunc effects.

Establishment of the natural filiation: As a result of the effects of a restricted adoption, it is possible to establish the natural filiation after the pronouncement of the adoption – Article 2001º CC.

Parental authority: It is exclusively exercised by the adoptive parents, as they have the parental rights and obligations. They can, therefore, make use of the child’s assets, but just in the amount that the Court settles as alimony for the latest.

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\(^{621}\) Article 1987º CC
Adopting child’s assets administration: The adopting parents have the legal obligation to present the child’s assets’ list in 30 days subsequent to the adoption pronouncement, if required by the Court.

They also can only expend the child’s income up to the limit defined by the Court to the last’s alimony.

Alimony related effects: The adopting children – and the respective descendants – are only obliged to pay alimony to the adoptive parent, in the absence of a spouse, descendants or ascendants in condition to do it.

As for the adoptive parents, they are considered ascendants of the 1st degree for alimony purposes.

Successory related effects: The adopting child (and its descendants) as well as the adoptive parent’s relatives, are not considerate as each other’s heirs, so they are not reciprocally entitled to alimony.

13. Revision Process Of The Adoption's Judicial Judgement

The judgement’s revision is regulated in Articles 1990º and 1991º CC, that doesn’t distinguish whether the adoption is full or restricted.

a) Requirements:

As the annulment or the voidance declaration of an adoption is not possible, the review of the judgement is the only way to retroactively destroy the adoption effects. It can only be requested by the mentioned people and depends on the violation of essential formalities; those vices are all expressly mentioned in the law622:

- Lack or vice of the adoptive parents’ consent;
- Lack or vice of the biological parents’ consent – or if it was irregularly dispensed;
- Duress or error vice of the adopting child’s or the biological parents consent;
- Lack of the child’s consent, when it’s necessary623.

Even if these requirements are fulfilled, the judgement’s review depends always on the preservation of the child’s superior interest above all.

The review of the judgement cannot take place if the child’s interests are considerably affected. In this circumstance the review will only occur if imperious reasons invoked by the adopting parent should impose it. The decision is up to the Court that should analyse and decide according to the given facts of the situation.

b) Standing to sue and time limit:

The judgement’s review can only be demanded by the person whose consent was required but not given, or had a vice, as it is never possible to be officiously revised.

14. Adoption And The Civil Registry.

All family bonds of the child with previous (blood) relatives are completely dissolved – Article 1986º nº 1 CC – as a consequence of the principle that states that fully adopted child

622 It’s not possible to invoke any other fundament for the revision
623 It is always mandatory when the child is over 12 years old
acquires the situation of son of the adopting parent (s) - by entering its family (similar effects as biological child);

This important adoption effect is dully expressed by the registry law\(^{624}\), which preserves the identity secrecy of the biological parents and the adopting parents.

The adoption\(^{625}\) is registered in the child’s birth certificate, and included all the relevant information. It’s also possible – if verbally required by the parents – to do an entirely knew birth certificate, not cancelling the prior one. The rule is that all the certificates an and copies are done having this new birth certificate as original, so that the identities are not revealed;

Naturally this rule has exceptions:

- For marital impediment cases;
- If the adopting child requests it and the biological parents didn’t oppose to the revelation of their identity;
- If requested by the adopting child, its ascendants, its descendents our heirs, if the biological parents didn’t oppose to the revelation of their identity;

Still regarding the register rules it is important to mention the relevance for register purposes of the decision of a promotion and protection measure of care aware to a selected candidate for adoption or to an institution with the goal of future adoption and the judicial care aware of the child. Even though these two decisions are not registered, they have registry related effects as they impose those birth certificates of the child respect the identity secrecy rule\(^{626}\).


The child participates in the development of its individual care plan. The child is informed and listened to through out all the proceedings that take place before and during an adoption process. In fact, it is considerate very important to analyze the child’s perspective, though its will is not always binding.

- Unsurprisingly though, the level of participation depends on multi factors:
- Level of understanding;
- Age;
- Phase of the process.

a) Children over 12 years old:

If the child is older than 12 years old, his consent is a mandatory requisite for the adoption\(^{627}\). That means that if the child opposes to be adopted, the adoption won’t take place.

This consent – as well as any other - has to be given personally, by oral declaration, in the presence of a judge\(^{628}\).

b) Children under 12 years old:

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\(^{624}\) The important rules regarding this matter are stated in the Civil Registry Code
\(^{625}\) As well as the conversion of a restricted adoption into a full adoption
\(^{626}\) Stated in Article 1985.º CC, and explained in detail in page 66
\(^{627}\) Article 1981º nº 1 CC
\(^{628}\) For detailed information about the consent, see page 26
If the child is not yet 12 years old, the consent is not mandatory.

However, its motivations and expectations are also taken under consideration. The experts that work directly with the child must promote its participation, taking into consideration its opinions / aspirations.


In order to prevent difficult situation, such as extortion or blackmail, but also to facilitate the integration of the child in the adopting family, there are specific rules concerning the identity revelation of the involved parties - in full adoption cases629.

The Article 1985º CC rules this subject, as follows:

The identity of the adopting parents can only be disclosed to the family of origin of the child if they specifically declare they don’t oppose that revelation.

As result it’s necessary an express declaration of the adopting parents so that their identity may be revealed to the biological parents;

Accordingly the identity of the biological parents can only be revealed to the child, as along as they expressly mention it;

Therefore, in the absence of an Express declaration opposing it, the identity of the biological parents may be revealed;

In order to make this identity secrecy effective, the procedural law states that the adoption (judicial) process as well as al the preliminary administrative proceedings, are secret – Article 178º OTM.

Hence, all the required citations and notifications must take these needs in consideration.

This legal frame respects the will of the biological parents of not being traced – although they can should for it to be possible; as well as the need for adopting parent’s identity to be protected.

Nonetheless, is important to mention that the law protects more the adopting parents identity than the one of the biological parents:

The silence of the 1st means their identity may not be revealed;

The silence of the biological parent however means their identity may be revealed;

There is a declared preference for the ability of the adopted person to find out about its origins.

17. Access To The Origins.

Under certain circumstances – imposed by the above-mentioned identity secrecy rules - the adopted person can access information about its own origins. Access to this information is permitted if the adoptee is over 18 years old; if the child is under 18 years old, adoptive parental consent is though required. The pursuit of the adoptee’s biological origins is legally possible, even if it is not always possible in practical terms. In fact, due to the secret nature of the adoption process, origin tracing may not be possible630. This information however must be permanently preserved as it is part of documents that integrate judiciary processes.

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629 Because in a restricted adoption the rights and obligations towards the biological family are preserved – except for a few exceptions specified by law
630 That is the case whenever biological parents expressly declare they don’t want their identity to be revealed
In Portugal centres / services specialized in the assistance in this matter don’t exist, as well as there is no central organ responsible for collecting and preserving this type of information. It’s not determined by the Portuguese legislation which services should support those who want to collect information about their origins. However if that request is formulated the services involved in the adoption process will apply to the competent Court. The Court is the competent subject to address the request and so is responsible for allowing the consults of the process or for emitting any required certificate. Access to this information is, for the reasons mentioned above, limited according to the terms established by the Court that receives the request.

18. Post - Adoption Phase And Adoptive Failures Cases.

Specific post-adoption services such as:

- Counselling;
- Groups of mutual aid;
- Psychotherapy;
- Scholastic support;
- Family mediation;

Do not exist in Portugal, as well as there is no rule that imposes the elaboration of any kind of reports on this phase. However before the adoption is pronounced the Adoption Team of the Social Services promotes the establishment of a good relation with the adoptive family. As the post-adoption phase monitoring is merely occasional and dependant on the trusty relations established with the adopting family, there is no public control of the situation after the adoption is decreed. Nonetheless, despite the inexistence of public support structures, private counselling is frequently used whenever complications arise. On the other hand, the adopting parents’ associations have been recently created– with on-line chats and blogs.

a) if an adoption happens to fail the juridical consequences differ depending on the type of adoption:

Full National; Intercountry; Restricted

- Full adoption is never revocable not even with the agreement of all parties (Article 1989º CC), National adoption

The judicial judgment that pronounced the adoption can only be reviewed, when the essential requirements are fulfilled:

Lack or vice of an essential consent – or an irregularly dispensed consent;

Preservation of the child’s superior interest above all;

In this case the Social Security Services and the Court are the involved entities.

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631 Of the family’s area of residence
632 The revision of the sentence cannot occur if the child’s interests are considerably affected; if they are affected the revision only occurs if imperious reasons invoked by the adopting parent should impose it
- Intercountry adoption.

The judicial judgment that pronounced the adoption can only be reviewed, as above mentioned, when the requirements are verified – these are the same mentioned for national adoption judicial judgment review.

In this case the involved entities are the Central Authorities or other competent entity of the concerned State. The judicial judgment that pronounced the restricted adoption can also be reviewed, when the essential requirements are fulfilled:

- Lack or vice of an essential consent – or an irregularly dispensed consent;
- Preservation of the child’s superior interest above all;
- Restricted adoption can however also be revoked in certain circumstances such as:
  - Requested by the adopting parent or the adoptee
  - If the adopting parent or the adoptee committed and was condemned for a crime against the adopting parent or adoptee, or his family;
  - If the adopting parent or the adoptee committed and was condemned for a calumny accusation or a fake testimony against the adopter or adoptee or his family;
  - Unjust refusal of alimony when they are duded;
  - Requested by the Public Prosecutor, the biological parents or the person to whom the child was trusted to before, when the child is still a minor:
  - If the adopting parent doesn’t accomplish its paternal duties regarding the child;
  - If the adoption, for any reason, becomes inconvenient for the education or interests of the child;

b) social benefit for adoption

Granted in case of non-availability for work, to assist an adopted child provided that he / she is under the age of 15 and has been entrusted to the adopting person for less than 100 days

Granting period: 100 days, immediately following the judicial or administrative decision. This period is increased by 30 days for each adopted child.

If there are two adopting persons they may share the period of leave. Amount 100% of the reference earnings. It cannot be lower than 50% of IAS.

Evolution of the number of adoptions’ benefits days by gender – from 1991 to 2003

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633 In Intercountry adoptions, being Portugal the receiving country
634 The sentence review cannot occur if the child’s interests are considerably affected; if they are affected the revision only occurs if imperious reasons invoked by the adopting parent should impose it
19. Intercountry Adoption

The first remark that imposes itself is to point out that there is no distinction at all between the regulations and procedures that rule the European adoption (adopting parents or adopted child from an EU country) from any other foreign country adoption.

Consequently there are no special provisions regarding the EU resident candidates, as there is no different regime applicable to those candidates. Portugal is a member state of The Hague Convention, therefore whenever the state of origin or the receiving state of the child is part of the Convention, the same is applicable.

And this is the only distinction made when we’re analysing the intercountry adoption’s regime. If the adoption is established according to the Convention, as long as the Central Authority of the state were the adoption took place or were the child comes from acknowledges that, it is automatically recognized in all the member states.

As the Convention is applicable to adoptions that establish a bound similar to filiations, in Portugal it means that is applicable to full adoptions only. The Social Security Executive Department was established as the “Central Authority” to put in force the obligations of this Convention, as well as the “Competent Authority” to certify that the adoption was made accordingly to the Convention.

The candidates may apply simultaneously to a national and an intercountry adoption, as long as there presents two different applications. They can also apply to more than one country. There are very important risks at stake in an Intercountry Adoption – for the child, for the biological family and for the adoptive parents – so it is crucial to assure that all the different interests are respected.

With that purpose, and also to prevent international child trafficking, the subsidiary principle specifically states that the placement of a child in a foreign country may only occur under certain circumstances. The same purpose explains why the procedures below mention are strictly mandatory, both for:

- The adoption of a child resident in another country by a candidate resident in Portugal;
- The adoption of a child resident in Portugal by a candidate resident in another country;
- The differences between the procedures for national and intercountry adoption are due mainly to the fact that the responsible authorities differ, as it will be explained below.

Both types of intercountry adoption are regulated by the Executive Law nr 185/93 of the 22nd May, and by the Law nr 29/2007 of the 2nd of August:

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635 Signed in the 26th of August 1999, in force since 1st July 2004 – Assembly of the Republic’s Resolution nr 8/2003 of the 25th February
636 With the changes introduced by the Executive Law nr 120/98 of the 8th May

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Source: IIES - Instituto de Informática e Estatística da Solidariedade (www.ine.pt)
Adoption of Portuguese resident children by candidates resident in another country;

Adoption of children resident in another country by Portuguese resident candidates;

List of countries that do Intercountry Adoptions with Portugal

Is not possible to adopt a child from any country, but only in those who accept the candidateship sent out by the Portuguese National Authority – whether it is a The Hague Convention member State or not.

Angola, Brazil, Bulgaria, Burkina Faso, Colombia, Slovaquia, Estonia, Ethiopia, Philippines, Guinea – Bissau, India, Letonia, Lithuania, Mali, Mozambique, Moldavia, Poland, Special Administrative Region of Hong Kong, Special Administrative Region of Macau, Check Republic, São Tomé e Príncipe, Thailand, Ukraine.

a) Lawyer's legal services

It’s not mandatory to be represented by a Lawyer in an Adoption Process in Portugal – it’s applicable in all the preliminary procedures. Nevertheless, as it’s mandatory in some countries, it’s frequent for the candidates to be represented in these processes by Lawyers.

b) Who supports the costs of an Intercountry Adoption?

In Portugal the adoption is free of charge.

The costs of the judicial process are reimbursed, and the required certificates are also free.

The expenses related with the legalization of the required documents – in case the country hasn’t ratified The Hague Convention of 1961 – as well as the costs of the translations and respective certification, are supported by the candidates as well as the costs of the translations and respective certification. The candidate also supports the required travelling that has to do when the child is resident in another country – there is no public support for that.

As the candidate must submit to both countries legal requirements the procedure is naturally expensive – even though the adoption in Portugal is free of charge.

- Portugal as state of origin - adoption of Portuguese resident children by candidates resident in another country;

The placement of Portuguese resident children in other countries for adoption purposes depends on a previous judicial decision regarding the adoptability condition of that child. This decision is one of the following:

- Promotion and protection measure of care award to a selected candidate for adoption or to an institution with the goal of a future adoption;

- Judicial care award of the child;

- The administrative care is therefore not adequate to these situations, as does not depend on a judicial decision – it’s granted by the Social Security Services (that are part of the Portuguese Public Administration).

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637 This information as well a the specificities of the candidateship according to the origin / receiving country (depending on the situation) is up to date and can permanently be consulted in the Social Security’s Web site (www.seg-social.pt)

638 Birth certificates, and marriage certificates issued by the register Office for adoption purposes

639 Regarding the Abolishing of the Requirement of Legalization for Foreign Public Documents
Anyway the child may only be placed abroad if the adoption in Portugal has been tried but was not possible – subsidiary principle. This means that all the necessary proceedings regarding a national adoption must be already done.

Since 2007, however, is possible to place a child resident in Portugal abroad if one of the following conditions is fulfilled:

- The child having the same nationality that the adopting candidate;
- The child being son / daughter of the candidates spouse;
- Being in the in the best interest of the child to be placed abroad - national adoption already tried but not possible;

As already mentioned, the decision of placing the child abroad must be granted by a Court, who must guarantee that all the essential formalities were respected, namely:

- All the required consents were given – or the fulfilment of the requirements for its dispense;
- The child has already a judicial care measure pronounced;
- The foreign competent authority considers the candidate suitable according to the national law;
- The child should have been at the adopting parents care during an appropriate period of time - a long enough pre-adoption period;

All the mandatory requirements coincide with the ones existent for the national adoption, except for the one that states that the adoption should not impose an unjust sacrifice to the candidates other children.

If the decision of judicial care award of the child or of care award to a selected candidate for adoption or to an institution in order to a future adoption, was granted without any reference to the placement of the child abroad, the Court may – if requested by the Public Prosecutor or by the Social Services – transfer the figure of temporary curator to a candidate resident abroad.

- Requirements regarding the child:

These conditions don’t differ much from the ones required to a national adoption, except for the verification of the subsidiary principal – above-mentioned.

The adoptability of the child must be decided, by the competent Court: judicial care award or measure of promotion and protection of care award to a selected candidate or an institution with the goal of future adoption

The child must be under 15 years old at the age of the petition for adoption or 18 years old as long as the youngster had been care awarded;

All the required consents, if dispensing is not possible;

Consent of the child if over 12 years old;

Recognition by the competent services of the state of the candidate, it’s fitness to adopt; and acceptance of the candidateship by the Portuguese Central Authority;

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640 Law nr 28/2007 of the 2nd of August
641 For detailed information regarding the child’s requirements please see pages 26 and following
Acknowledgment that the adoption is possible in the receiving state;

Evaluation of the convenience to establish the adoption bound and if that corresponds to the superior interest of the child;

At the moment, the profile of the children being set out for Intercountry adoption is:

- Children under 9 years old with health problems and/or siblings;
- Children from 10 to 5 years old with no health problems;

Requirements regarding the candidate

These conditions also don’t differ much from the ones required to a national adoption, to fully adopt a child.

- Couples married for at least 4 years (not judicially or de facto separated), or different sex de facto married couples for more than 4 years, as long as both are over 25 years old;
- If it is a singular candidate, it should be over 30 years old, or – if the child is sun/daughter of the spouse – more than 25 years old;
- The candidate must be under 60 years old at the time where the child was trusted to him/her;
- If the candidate is over 50 years old, the difference to the child’s age can’t exceed 50 years;
- Exceptionally this difference may exceed 50 years if arguments are invoked to justify it;

Required documents

The file that is sent to Portugal with a candidateship for an Intercountry adoption of a Portuguese resident child must be organised by the Competent Authority of the candidate’s state and must contain the following documents:

- Aptness certificate for Intercountry Adoption purposes;
- Social and psychological report;
- Authenticated copy of the passport;
- Marriage certificate;
- Criminal record certificate;
- Medical certificate;
- Residency certificate;

For detailed information regarding the child’s requirements please see pages 26 and following.

Such as the case of siblings where the age issue arises only regarding to one or some.
Authenticated copy of the last payment receipt or declaration from the employer or copy of the last IRS declaration;

All the documents that are not written in Portuguese must be sent with its certificated translation.

All the documents that were not emitted by Portuguese entities must be submitted to a legalization process:

Signature recognition of the public officer who performed the document, by the diplomatic or consular agent of the state of destination and authentication of it’s signature by the apposition of the white stamp;

If the state has ratified The Hague Convention of 5th October 1961, the documents must be submitted to the apposition of the apostil – this formality according to the Convention attests the veracity of the signature, the quality in which the undersigned intervened, and the authenticity of the stamp that is part of the act – therefore discharging the legalization process of the document;

If the documentation file has copies of any document, in order to be considered valid these must be authenticated.

- Intervening authorities
  - Portuguese Central Authority – Social Security Executive Department;
  - Foreign competent entity;
  - Accredited mediators for Intercountry adoption – that must be accredited simultaneously in both Countries;
  - District Adoption Services;
  - Courts – family and minor’s courts whenever they exist in the district;
  - Civil Registry Services;

- Procedures

For an Intercountry Adoption to take place all the preliminary proceedings – described above – must already had taken place.

The typical procedures that occur in an Intercountry Adoption are foreseen in the nation legislation or in the international agreements that Portugal is part:

- Foreign candidateship transmitted to the Portuguese Central Authority by the Central Authority of the candidate’s state of residence or another accredited entity;

- There are only three Intercountry Adoption Mediation Agencies working in Portugal – the French Adoption Agency, Bras Kind (from Switzerland) and Dan Adopt (from Denmark).

- Foreign candidateship is analysed and accepted;

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644 Regarding the Abolishing of the Requirement of Legalization for Foreign Public Documents
645 Or the SCML if the candidate is resident in the city of Lisbon
646 These Agencies can participate in the Intercountry Adoption process if they are simultaneously recognized by the candidate’s state as well as by Portugal
Foreign candidateship is registered in the National List for Intercountry Adoption;

A child proposal is presented;

The proceeding agreement is emitted;

The foreign candidate programmes a visit to Portugal in order to meet the child;

The child and the candidate meet;

The child is trusted to the candidate – care award to a selected candidate for adoption in order to a future adoption or judicial care award of the child - and it is prepared the placement of the child in the candidates country of residence;

The pre-adoption periods is then initiated – the duration of the pre-adoption period is determined by the receiving state’s national law;

Accompaniment reports are presented to the Portuguese Central Authority;

If it is decided – according to the accompaniment period – that the situation is not in the best interest of the child, all the necessary measures should be put into action to protect the child – which may be the definition of an alternative project of life.

The adoption is decreed in the candidate’s state of residence;

From these phase one, the process differs according to the state of origin of the child: if it is member state of The Hague Convention or not;

If it is a member state of The Hague Convention

Copy of the (foreign) adoption decision is sent to Portugal with the accordance certificate;

The decision’s recognition can only be refused if the adoption is manifestly contrary to Portuguese public policy, taking into account the best interests of the child;

It is altered the Civil Registry of the child;

If it is not a member state of The Hague Convention

Copy of the (foreign) adoption decision is sent to Portugal and should be validated;

The recognition of an Intercountry adoption occurred not in accordance to the Convention is not as automatically accepted;

The adopting parents can request this validation in 3 months after the adoption decreed; or afterwards by the Public Attorney in the 2nd instance court.647

The process of revision of a foreign decision that decreed an adoption in another country should preserve the identity secret of the biological parents.648

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647 There are 5 in Portugal – Lisbon, Oporto, Coimbra, Évora and Guimarães
- After deciding upon the foreign judicial judgment that decreed the adoption, the competent court should send to the Central Authority copy of its decision.

- It is altered the Civil Register of the child;

Foreigners living in Portugal can adopt children – Portuguese or not – under the same conditions as Portuguese adopting parents’ resident in Portugal. In fact, the restrictions refer to the residence, not to the nationality.

In these cases the candidates should contact the District Social Security Adoption Service, and they must fulful all the general required conditions of the Portuguese law, but also of the country of the destination of the candidateship.

After the selection process, the candidateship is sent by the Portuguese Central Authority to the competent entity of the state of origin of the child to adopt.

- Requirements regarding the child

These requirements must be checked by the state of origin of the child.

- Requirements regarding the candidate

These conditions also don’t differ much from the ones above mentioned:

- Couples married for at least 4 years (not judicially or de facto separated), or different sex de facto married couples for more than 4 years, as long as both are over 25 years old;

- If it is a singular candidate, it should be over 30 years old, or – if the child is sun / daughter of the spouse – more than 25 years old;

- The candidate must be under 60 years old at the time where the child was trusted to him / her;

- If the candidate is over 50 years old, the difference to the child’s age can’t exceed 50 years;

- Exceptionally this difference may exceed 50 years if arguments are invoked to justify it;

Besides these requirements the candidate must also fulful the conditions required by country of destination of the candidateship.

- Required documents

- Aptness certificate for Intercountry Adoption purposes;

- Social and psychological report;

- Commitment declaration regarding the accompaniment of the child’s situation during the pre-adoption period and the sending of the reports to be sent until the adoption is decreed;

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648 As it is foreseen in Article 1985º CC

649 Such as the case of sibling where just regarding to one of them is age difference is bigger
Authenticated copy of the ID card or passport;
Birth certificate;
Marriage certificate or declaration attesting the de facto marriage;
Criminal record certificate;
Medical certificate;
Residency certificate;
Authenticated copy of the income declaration or declaration from the employer or copy of the last IRS declaration;

All the documents that are not written in Portuguese must be sent with its certificated translation. All the documents that were not emitted by Portuguese entities must be submitted to a legalization process:

- Signature recognition of the clerk who did the document, by the diplomatic or consular agent of the state of destination and authentication of it’s signature by the apposition of the white stamp;
- If the state has ratified The Hague Convention of 5th October 1961, the documents must be submitted to the apposition of the apostil – this formality according to the Convention attests the veracity of the signature, the quality in which the undersigned intervened, and the authenticity of the stamp that is part of the act – therefore discharging the legalization process of the document;
- If the documentation file has copies of any document, in order to be considered valid these must be authenticated.

- Intervening authorities
  - Portuguese Central Authority – Social Security Executive Department;
  - Foreign competent entity;
  - Candidates;
  - District Adoption Services;
  - Courts;
  - Civil Registry Services;
- Procedures

For an Intercountry Adoption to take place all the preliminary proceedings – described above – must already had taken place.

The adoption proceeding are initiated in the Adoption Service of the district were the candidate residences. The typical procedures that occur in an Intercountry Adoption are foreseen in the nation legislation or in the international agreements that Portugal is part of:

- Candidate contacts the District Adoption Services;

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650 Regarding the Abolishing the Requirement of Legalization for Foreign Public Documents
651 Family and minor’s courts whenever they exist in the district
- Candidate is selected - For detailed information regarding the selection process, please see pages 43 and following;
- If the candidateship is rejected the candidates have 30 days – since the date of the notification - to appeal to the competent court in family and minor’s affaires of the Adoption Service area.
- Candidateship is transmitted to the Portuguese Central Authority along with the candidate’s file;
- Candidateship is then transmitted to the Central Agency of the chosen country;
- A child’s proposal is presented by Central Agency of the child’s residence (or to other competent authority);
- The proceeding agreement is emitted;
- The Portuguese Central Authority gives notice to Public Attorney in order for this to take the necessary arrangements for granting the judicial care of the child to the candidate;
- The candidate programmes a visit to the country of residence of the child in order to meet him / her;
- The child and the candidate meet;

From these phase one, the process differs according to the state of origin of the child: if it is a Hague Convention state member or not;

If it is a member state of The Hague Convention, the child is trusted to the candidate and it is prepared the placement of the child in Portugal; the pre-adoption period is then initiated – it must not exceed the 6 months period and should be communicated by the Adoption Services of the candidates residence area to the Public Attorney; Accompaniment’s reports are presented to the Central Authority of the child’s state of origin;

If it is decided – according to the accompaniment period – that the situation is not in the best interest of the child, the Central Authorities should put into action all the necessary measures should be put into action to protect the child – which may be the definition of an alternative project of life;

Adoption Services of the candidates residence area elaborate and present the pre-adoption inquiry and notifies the candidate, after which the adoption petition enters the competent Court; the adoption decision is decreed by the Court; the accordance certificate is emitted; the child’s Civil Register is altered; the child fully adopted by a Portuguese national, automatically acquires the Portuguese nationality.

If it is not a member state of The Hague Convention: the adoption is decreed in the state of origin of the child and the accordance certificate is emitted; the foreign decision of adoption is validated – except if there is a judiciary agreement between the two countries; Since 2003 it is possible to admit an adoption already decreed by the country of origin of the child, so the Portuguese Central Authority should require (if the candidates didn’t do it in a 3 months period) in the competent Court (2nd instance Court) the revision of the decision that pronounced the adoption.

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652 For detailed information regarding the appealing possibilities, please see page 48
653 These reports are elaborated by the Adoption Services of the candidates residence area
654 See page 48 for detailed information regarding these decision and possible reaction to it
655 Law nr 31/2003 of the 22nd August
As well as mention above, the process of revision of a foreign decision that decreed an adoption in another country should preserve the identity secret of the biological parents. The child’s Civil Register is altered, the child fully adopted by a Portuguese national, automatically acquires the Portuguese nationality.

20. Relevant Legislation In Force In Portugal

Before exposing a list of important legislation in this matter, it should be said that all the rules about international adoption are a result of the conjugation of all legislation approved internally with the different international instruments that bind the Portuguese state.

a) National Legislation

- Law nr 31/2003, of August the 22nd – DR I Series-A, nr 193, of August the 22nd 2007
- Law nr 7/2001, of May the 11th – DR I Series-A, nr 109, of may the 11th 2001
- Regulatory Order nr 17/98, of August the 14th – DR I Series-B, nr187, of August the 14th 1998
- Executive Law nr 185/93, of May the 22nd, with a first composition by the Executive Law nr 120/98, of May the 8th – DR I Series-A, nr106, of may the 8th 1998
- Law nr 35/2004, of July the 29th, regalement’s the Law nr 99/2003, of August the 27th, which has approved the Labour Code – DR I Series-A, nr 177, of July the 29th 2004 – currently in revision process;
- Regional Legislative Decree nr 19/2006/A, of June the 2nd, adapts the Law nr 99/2003, of August 27th (which approved the Labour Code), and the Law nr 35/2004, of June 29th which proceeded to its regulation, to the Autonomous Region of Azores (with the appropriate territorial application adjustments)
- Regional Legislative Decree nr 3/2004/M, of March 18th, adapts the Labour Code (approved by the Law nr 99/2003, of August 27th) to the Autonomous Region of Madeira, with the adjustments resulting from the correspondent competences of its services and organisms
- Regional Legislative Decree nr 13/2005/M, of August 3rd, adapts the Law nr 35/2005, of July 29th (which approves the Labour Code), to the Autonomous

656 As it is foreseen in Article 1985º CC
657 DR – Republic Diary
Region of Madeira, with the regional particularities and adaptations resulting from the correspondent competences of its services and organisms

- Law nr 37/81, of October 3rd, Nationality Law, republished as an attachment to the Organisational Law nr 2/2006, of April 17th – DR I Series-A, nr 75, of April 2006
- Executive Law nr 237-A/2006, of December 14th, Regulation of the Portuguese Nationality – DR I Series, nr 239, of December 14th 2006

**b) International Instruments**

- Convention about the Rights of Children, November 20th 1989. Resolution of the AR nr 20/90; DR I Series, nr 211, of September 12th 1990;
- Resolution of the AR nr 4/90; DR I Series, nr 26, of January 31st 1990;
- Convention on the Dispense of Legalization for Certain Certificates of the Civil Register and Documents, signed in Athens, September 15th 1977. Decree 135/82, of December 20th; DR I Series, nr 292, of December 20th 1982;
- The European Convention, of June 7th 1968, About the Abolishing of the Legalization for Foreign Public Documents by the Diplomatic Agents and Consuls
- Executive Decree nr 99/82, of August 26th; DR I Series, nr 197, of August 26th 1982;
- Executive Law nr 34/83, of May 12th; DR I Series, nr 109, of May 12th 1983;

**21. Glossary.**

As there are word that we frequently used abbreviated, a small glossary imposed it self.

- AR – Parliament (Republic’s Assembly);

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\(^{658}\) AR – Assembly of the Republic
CAT – Temporary Foster Home;
CC – Civil Code;
CPCJ – Commission for Children and Juveniles’ Protection;
DR – Republic’s Diary (where the legislative acts are officially published);
LPCJR - Law of protection of children and youth in danger;
OTM - Minor’s Tutelary Organization;
SCML – Santa Casa da Misericórdia of Lisbon;

22. Attachement

a) Important Data On Adoption In Portugal

Regarding the legal analysis on the adoption system it is important to have in mind that Portugal is a Country with few adoptions and even more when intercountry adoptions are concerned. Therefore, we decided to include the following data that gives the picture of the various adoption aspects (annex).

23-Working Instruments

A) Bibliography


B) Internet

Supreme Court of Justice - www.stj.pt;
Constitutional Court - www.tribunalconstitucional.pt;
Erreur ! Référence de lien hypertexte non valide.;
Centre for Judicial Studies - www.cej.pt/PAG1_INGLES_CEJ.htm;
Legal Policy Office of the Ministry of Justice:
http://www.dgpj.mj.pt/DGPJ/sections/english-version;
Department of Public Registers and the Notarial Profession - http://www.dgrn.mj.pt;
On-line legislation database (contains laws and acts published in Series I of the Official Gazette since 01.01.1970; free access to the legislation published in Series I since 01.01.2000);

Observatory on-line “Opção+Adopção” - www.opcaoadoptao.org;
Family Law Centre - www.lexfamiliae.org;
National Council for Adoption - www.adoptioncouncil.org;
ChildONEurope – European Network of National Observatories on Childhood – www.childoneurope.org;
Eurochild - http://www.eurochild.org/
International Juvenile Justice Observatory - www.ijjo.org;
European Aliance for Families
- http://ec.europa.eu/employment_social/families/index_en.html;
2.22. Romania

Law no. 273/2004 – Regulating the legal system of Adoption

The Adoption – is the legal operation creating the filiation relationship between the adopting applicant and the adopted child, as well as family ties between the adopted child and the relatives of the adopting applicant.

The defining criteria to classify the adoptions in Romania are represented by the domicile of both the adopting applicant or of the adopting family and of the adopted child.

Adopted child – the person who was or is going to be adopted;

Adopting applicant - the person who adopted or wishes to adopt; exercise

Child - the person who is not 18 years old or who has not the full capacity;

In order to be able to adopt, any person or family has to obtain a certificate.

The certification of the adopting applicant or of the adopting family

The evaluation of the moral guarantees and of the material conditions of the adopting applicant or of the adopting family is done, at their request, by the department from their residence and it has to take into account:

a) the personality, the health, the economical situation of the adopting applicant or of the adopting family, the family life, the living conditions, the aptitude to educate a child;

b) the reasons for which they wish to adopt;

c) the obstacles of any kind, important for the capacity to adopt.

The Department – the general department of social assistance and child protection, a public institution, a legal person, being subordinated to the regional councils and to the local councils.

On the basis of the results of the evaluation, the department of the region where the adopting applicants have their residence decides, within 60 days since the application submission, if they are able to adopt.

The certification’s validity is one year and can be renewed for a period of 1 year.

If the result is not favorable, the adopting applicant or the adopting family can ask for a reevaluation within 30 days since the result communication. The non-favorable result of the reevaluation can be contested, within 15 days since the date of its communication, at the court of law from the adopting applicant’s residence.

The adoption steps

To obtain the certificate of person or family who wishes to adopt (according to pct. 1.);

To entrust the child in order for this one to be adopted;
To consent the adoption.

The procedure of the national adoption of the child being adopted takes the following steps:

To open the procedure of the internal adoption;

To entrust the child to adopt;

To consent the adoption.

To open the procedure of the internal adoption:

Internal adoption – the adoption where both the adopting applicant or the adopting family and the adopted child have the residence in Romania.

According to the individualized plan of protection, the department of the region where the child has his residence takes the steps to reintegrate the child in the family or, if it is the case, to place the child in the care of the extended or substitute family.

Family – parents and children in their care;

Extended family – the parents, the child and his relatives, up to the IV degree inclusively;

Substitute family – people, besides those belonging to the extended family, who, according to the law, assures the child’s raise and care;

Individualized plan of protection – the document stipulating the planning of the services, benefits and the measures of special protection of the child, according to the psychosocial evaluation of the child and of his family, in order to integrate the child who was separated of his family, in a stable, permanent family environment as soon as possible.

The individualized plan of protection may have as a purpose the internal adoption if the steps for the child’s reintegration in the family or in the extended family failed.

The department of the region where the child has his residence will go to law, within 30 days since the steps (for the child’s reintegration) finished, at the court of law from the child’s residence in order to consent the opening of the procedure of the internal adoption.

The consent of the opening of the procedure of the internal adoption is done only if:

a) the individualized plan stipulates this necessity;

b) the child’s parents or, if it is the case, the guardian expresses their consent for the adoption.

The natural parents’ consent or, if it is the case, the guardian’s may be given only after a period of 60 days since the child’s birth recorded in the birth certificate.

The revocation of the consent may be done by the natural parent or by the guardian within 30 days since its expression.

The natural parents’ consent is not necessary if one of the parents is dead, unknown, declared dead or disappeared, as well as if he/she is, in any circumstances, in the impossibility to show his/her will, and in the case of the adoption of a person over 18 by the adopting applicant or the adopting family having raise him/her during his/her minority.

The irrevocable court order according to which the court of law admits the demand of the department produces the following effects:
a) the rights and the obligations of the natural parents are suspended;

b) the parental rights and obligations are exercised by the regional council (at the county level) or by the local council (at the city, village level).

To entrust the child to adopt

The court of law can consent the adoption only after the child has been entrusted for a period of 90 days to the person or the family wishing to adopt him.

Within 30 days since the date of the definitive and irrevocable court order according to which it was agreed to open the procedure of the internal adoption, the department from the child’s residence takes the necessary steps to identify the best adopting applicant or the best adopting family.

Within 30 days, the department analyses the possibility to entrust first the child:

to a relative in the extended family;

to another person or family where the child under 18 is placed.

If there is no request from the people or the families, there are taken steps to identify on the territory of the Department from the child’s residence a certified person or family (see pct. 1.

Office – specialized authority of the central public administration, a legal person, founded by the reorganization of the Romanian Committee for Adoptions, with competences to watch and coordinate the activities related to the adoption.

If, the deadline of 30 days expired and the Department from the child’s residence has not identified any adopting family, it requests to the Office that within 5 days to send the list centralized at national level of the certified and adopting applicants or families recorded in the national Book of adoptions.

The choice of the adopting applicants or families is done within 60 days after the centralized list was received by the department of the region where the child’s residence is.

The selection of the adopting applicant is notified within 3 days, to the Department of the child’s residence.

If, after the check is done, the Department of the region where the child’s residence is, records his compatibility with the person or the family, seizes the court of law in order to entrust the child to be adopted.

The child is entrusted for adoption for a period of 90 days.

It is not necessary for the child to be entrusted for adoption in the following cases:

for the person over 18 who can be adopted by the family that has raised him/her during his minority.

for the adoption of the child by the natural or adopting parent;

for the adoption of the child for whom the procedure of the internal adoption was open and this one was placed to the adopting applicant, and the placement period is of 90 days;

At the end of the period for which the child was entrusted for adoption, the Department drafts a final report about the evolution of the relationships between the child and the adopting
applicants, and it communicates it to the competent court of law for the application consenting the adoption to be solved.

The consent the adoption

To consent the adoption is the competence of the courts of law.

The application consenting the adoption may be submitted directly by the adopting applicant if:

the person over 18 is adopted by the people who has raised him/her during his minority;

a spouse adopts the child of the other spouse;

by the department of the residence of the adopting applicant, at the end of the period for which the child was entrusted for adoption.

The application consenting the adoption is accompanied by the following documents:

a) the birth certificate of the child, an official copy;

b) the medical certificate stating the child’s health;

c) the valid certificate of the adopting applicant or of the adopting family;

d) the irrevocable court order entrusting the child for adoption;

e) the birth certificates of the adopting applicant or of the husband/wife of the adopting family, official copies;

f) the marriage certificate of the adopting applicant or of the spouses of the adopting family, an official copy;

g) the police record of the adopting applicants;

h) the medical certificate of the adopting applicants, issued by their family doctor;

i) documents proving the expression of the consent of the natural parents, if there has not been pronounced any court order consenting the opening the procedure of internal adoption.

The Department will have to submit the final reports, at least 5 days before the term it was summoned for the case judgment.

The consent to adoption of the child over 10 is given in front of the court of law, when the adoption is consented.

The adoption will not be consented without the consent of the child over 10.

The consent of the adopting applicant or of the adopting family in front of the court of law, when the application consenting the adoption is solved.

The Department from the child’s residence will draft quarterly reports about the evolution of the child, for 2 years after the adoption was consented.

INTERNATIONAL ADOPTION
The international adoption of the child having the residence in Romania may be consented only if the adopting applicant or the adopting family having the residence abroad is the child’s grand parent for whom has been consented the opening of the procedure of the internal adoption.

The application consenting the adoption is submitted to the court of law by the Office.

According to the irrevocable court order consenting the adoption, the Office issues within 3 days, a certificate attesting that the adoption is according to the norms of the Hague Convention.

The Hague Convention – the convention on the child’s protection and on the cooperation in the matter of international adoption concluded in Hague on 29 May 1993 and ratified by Romania by the Law no. 84/1994.

The adopted person can leave Romania and go to the residence country of the adopting applicant or of the adopting family only when the court order consenting the adoption is irrevocable.

The Office has to watch the evolution of the child and of the relationships between this one and the adopting parents for 2 years after the adoption has been consented.
1. Briefly describe the national adoption process (National adopting parents – national children).

The adoption is a legal relationship which comes into existence between the adopting parent (applicant) and the adopted child pursuant to the court’s decision. On basis of this legal fact, the adopted parent and adopted child will gain rights and obligations of biological parents and children. Our legislation distinguishes between revocable and irrevocable adoption. In the new legal regulation, adoption is separate from the forms of the substitutive child-care, because it is concerned as a permanent and not temporary measure. Together with the foster care they have the same dimension of family environment and therefore the Act on social protection terminologically join them as forms of substitutive child-care. The adoption is the most suitable form of substitutive child-care, as it most closely approaches to the relationship between the parent and child.

Before filing an application to a court, a certain formal sequence shall take place. First of all, it is necessary to turn to a District office of Labour, social affairs and family, where the persons interested in the adoption will undergo a consultation concerning their decision and will be instructed about further steps. The applicants will need documents as follows: medical record about health condition, extract from a criminal record, employer's confirmation about income, confirmation about the permanent address, the applicants shall also fill in the questionnaire regarding the adoption. Moreover the applicants should be prepared for a visit of the clerk from the appropriate office.

a) The adoption procedure in Slovak republic is regulated in the following legal acts:

- in Act No. 305/2005 Coll. on social and legal protection of children and social nurture as amended.

In the adoption procedure, the body of social and legal protection of children and social nurture is playing an important role. The role of this body is stated in the Act on social and legal protection of children and social nurture as amended. Among these roles belongs mainly mediation of a foster care or adoption, if the parents are not providing, or are not able to provide the personal child care and it is not possible to entrust this child into the personal care of other person than the parent.

For the purpose of mediation of the foster care or adoption, the body of social and legal protection of children and social nurture keeps:

- summary of children to whom it is necessary to mediate a substitute family care,
- list of applicants who would like to become a foster parent or adopting parent.

Within these tasks, the body of social and legal protection of children and social nurture is executing the preparation and examination of the natural persons, who would like to be enlisted in the list of applicants for the foster care or adoption. The dedicated body of social and legal protection of children and social nurture is decides about enlisting of the natural person, who would like to become a foster or adopting parent into the list of applicants until 15 days from the delivery of the final report about the preparation of the natural person for the execution of the substitute family care.
The application for enlisting into the list of applicant contains the personal data of the natural person, who would like to become a foster parent or adopting parent, these are as follows:

- name and surname,
- date and place of birth,
- domicile,
- birth identification number,
- nationality and
- nation.

The following documents need to be submitted to the application:

- questionnaire,
- extract from the criminal record not older than three months,
- report about health condition and
- document about the financial status for demonstration of the satisfactory financial ground for the fulfillment of the safeguarding function of the family.

The preparation of the applicants for the foster care or adoption is executed by the body of social and legal protection of children and social nurture, or the accredited subject pursuant to the accreditation granted by the Ministry of Labour, social affairs and family of SR. The preparation has to take at least 26 hours, namely by individual form or form of a group.

The legal regulation of the adoption itself is contained in the Act on family (material side) and in Code of civil procedure (procedural side).

The adoption is realized in a special court proceeding. The result of this proceeding is the court's decision on adoption. This decision has constitutive effect, because the adoption relationship originate by the decision, this relationship by its legal consequences substitutes the native family.

By adoption, the mutual rights and duties between the adopted child and his original family will fade and new relation between the adopted child and his adopting parents and their family will arise. Between the adopting parent and the adopted child will arise same relationship as it is between the parents and children. During the nurture the adopting parents have same responsibility and same rights and duties as the parents. Between the adopted child and the relatives of the adopting parents a filiation will arise.

A court decides on adoption pursuant to the application of the adopting parent.

The adopting parent can be only a natural person, who:

- has the legal capacity in full extent,
- has personal assumptions – especially health, personable, moral,
is registered in the list of applicant for the adoption according to special by-law, and

by the way of his life and life of persons living in his household guarantees, that the adoption will be in favour of the infant child.

Between the adopting parent and the adopted child there shall be an appropriate age difference. The infant child may be adopted only if it is in his favour.

The adopting parent can be:

- spouses
- spouse of the parent of the child
- bereaved spouse after the parent or adopting parent of the child
- lonely person – only exceptionally, under the condition that the adoption will be in favour of the child.

Only spouses may adopt the infant child as a common child. The legal regulation of Slovak republic does not allow the adoption by persons who are not spouses, even if their cohabitation is permanent and harmonious.

If the adopting parent is a spouse of the parent of the infant child, the child can be adopted only with the consent of the second spouse- the parent of the child.

Mediation of the personal logging between the child and the future adoptive parent is secured by the body of social and legal protection of child and social nurture.

Before the court's decision on adoption of the child, the infant child has to be entrusted into the care of the future adoptive parent, this is concerned as a pre-adoption custody.

The purpose of the pre-adoption custody is to create conditions in order to establish emotional ties between the child and the future adoptive parent. This is an obligatory condition of the adoption. This preliminary care shall last constantly for at least nine months and shall precede the court's decision on adoption. The costs related with the pre-adoption custody are disbursed by the adopting parent from his own financial sources.

The court is deciding about the entrustment of the child into the pre-adoption custody pursuant to the application of the future adopting parent.

Competent court is the court, in which district has the child has his domicile. During the proceedings the court investigates, if there are fulfilled all the conditions for the adoption, both on the side of the adopting parent and the adopted child in order to avoid the potential complications in the adoption procedure.

The court is pursuant to the medical examination obliged to determine whether the health condition of the adopted child and adopting parents is not in conflict with the purpose of the adoption. The court will inform the adopting parents, representative of the child with the results of the examination and will advise them about the purpose, contents and consequences of the adoption. The court in the decision specifies the measure of rights and duties of the future adopting parents towards the child.

After the lapse of the preliminary pre-adoption custody, the future adoptive parents will file an application for the adoption of the child. The adoption will come into existence pursuant to the legally binding court’s decision on adoption.
According to the law, the participants of the adoption procedure are:

- the adopted child represented by under-tutor,
- parents of the child, eventually the guardian,
- adopter parent and
- the spouse of the adopting parent – if his or her consent is needed.

The court will decide on adoption without undue delay at latest until one year from filing an application for adoption. The procedure can be prolonged only if it is not possible to execute the evidence from objective reasons.

In the decision on adoption the court will always specify the surname which the adopted child will gain by the adoption and will be marked in the birth register. This is a statutory result of the adoption, which cannot be excluded.

The current legal system of SR regulates only one type of adoption, which is from a legal point of view an irrevocable adoption. Occasionally the court is entitled to cancel the adoption because of serious reasons in favour of the adopted child, the adoption can be canceled until six months from the validity of the court’s decision on adoption. By cancellation of the adoption there will again come into existence the mutual relations between the adopted child and his original family. The adopted child will again obtain his previous surname.

The adopted parents may mediate an access to the information about the biological parents of the child, or provide information by which they dispose, if it is in favour of the child.

b) The different stages.

The procedure about entrustment of the child into pre-adoption custody, which last at least nine months before the procedure on adoption. After the lapse of this pre-adoption custody, the future adoptive parents will file an application for the adoption. Only in the adoption procedure the court will issue a decision pursuant to which a same relationship between the adopting parent and adopted child will rise as between the parent and the child.

b-1. legally binding court decision about suitability for the adoption of the minor,
b-2. personal decision of the future adoptive parents to adopt a child,
b-3. legally binding court decision about pre entrustment of child into pre-adoption custody,
b-4. legally binding court decision about adoption of the child.

(Indicate at which steps judicial decisions intervene and what is (are) their object(s) (aptitude to adopt, confirmation of preparation to adopt, creation of adoption relationship,…)

What are the possible resources and at which steps they occur?)

2. Briefly describe the international adoption process (European Union (EU) parents – non-European children or European (EU) children and non-European (EU) adopting parents).

This form of substitutive child-care is a potential solution in case, if it was not possible to find an appropriate family for a child in the country of origin. From 01.10.2001 the Slovak republic became a contracting party of the Convention on protection of children and on cooperation in international adoption. According to the Convention, the central authority of Slovak republic
for execution of the Convention is the Centre for international legal protection of children. The Centre is operating on the whole territory of Slovak republic.

The international adoption can be realized by two forms. The children can be adopted in his country of origin by foreign citizens, or to be moved to the state of origin of the future adoptive parents and to be adopted there.

a) The different stages

Applicant with residence in the receiving state who would like to adopt a child from Slovakia shall refer to the central authority in state of his stay. If authority of the receiving state will come to a conclusion, that the applicant is suitable and capable to adopt a child, it will execute a complex social study for the international adoption. This study shall be sent to the central authority of SR, which will appraise it and send back a report about the child. The central authority of the receiving state and the Centre for international legal protection of children cooperate not only until the successful end of the international adoption procedure, but also after the child's leave from Slovakia. The central authority of the receiving state is obliged to send regular reports about the child to the Centre for international legal protection of children. Hereby a citizen of Slovakia can adopt a child from other state, if such a possibility does not exist in Slovakia.

For an international adoption the consent of the Ministry of Labour, social affairs and family of Slovak republic, or the organization of public administration designated by Ministry of Labour, social affairs and family is required.

In the rest the phases are identical with the national adoption procedure.

b) The international adoption procedure in Slovak republic is regulated in the following legal acts:

- in Act No. 36/2005 Coll. Act on family as amended
- in Act No. 305/2005 Coll. on social and legal protection of children and social nurture as amended
- in Act No. 97/1963 Zb. on Private international law and rules of procedure as amended

The Convention on protection of children and co-operation in respect of international adoption (hereinafter the „Convention on adoptions”) came into effect for the Slovak republic by 1st October, 2001.

In compliance with Article 2 of the Convention, the Slovak republic can be:

- the state of origin – foreign applicant may adopt the child residing on the territory of Slovak republic
- the receiving state – the Slovak applicant may adopt the child residing in abroad

In the international adoption procedures the Centre for international legal protection of children (hereinafter the Centre) has a significant role. In compliance with Article 6 of the Convention on adoptions the Centre is the central authority of SR assigned by the government of SR for the issuance of acknowledgement pursuant to the Article 23 of this Convention.
The Centre is the only body on the territory of SR realizing international adoptions in terms of the Convention about protection of children and on cooperation in international adoptions dated May 29, 1993. When organizing international adoptions the Centre cooperates exclusively with the contracting states of the Convention on adoptions.

For the cooperation of the Centre with abroad in field of international adoptions it is important, if the receiving state (the state of future adoptive parents) is a the EU.

Individual international adoptions without the consent of the Centre are not accepted.

When applying the Convention on adoption, the SR consistently follows the *subsidiarity principle* contained in Art. 21 of the Convention on children’s rights according to which the international adoptions can take place only if the appropriate bodies will not find a suitable alternative family environment in Slovak republic for the children.

The international adoption is eligible only in case, when it was not possible to mediate for a child who may be pursuant to the court’s decision adopted a suitable alternative family environment on the territory of Slovak republic.

In such cases, the dedicated body of social and legal protection and social nurture administering the child in the record of children to whom it is necessary to mediate substitute family care, will prepare the documentation of the children for the international adoption purpose and will submit it to the Centre. The Centre after appraising the documentation will enter the child into the summary of children, to whom it is possible to mediate an international adoption.

At the same time the Centre is accepting the documentation of applicants for adoption of children from Slovak republic, this documentation is obtained from the cooperating states. After the appraisal of their documentation, these applicants will be registered in the list of applicants for adoption, the list is conducted by the Centre.

If the Centre finds out, that the register of the applicants for adoption contains an applicant who may be integrated into the process of establishing of a personal contact between the applicant and the child, he will without undue delay, but at latest the next working day inform the dedicated body of social and legal protection of children and social nurture administering the child about this fact in the summary of children to whom it is necessary to find a substitute family care.

The Centre will inform the suggested applicants with the documentation of the child through the cooperating central body or accredited institution of the receiving state.

If the applicants agree with the adoption of the suggested child, the appropriate body of the receiving state will send to Centre the consent of both applicants together with its own consent. Part of both consents is also an announcement about the selection of attorney who will represent the applicants in the procedure about entrustment of the child into the pre-adoption custody before a Slovak court.

The Centre will send the appropriate body of social and legal protection and social nurture an announcement about granting consents for the international adoption of the particular child. In this announcement, the Centre concretizes the data about applicants and at same time will ask for a psychological preparation of the child in order to meet the particular applicants (interaction). Consequently the Centre will send to the foster home photos, eventually video, or audio record of the applicants for the purpose of the child’s preparation.

Pursuant to the announcement of the applicants, the Centre will prepare and send the empowered attorney the complete documentation of the child in order to file an application
for entrustment of the child into the pre-adoption custody of the future parents before a Slovak court.

The attorney very closely cooperates with the Centre and during the court procedure will assign all the information and subsequent measures needed for travelling of the child into the receiving state.

Before the term of the first hearing, the applicants will travel to Slovak republic in order to meet the child for the first time. This first meeting, also called as an interaction take place with the participation of the translator, employee of foster home in which the children is placed, psychologist and employee of the entrusted body of social and legal protection and social nurture.

The length of the interaction depends on the age of the child as follows:

- two weeks – if the child is younger than three years,
- three weeks – if the child is older than three years or there are groups of siblings.

In compliance with the legal system of Slovak republic, the procedure of entrustment the child into the pre-adoption custody of future parents is regulated by the law of the state in which the child has his habitual abode, this state is Slovak republic in case of infant children with their usual residence on the territory of SR.

After the lapse of the pre-adoption custody the future parents will file an application for adoption:

- on the particular court of the receiving state or
- on the particular court of Slovak republic which decide about the entrustment of the child into the pre-adoption custody of the future parents.

If the procedure took place before the court of the receiving state, the particular body of the receiving state will send to the Centre the legally binding court’s decision on adoption. This body will at the same time provide the issuance of the acknowledgement in terms of Article 23 of the Convention on adoptions.

The Centre will consequently send both documents to the particular court of Slovak republic, which decided about the entrustment of the child into the pre-adoption custody of the future parents.

3. The various organs or services that partake in the adoption process.

- Ministry of Labour, Social Affairs and Family of Slovak republic
- agencies of labour, social affairs and family
- Centre for international legal protection of children
- Township regional unit accredited subjects, e.g. non-governmental organizations
- legal entity or natural person performing social measures for protection of children and social nurture
- Bodies of social and legal protection and social nurture
- Foster homes
Courts of Slovak republic

a) Their nature

These bodies are mainly state administration bodies, bodies of local self-government and accredited subjects in this area.

The bodies participating on the adoption procedure listed in point 1, 4 has the character of state bodies mainly with social character. During the preparation of the future adopting parents, also the foster homes (public and also non-public) and accredited subjects (institutions with non-public character, especially non-governmental organizations) are fulfilling the statutory tasks. The only body entitled to decide on international adoptions, as well as about entrustment of the child into the pre-adoption custody of the future parents is the particular court of SR. No other body is entitled to issue such a decision.

b) The stage of the procedures when they intervene.

The fact in which phase will the bodies participating on the adoption procedure step into the procedure depends on the particular legal regulation and type of the respective body.

The bodies of social and legal protection of children and social nurture and foster homes are fulfilling tasks at the preparation of the documentation of children suitable for the adoption. The bodies of social and legal protection of children and social nurture and accredited subjects are fulfilling the statutory tasks at the preparation of the applicants for the adoption. The bodies of social and legal protection of children are keeping records of applicant who would like to become a foster parent or an adopting parent.

The Centre operates and provides the administrative tasks connected with the execution of the international adoptions in cooperation with the bodies of social and legal protection of children and foster homes. The courts of SR determines about the entrustment of the child into the pre-adoption custody and on adoption, respectively about the cancellation of the adoption.

c) the missions.

The purpose of all bodies participating on the adoption process is to provide realization of the adoption and to ensure that the adoption procedure will be realized in compliance with the Slovak legal system and international treaties by which SR is bound. The adoption should be realized properly, in time and in best interest of the child.

The respective courts of SR have not only decision-making competence, but also investigative and supervisory competence, so the adoption is in the favour of the child.

d) The composition of these organs and services.

The structure of the abovementioned bodies is regulated in these Acts:

Bodies of social and legal protection and social nurture - § 73 of Act No. 305/2005 Coll. on social and legal protection and social nurture as amended

Centre for international legal protection of children - § 74 of Act No. 305/2005 Coll. on social and legal protection and social nurture as amended

Accredited subjects - § 77 and following of Act No. 305/2005 Coll. on social and legal protection and social nurture as amended

Foster homes - § 49 and following of Act No. 305/2005 Coll. on social and legal protection and social nurture as amended
e) The worker social intervenant.

Of course, social workers of state institutions as well as accredited subjects are involved. Regarding their education, all of them should have university degree, but in the practice it does not apply for 100%. In this field, the social workers of accredited subjects are in my opinion better educated. All workers shall be regularly trained in the area of psychology, social work, the actual legislation, etc… I cannot say, if it is so.

To the adoption procedure there are engaged the social workers, who have a university education of second degree, usually in field of social work. They are entering into the administrative process at preparation of children and the applicants, but also into the court proceeding as under-tutors of the child, respectively the guardians of the child pursuant to the court's decision. The special trainings of the social workers are organized by their employer, or the superior body, e.g. the Ministry of Labour, social affairs and family of SR, Ministry of justice of SR, etc...

Primarily their function is to ensure, that the children will be placed in a suitable family. Of course, they are destined for the needs of all concerned parties, but the needs of the children are on the first place.

f) The post-adoption follow-ups

Unfortunately, I don't know, but the legal regulation is in the Act No. 305/2005 Coll.

In National procedure: In field of national adoption there is no legal regulation regarding post-adoption control.

In International procedure: In compliance with the Convention on adoptions, the Centre for international legal protection of children in cooperation with the respective body of the receiving state monitors after the leave of child to the receiving state of the future parents the incorporation of the child into the new family environment through the social reports. These reports are forwarded to the Centre from the receiving state regularly within the pre-adoption custody, but also after the adoption. The social reports are executed by the particular bodies, or social offices of the receiving state, these organs are responsible for their contents. The intensity of their forwarding depends on the age of the child, the last report is sent after the achieving of the lawful age of the adopted child.

5. Circumstances that is a European adoption (Parents-children with different nationality but both European (EU) treated differently than international adoptions (simplified procedure...)?

As aforementioned, for the cooperation of the Centre with abroad it is important, if the receiving state is a contracting state of the Convention on adoptions and not the fact, if it is a member, or a non-member state of EU.

In compliance with Article 2 section 1, the Convention on adoptions will apply in every situation where the child with habitual abode in one contracting state was or has to be transferred into other contracting state after his adoption in his state of origin by spouses, or by a single person with habitual abode in the receiving state. From the aforementioned reasons, the Convention is applying also in cases, if the citizen of SR residing in abroad for longer time would like to adopt a child with habitual abode in Slovak republic.

When applying the Convention on children’s rights, the subsidiarity principle contained in Article 21 of Convention shall be strictly followed. According to the principle, the international adoption can be realized only if it was not possible to find for a child a subsidiary family in Slovak republic.
According to Act No. 97/1963 Coll. on private international law and rules of procedure, if the adopting parent is a Slovak citizen, the Slovak court will decide. If the adopting parents are spouses, it is sufficient if only one of them is a Slovak citizen, or has a habitual abode in Slovak republic.

If the adopting parent or both adopting spouses are not Slovak citizens, the Slovak court shall have jurisdiction, if:

- the adopting parent, or at least one of the adopting spouses resides here and if the courts decision is recognizable in the home country of the adopting parent or the adopting spouses, or
- the adopting parent, or at least one of the adopting spouses resides in the Slovak Republic for a longer period of time.

Adoption of a child who is a Slovak citizen and resides permanently on the territory of the Slovak Republic shall be decided exclusively by the Slovak court. The Slovak court is entitled to decide also if the child already does not have a habitual abode in Slovak republic, if he decided about the entrustment of the infant child into the pre-adoption custody of the future adoptive parents.

6. The conditions to adopt distinguishing, as required, between international and national adoption.

The court will decide about the adoption on the basis of the adopting person's application. Before the court's decision on adoption, the child must be put into the future adoptive parent's custody for at least nine months; the cost of this pre-adoption care shall be covered by the future adoptive parents.

If the foster parent decides to adopt an infant child, who is in his pre-adoption care, court's decision about pre-adoption care is not required, if such a pre-adoption care lasted for at least 9 months. The same procedure shall take place, if the child shall be adopted by a person, to whom the child was entrusted to substitutive personal care, or by trustee who is personally taking care of the child. Adoption is adjusted by §97- §109 of Act on family as amended.

The child can be also adopted jointly by the spouses. The adopting parent can be each person who fulfills the requirements determined by the law. After the lapse of the pre-adoption care, the court will decide about the adoption and the adopting parents will be registered in the child's birth certificate and will be stated as the parents of the child.

The adoption fundamentally interfere to the legal position of the adopted child, his parents and the adopting parent. The law therefore regulates a number of material conditions both on the side of adopting parents and the adopted child. In order to accomplish the adoption all the conditions shall be fulfilled.

The conditions valid for both national and international adoptions are mainly as follows:

- the adoption must be in favor of the child.
- the child is suitable for adoption.
- only an infant child may be adopted, if the adoption is in his favour.
between the adopting parent and the adopted child there must be an appropriate age difference.

the health condition of the adopting parent and adopted child must respond the purpose of the adoption.

the adopting parent (natural person) must fulfill all the legal and administrative conditions.

only spouses may adopt an infant child.

for the adoption the consent of parents of the infant child is needed, besides the exceptions stipulated by the Act on family.

if the adopted child is capable to consider the consequences of adoption, also his consent is required.

lapse of the pre-adoption custody period (minimum 9 months), during which the adopting parent has the adopted child in his care pursuant to the court's decision.

International adoption – besides the aforementioned conditions also the following conditions must be fulfilled:

the receiving state is a contracting state of the Convention on adoptions.

the subsidiarity principle must be followed.

the evidence of the child and the applicants in the list of the Centre for international legal protection of children.

the adoption is approved by particular bodies of the receiving state and the state of origin.

the adoption procedure in each case shall be performed in compliance with the Convention on adoptions.

consent of the Centre for international legal protection of children for adoption of the child to abroad.

7. The conditions to be adopted distinguishing, as required, between international and national adoption.

Suitable for adoption is a child, who find himself without a family and has no chance to return to his original family. The adoption requires a consent of the legal representative of the child. Usually a legal representative is a biological parent of the child (if his parental rights were not limited, or if he was not deprived from the legal capacity).

This consent is not required, if the parents:

- during at least six months systematically did not manifest a proper interest concerning the child,
- manifested no interest concerning the child for at least two months after the child's birth, or
• give their consent in advance without the relation to concrete adopting parents.

In case of international adoption a condition, that it was not possible to find an adopting family in Slovakia need to be fulfilled.

The conditions for the child to be adopted in both national and international adoption are mainly as follows:

• Only a minor may be adopted under the condition that it is in her/his interest,
• The child is suitable for adoption,
• There may be no blood relationship between the child and the adopting parent - this condition is not stipulated by law but is steady in judicial practice,
• There has to be a proper difference between the age of the child and the age of the adopting parent,
• The health state of the child and adopting parent has to serve the purpose of adoption,
• The child shall agree with the adoption, if he/she is able to do so,
• The agreement with adoption of the parents of the child is needed with some exceptions stipulated by law.

International adoption – in addition to the above mentioned conditions the following conditions have also be fulfilled:

• The child has to be registered in the register of children for which international adoption may be mediated, which is kept by the Centre for international legal protection of children,
• The principle of subsidiarity has to be followed.

8. Hearing out the children procedure

The adopted Child will be heard only if this child is able to understand the importance of the adoption and if it is not in contradiction with his/her interest. If the adopted child shall not be heard out, he is not convened to a court hearing. Other participants must be always heard out, if possible personally. this is not mandatory; the age limit is not defined, it's individual.

The institute of hearing the child in the proceedings on adoption of the child is regulated by the Code of Civil Procedure. The court hears the child only if he/she is able to understand the consequences of the adoption, and such hearing does not contradict with his/her interests. The purpose of the hearing is to find out the opinion of the child on the intended adoption. If the court doesn't intend to hear the child, the child is not summoned. The rest of the parties to the proceedings have to be heard by the court, if possible they have to be heard directly.

The law doesn't stipulate a particular age limit, which would set the frontier when it is not yet necessary to hear the child or when it is obligatory to hear the child in the proceeding on adoption.

In praxis, the courts take into consideration the opinion of the child and the child is heard in the presence of the deputy of the body of social and legal protection of children and social nurture. The judge usually ensures that the child is heard informally and outside the court room, so the child is not exposed to inadequate stress. The agreement has to be expressed
mutually and it has to be certain, comprehensible, unambiguous as to whether the adoption should or should not take place and the agreement shall not be dependant on any conditions.

9. The consent to the adoption

- The child being adopted,
- Legal partners (holders or parental authority),
- Biological parents (they are not the legal partners),
- Other members of the family:

The adoption requires the consent of the parents of the infant child. So is required the consent of the minor parent of the infant child, if the law does not stipulate otherwise. The consent can be withdraw into the time, until the minor is pursuant to court's decision not placed to the care of the future adoptive parents.

If one of the parent died, is not known, or was deprived of his legal capacity in full, was deprived of his parental rights and obligations, only the consent of the second parent is required. If the legal capacity of one parent was limited, his consent for the adoption is required only if he is able to condemn the consequences of the adoption.

If both of the parent died, are not known, were deprived of their legal capacity in full, were deprived of their parental rights and obligation, or they are not able to condemn the consequences of the adoption, only the consent of the curator appointed to the child is required.

If the infant child is able to condemn the impact of the adoption, also his consent is required.

For an international adoption the consent of the Ministry of Labour, social affairs and family of Slovak republic, or the organization of public administration designated by Ministry of Labour, social affairs and family is required.

The Act on Family stipulates, that the agreement of the parents of the child to be adopted is one of the basic conditions, and if it is not satisfied the child may not be adopted unless the law stipulates otherwise. In addition to the agreement of the parents the agreement of other persons is needed. The agreement of the following subjects is needed for the adoption of a minor:

- both biological parents;
- one of the parents – if the other parent has died, is unknown, has been deprived of his/her legal capacity, his/her legal capacity has been restricted and this restriction concerns also his/her right to grant consent with adoption, his/her legal capacity has been restricted and he/she is not able to consider the consequences of the adoption, the parent has been deprived of his parental rights;
- guardian – if both of the parents have died, are unknown, have been deprived of their legal capacity, their legal capacity has been restricted and this restriction concerns also their right to grant consent with adoption, their legal capacity has been restricted and they are not able to consider the consequences of the adoption, they have been deprived of their parental rights;
- special tutor – a special tutor is a tutor appointed ad hoc to the child only for the purpose of granting a consent with adoption (consents with adoption instead of the
parents, in case their consent is not needed), his appointment in the case ceases to exist after the execution of above mentioned legal act;

- the minor child to be adopted - if he/she is able to consider the consequences of the adoption (The law doesn’t stipulate a particular age limit, which would set the frontier when the approval of the child shall or shall not be needed. This question is considered with regard to the mental and volitive maturity of the child. The legal regulation respects the so called participation right of the child stipulated in the article 12 of the Convention on children's rights)

- Centre for international legal protection of children – in case of international adoption of the child.

10. The moment after childbirth where the mother authorized to give her consent to adoption.

The consent can be given immediately after the childbirth, but also before it, if the mother before a childbirth asks for a confidentiality regarding the childbirth.

In terms of the Act on family, both parents have to give their consents to the adoption of the child anytime from the moment of the child's birth. This consent can be given directly in the medical centre, where the child was born. The law exactly stipulates when the consent of the second parent is not required.

The law determines special form for granting a consent for adoption- the consent must be given:

- in writing

- personally (in personal presence)

- before a court/ body of social and legal protection and social nurture / entrusted employee of the body of social and legal protection and social nurture in the medical centre, where the child was born.

The consent with the adoption can be revoked only until the time of entrusting of the child into the pre-adoption custody of the future adoptive parents.

11. The possibility to sign a blank consent.

Yes, it is a consent given in advance without the relationship to concrete adopting parents.

The personal consent of a parent for a adoption given in advance without a relationship to concrete adopting parents shall be written and shall be given before a court, or a social-legal protection authority, or in front of entrusted employee of social – legal protection authority in medical institution, where the child was born. The consent can be cancelled only into the time, until the minor is pursuant to the court's decision not positioned in the care of future adoptive parents.

The parents of the child may grant their consent with the adoption of the child without reference to particular adopting parents - so called blank consent.

12. Possibility to ignore the refusal of the required consent.

Neither consent of the parents of the adopted child, nor the consent of the under aged parent of the infant child is required, if:

- during at least six months they systematically did not manifested a proper interest concerning the child, in particular by not visiting the child, by not fulfilling
their maintenance duty to the child regularly and voluntarily and by not trying to rectify their family and social situation within the limits of their possibilities, so that they can personally care of the child;

- they manifested no interest concerning the child for at least two months after the child's birth even if no impediment prevented them from manifesting the interest.

- they give their consent in advance without the relation to concrete adopting parents

In those cases the adoption requires consent of a curator appointed to the adopted child in adoption proceedings. The function of the curator will terminate by execution of legal act, to which he was appointed.

a) The consent with adoption of the child is not required from the parents:

- have been deprived of their parental rights and duties;
- have been deprived of their legal capacity in full extent;
- their legal capacity has been restricted and they are not able to consider the consequences of the adoption;
- their legal capacity has been restricted and this restriction concerns also their right to grant consent to adoption;
- the parents have not manifested real interest in the child for at least six months, i.e. they have not visited the child, they have not fulfilled their maintenance duty to the child unless there were serious obstacles preventing them from fulfilling their duties;
- parents have not manifested any interest in the child for at least two months after the child's birth unless there were serious obstacles preventing them from fulfilling their duties;
- the parents have granted consent to adoption without reference to particular adopting parents.

b) The body to decide whether the conditions for suitability of the child for adoption are fulfilled is always the court which decides on petition of the body of social and legal protection of children and social nurture or without any petition.

2.24. SLOVENIA

1. The national adoption process (National adopting parents - national children).

Only children whose parents are unknown or whose residence has not been known for a year or who have consented to adoption before a competent body, may be adopted. The
consent of a parent from whom parental rights have been taken away, or is permanently incapacitated from expressing their wish, is not required.

Adoption is possible after the expiry of one year from fulfilling the conditions described in the previous paragraph. Adoption is also exceptionally possible prior to the expiry of this time limit, if the centre for social work finds that it would be to the benefit of the child. Adoption is also possible if the child’s parents are no longer alive.

The court has no jurisdiction in matters of adoption. The process is handled and administered by social work centres.

The procedure for adoption is started ex officio by the centre for social work, or on the proposal of the future adopters.

In the procedure for adoption, an extract from the register of births and other suitable documentation for the adopters and person adopted must be provided, and it must be ascertained that the future adopter has not had parental rights removed.

Prior to the centre for social work deciding on adoption, it must interview adult brothers and sisters, grandparents, or if these are not still living, uncles and aunts of a child the residence of whose parents is unknown, or who are no longer alive.

In order to establish whether the person adopted and the adopter can live in the new circumstances and whether adoption will be to the adopter’s benefit, the centre for social work may decide that the person adopted should live in the family of the adopter for a specified time prior to the decision on adoption.

If the centre for social work finds from the content of the submitted documents or investigation into adoption which it carries out prior to adoption, or on the basis of understandings from the time in which the child has lived with the future adopter prior to the decision on adoption, that the prescribed conditions for adoption are not met, or that adoption would not be to the benefit of the person adopted, it rejects by decree the proposal, or halts the procedure of adoption.

If the centre for social work finds that the conditions for adoption specified by the law are met and that adoption is to the benefit of the person adopted, it issues a decree on adoption.

The adoption decree is based on the name and surname of the person adopted that the adopter has decided.

The centre for social work finally sends the legally binding decree on adoption to the competent registrar who inscribes it in the Register.

Adoption creates the same relations between a person adopted and his/her descendants as between relatives, unless the law determines otherwise. The rights and obligations of the person adopted to its biological parents and other relatives and the rights and obligations of biological parents and relatives to it, cease with adoption. With adoption, the adopters are inscribed in the Register as the parents of the person adopted.

An adoption may not be dissolved.

2. The international adoption process (European Union (EU) parents – non-European children or European (EU) children and non-European (EU) adopting parents).

Unfortunately, the international adoptions are neither legally governed nor performed in Slovenia. Although it is theoretically possible that a Slovenian child is adopted by foreigner, this never happens in real life since there are too many Slovenian parents who would like to adopt a child. On the other hand, Slovenian parents tend to adopt foreign children quite
often as the waiting list for Slovenian children is too long. The only bilateral agreement governing international adoptions has been signed between Slovenia and RYR Macedonia. In all other cases of international adoptions parents act on their own: if the adoption is allowed and realized according to the laws of the country of the child’s citizenship, the recognition in Slovenia is usually just a formality.

3. The various organs or services that partake in the adoption process.

The only body authorized to lead the adoption process is the centre for social work. The courts do not partake in the adoption. The centre for social work conducts the whole procedure. Their first task is to act in the best interest of the child.

4. The composition of these organs and services

Are social intervenants involved; which ones; what is their education; in which proportions? Are the members of these organs and services specifically trained. If so, which training do they get?

5. Which post-adoption follow-ups exist?

None. Post-adoption follow-ups are not legally provided for and are not conducted in practice.

6)In which circumstances is a European adoption (Parents-children with different nationality but both European (EU)) treated differently than international adoptions (simplified procedure....)? Is a European national who resides in another Member State treated differently than a citizen of such Member State with respect to the possibility of adopting a child? (For example, does he need to have resided a certain number of years before or after the adoption; do we apply the national adoption procedure to such cases or not....).

A European adoption is treated in the same way as any other international adoption. A number of years of residency in Slovenia are not a prerequisite, but in practice foreigners do not adopt in Slovenia (as the queues are very long for Slovenian citizens).

7. What are the conditions to adopt? Distinguish, as required, between international and national adoption.

a) National adoptions:

Only a mature person, at least eighteen years older than the adoptee, may be an adopter. In exceptional cases, a centre for social work, having studied all the circumstances of the case and convinced themselves that such an adoption would be in the interest of the person adopted, may allow adoption also to an adopter who is not eighteen years older than the person adopted.

It is not possible to adopt immediate relatives nor brother nor sister. A guardian may not adopt his/her ward during the duration of the guardianship. The adoption of a young person who is older than ten years requires their consent.

A married couple may only adopt a child together, unless one of them is adopting the child of the other spouse.

It is not possible to adopt immediate relatives nor brother nor sister. A guardian may not adopt his/her ward during the duration of the guardianship.

An adopter may not be:
- a person from whom parental rights have been removed;
- a person of whom the suspicion exists that they would abuse the person adopted;
- a person who does not give a guarantee that they will exercise their parental rights to the benefit of the child;
- a person whose business capacity has been removed, or who is so mentally handicapped or ill that it might bring the person adopted's health or life into danger.

b) International adoptions:

An adopter may exceptionally be a foreign citizen, if the centre for social work is unable to find an adopter for the child to be adopted among citizens of Republic of Slovenia.

The minister responsible for matters of social care and the minister responsible for internal affairs must give their consent to the adoption of a child by a foreign citizen. Consent is not necessary in a case in which the adopter is the spouse of the child's parent.

What are the conditions to be adopted? Distinguish, as required, between international and national adoption.

The conditions do not distinguish between national and international adoptions.

The basic condition is that only children under the age of legal maturity may be adopted. The legal maturity in Slovenia is reached at the age of 18 (there are some minor exceptions to this rule). Unless the adopters are a married couple, nobody may be adopted by more than one person.

Only children whose parents are unknown or whose residence has not been known for a year or who have consented to adoption before a competent body, may be adopted. The consent of a parent from whom parental rights have been taken away, or is permanently incapacitated from expressing their wish, is not required.

8. Which process within the adoption procedure exists to hear the child?

The hearing of a child is not formally provided for under Slovenian Law. It is therefore not mandatory to hear the child during the adoption process. As the children older that 10 years can only be adopted with their consent, it can be concluded that at the age of 10 the hearing of a child becomes an obligation.

In practice, the child is heard if (s)he is mature enough to be able express his/her opinion. As the majority of adopted children are babies, the hearing is not always necessary.

9. who must give consent to the adoption?

a. The person adopted- only after the age of 10
b. Legal parents (holders of parental authority)- yes, if they are alive, are capable to give consent and still hold their parental rights

c. Biological parents (they are not the legal parents)- no

d. Other members of the family- no, but adult brothers and sisters, grandparents, or if these are not still living, uncles and aunts of a child the
residence of whose parents is unknown, or who are no longer alive, must be heard prior to adoption

10. At which moment after childbirth is the mother authorized to give her consent to adoption?

The moment is not defined by law. Theoretically, the mother can give her consent to adoption at any time after the childbirth.

11. Is it possible for a parent, who must consent to the adoption, to sign a blank consent (consent although the adopting family is not yet known)?

Yes, the parents do not know who the adopting family will be.

12. Is it possible to ignore the refusal of consent required?

It is not possible to ignore the refusal of consent of the child who is older than 10 years. It is not possible to ignore the refusal of consent of the legal parents if they have their parental rights.
2.25. **Spain**

**Preamble**

It is important to observe that Spain has chosen in its Constitution of 1978 a system of regional State by creating the Autonomous Communities (Comunidades Autónomas) to which were delegated several competences.

According to article 149 of the Spanish Constitution, the competence of the national State is excluded from civil matters without prejudice to the conservation, modification and development of the civil laws by the Autonomous Communities and, in particular, by those which have an own law (*derecho foral*).\(^{659}\)

Therefore, regarding the matter of adoption, the national and autonomous laws live side by side, whilst it must be specified that these last can be more restrictive than the first. In both cases, adoption is defined as a protection measure for the child and must consequently always be a guarantor of the higher interest of the child, a point which finds its base not only in the International Conventions signed and ratified by Spain but also in article 39.4 of the Spanish Constitution.

Finally, we must stress that legal intervention not only in national adoption but also in international adoption is governed by the national legal laws, which apply to all the state territory.

1. **The national adoption process.**

   a) **The steps of the national adoption.**

   - The request for adoption.

   The request for adoption constitutes the first step given in the long way of the adoption. It devotes the decision of parents to enter the administrative phase of the process of adoption.

   The **international adoption being subsidiary national adoption, the model of the request for adoption is single and is placed at the disposal of the citizens by each service of protection of the minors (*entidad pública*) of the Autonomous Communities.**

   The request contains the following data:

   - Personal data: names, first names, date of birth, marital status, studies, profession and telephone number of the adopting candidates.

   - Residence: complete address.

   - Marital status: a number of biological or adoptive children, a number of years of common life in the case of unmarried couples.

   - The reasons for which the adopting candidates want to adopt.

   - Data relating to the child: age bracket preferred, acceptance of brothers and sisters, etc.

   - In international adoption cases: to see further,

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\(^{659}\)The case of Catalunya, Aragon and Netherlands.
In case of adoption of children with specific needs, it’s necessary to indicate the circumstances which are accepted: diseases, physical handicap, psychic handicap, etc.

The request for adoption should to be signed by the adopting candidates and will have to be given to the service of protection of the minors of the Autonomous Community of the usual place of residence of the adopting candidates while joining the following documents:

- Certificate of census,
- Last income tax return about the incomes, the tax about the assets and the last payment salary,
- Certificate of penal antecedents,
- Medical certificate carried out by a family practitioner.

- The pre-adoptive reception.

In Spain, there is only the full-plein adoption process since the entry into force of the law 21/1987, in November 11, which had as a principal objective the assimilation of adoptive filiations to biological filiations.

The full adoption is preceded by one “pre-adoptive reception” or a pre-adoption placement within a foster family that means for some part of the doctrine the same characteristics as the simple adoption. It is about a necessary phase in a family reception during which an emotional attach develops between the child and the future parents and not having a duration superior to one year.

- The aptitude certificate.

The public entity of protection of the minors will have to issue the certificate of aptitude if it considers that the necessary conditions are met in the chief of adopting, as we will see it thereafter.

- The juridical procedure of adoption.

The adoption constitutes itself by court order stated by the court of first authority. The procedure can be initiated in two ways:

- Obligatory initiation by the public entity of protections of the minors.

The procedure will be necessarily initiated by the public entity, which will have to ask for the constitution of the adoption in favour of the adopting parents to which it will have issued the certificate of aptitude.

- initiated by the public entity or the adopting parents.

The procedure will not be initiated by the proposal of the public entity when:

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660 Both of the proceedings presenting a temporary character, conserving the liens within the adopting family and trying to end either to the full adoption by the adopting family or to the reinstatement of the child to the biologic family.

661 Article 173bis of the Civil code.

662 Article 176 of the Civil code.
- the adoptee is orphan of father and mother, and is relative of adopting in third degree,
- the adoptee is biological child of the spouse of adopting,
- the adoptee has been in pre-adoptive foster for at least a year,
- the adoptee is person of full age or emancipated minor.

a) The intervention of the Court Decisions.

The granting of the certificate of aptitude.

If the administration does not grant the certificate of aptitude, this decision can be the subject of recourse near the court of first authority and, in the event of dissension with this judgement; it may be requested to the Court of Appeal.

At this case, the legal intervention occurs at the beginning of the process of adoption since the certificate of aptitude is a necessary condition without which no adoption is possible.

The constitution of the adoption

Only the legal authority is qualified to constitute the adoption according to article 176 of the Civil code and 22.3 of the organic law of the judicial power\textsuperscript{663}. The judge will always have to take account about the higher interest of the child thus that the adopting parents' aptitude.

Therefore, during the constitution of adoption process, the judge must join together the consent of certain people whose biological parents of not emancipated minors and who were not private from parental authority.

Under article 781 of the Legal Law, the parents considering their consent must be required will be able to come to the first instance court, which knows the adoption procedure. At this case, the procedure will be suspended and the court will give to the parents a time, which could not be higher than 20 days in order to present their request formally.

If within this delay the request is not presented, their right will be nullify and they will be unable to claim their right to consent or to ask for the extinction of the adoption.

The extinction of the adoption.

The adoption is irrevocable nevertheless article 177.2 of the Civil code provides that the biological parents who were not private of the parental authority must agree to the adoption unless they had not had the possibility to do it during the procedure of adoption for an independent reason of their will.

At this case, the article 180 of the Civil code provides they can present a request within two year since the judgement constitutive of the adoption in order to ask its extinction to the first instance tribunal of the place of the residence of the adopting in application of the article 779 of the juridical proceeding Law.

\textsuperscript{663} Article 22.3 of the organic law of the juridical capacity (ley oranica LED poder judicial) states the jurisdiction to the judges and courts of the civil order to constitute the adoption when adopting parents or the adoptee are from Spanish nationality or they have their usual residence in Spain.
b) The recourses.

- The resources against the Administration’s decisions\(^{664}\).

The decisions ordered by the administration within the framework of the adoption can be the object of a recourse to the first instance court of the residence’s place of the public entity of protection of the minors or, failing this, of the binder of the residence of adopting.

The legal recourse should not be preceded by an administrative recourse and the recourse in priority matter according to article 779 of the Legal Law because of the interest of the child.

Thus the recourse should be presented within two month since the notification of the administrative decision. Then the judge will ask the administration to provide him the complete file within 20 days delay\(^{665}\). Once received the aforementioned file, the applicant will have a 20 days deadline to present his complete request. After this, it will be transmitted to the Public Ministry and the administration envisaging having their answer within the 20 days. Finally, the court will fix the date of the lawsuit.

- The resource against the first instance Court’s judgements.

Against the decisions taken by the first instance court an appeal to the Court of Appeal (audiencia provincial) may be introduced. The recourse will be submitted within five day following the notification of the judgement and, once admitted, the complete writing will be presented within 20 days.

The recourse in appeal will then be transmitted to the other parties that will have a 10 days deadline to oppose or require the confirmation of the judgement. In Spain, the Court of Appeal hands down its judgment against which it is not possible to provide itself in cassation.

2. The international adoption process.

a) The steps of the international adoption.

- The request for adoption.

The model of request for adoption is unique since, as we said, the international adoption is subsidiary to the national adoption.

Therefore when the adopting candidates fill their request of adoption they must indicate the country where they want to carry out the adoption and, if necessary, entity of collaboration of the international adoption (ECAI or entidad colaboradora de la adopción internacional) selected.

- The choice: with or without ECAI.

Entities of collaboration to the international adoption (ECAI) are accredited by the services of protection of the minors of each Autonomous Community in the framework of a selection process. We will further analyse their function, nature and composition, but here it is important to mention these because the adopting candidates who want to adopt a child abroad from Spain will be in front of the following choice:

- to pass by a single ECAI because thus the country of origin requires it,

\(^{664}\) Article 779 has 781 of the Legal Law 1/2000, modified by law 54/2007 relating to the international adoption.

\(^{665}\) They are the working days from Monday to Friday being excluded Saturdays, Sundays and public holidays.
to chose between several ECAI which are accredited for the same country,

, to address directly to the service protections minors because no ECAI is accredited for chosen the country,

Do not choose any ECAI.

This choice is important because it must be indicated in the beginning of the request for adoption. This is why it is important to choose the correct country and to choose some several and to go to the informative meetings various ECAI in order to choose which corresponds to the waiting about information, support and collaboration.

- The certificate of aptitude.

The article 10 of law 54/2007 relating to the international adoption defines the aptitude like the adequate capacity and motivation to exercise the parental authority, answering the needs of the adoptive children, and assuming the characteristics, consequences and responsibilities which comprises the international adoption.

- The allocation of the child

Considering they are the children entitled to a family, the country of origin proposes a child with the adopting candidates.

If the adoption is carried out through ECAI, the representative of the ECAI from the origin country communicates this to the ECAI and this one to the adopting parents. If these ones agree they will sign a document of acceptance of the child proposed. If the adoption is not carried out with through ECAI, the person of contact of the origin’s country communicates this directly to the adopting parents who should at its turn to communicate this to the service protection of minors. Here also will be signed the document of acceptance.

It should be stressed that the acceptance of the child chosen by the authorities of the country of origin is not obligatory, At this case another assignment will be carried out.

b) The voyage.

It is the great moment. Once accepted the child proposed and after a waiting period which sometimes is several months, the adopting candidates travel to the country of origin in order to know their child.

- The intervention of the decisions courts.

- Obtaining the certificate of aptitude.

As we saw, if the administration does not grant the certificate of aptitude, this decision can be appealed to the first instance court of the residence’s place of the public entity of protection of the child and, in the event of dissension of the judgement, to the Court of Appeal.

- The constitution of the adoption by Spanish Consul abroad.

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666 There are exceptions with the assignment: it is the case of Ukraine where the choice is made within the adopting parents place.
667 For example when it is about a child who presents a chronic illness when in the initial request of adoption the candidates refused this possibility.
668 And in this case everything will depend on the country of origin: some offer an alternative assignment quickly, others make wait a long time adopting them and others refuse to carry out another assignment.
669 Sometimes the first travel is not a synonym of return with the child: certain countries require two travel.
According to article 17 of law 54/2007 relating to the international adoption, the Spanish consuls abroad will be able to constitute an adoption when adopting parents are Spanish citizens and the adoptee has his residence in the consular demarcation.

At these cases, the proposal for an adoption should be formulated by the public entity of the place of the last usual residence of adopting parents in Spain.

If the adopting parents had not had their usual residence in Spain the two last years, in this case the preliminary proposal will not be necessary but the Consul should ask instead of to the residence’s place of adopting parents the reports/ratios necessary to be able to estimate his aptitude.

This aims to facilitate the constitution of adoption by Spanish abroad even if they never had their usual residence in Spain.

Nevertheless we cannot pass in addition to the fact the Convention of Vienna of 1963 submit the instrumental capacity of the Consuls to the acceptance of this practice by the country of origin which can prohibit very well these proceedings to the constitution of adoptions.

- The constitution by the Spanish judge to the adoption of a minor who’s in Spanish territory under a protection measure.

The article 14 of law 54/2007 provides that the Spanish courts will be qualified to constitute the adoption when adopting parents are Spanish citizen or have their usual residence in Spain. In this case, the applicable law to the constitution of the adoption will be the Spanish material law when the adoptee has his usual residence in Spain at the time of the constitution of the adoption or when he has or will have transferred to Spain in order to establish his usual residence there. The legal authority must be limited to check the capacity of the adoptee, the aptitude of the adopting parents and the existence of assents, consents and hearings necessary in the respect of the interest of the child.

As for the capacity of the adoptee and the assents of the intervening people in the constitution of the adoption, they will be governed by the national law of the adoptee in these two cases:

- If the adoptee has his usual residence outwards known Spanish territory at the time of the constitution of the adoption,

- If the adoptee does not acquire Spanish nationality even residing in Spain.

In the other cases, the applicable law will be the Spanish law. Nevertheless the judge will be able to ask any of the assents, hearings and for authorizations which would be envisaged by the national law or that one of the usual residence of the adopting parents or the adoptee and this is only if that arises from the higher interest of the child or if the adopting parents or the Public Ministry thus require this.

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670 The Article 24 of the law 54/2007 relating to the international adoption.
671 Frequent cases of the people who cooperate with organisations international there which live in the country of origin of the adoptee.
672 For example when the minor was the subject of a simple adoption at his original country. The Directorate-General of the Registers and Notaries in his resolution of January 24, 1997 allows the assimilation of the simple adoption about the pre adoptive foster provided that adopting parents are titular of an aptitude certificate. In the case of India, the measure which is made up in the country of origin means a tutelage.
673 The article 18 of the law 54/2007 relating to the international adoption.
674 The article 20 of law 54/2007.
- Recognition by the Spanish judge of the adoption made up in a country not signatory of the Hague’s Convention of 1993.

The Recognition of the adoptive legal relation abroad made up by adopting Spanish is conditioned with its inscription with the civil register. Thus this inscription will take place only if the magistrate in charge at the civil register understands the conditions for the recognition are attained.

When adopting parents have their usual residence in Spain and the adoption was constituted by the authority having jurisdiction abroad, the judge will have to check if they have the certificate of aptitude and if the conditions stated by the article 26 of the law 54/2007 are attained. Thus, the conditions which the foreign resolutions of constitution of the adoption must meet to be registered to the civil register are the following ones:

The formal requirements.

Value of the foreign document which contains the foreign resolution. This value will be given according to the law relating to the obligatory force of the public documents of the original country. Thus either the formal requirements or the founds ones will be determined by the qualified authority of the country.

the legalization and translation of the foreign document. Regarding the legalization, it will not be not necessary if the country of origin is a signatory of The Hague Convention of October 5, 1961, which removes the requirement of the legalization of the foreign public documents.

Regarding the translation, it can be carried out in Spanish or in any of the officials languages recognized on the Spanish territory. The private translation is allowed.

The founds conditions.

the control of the foreign jurisdiction. The adoption must be constituted by the qualified foreign public authority being or not juridical. It will be considered as qualified if it has respected at the time of the constitution of the adoption the criteria of fastening envisaged by its legislation. Thus, if there is not sufficient bond as well familiar as social with the country of the public authority, this one will be consider inefficient.

the control of the applicable law by the foreign authority. The adoption will be made up pursuant the rules of conflicts of the country of the qualified authority. It is necessary that the capacity and the assents correspond to the law of the
adoptee, being able the assents given later or\textsuperscript{683} either in front of a Spain authority or in front of another qualified foreign authority.

. the control of the equivalence of the effects of the adoption decision within the national law\textsuperscript{684}. When the adoptee or adopting parents are Spanish citizens, the adoption constituted by a foreign authority must produce the legal effects of the adoption decision within the Spanish law. As we saw the adoption in national law create three effects: the breakdown of bonds with the biological family\textsuperscript{685}, the irrevocability and the need to be declared eligible to adoption. Thus when the law of the authority which constitutes the adoption envisages its revocation by the adopting parents, these last ones will have indispensably given up this faculty in a notary act or by the magistrate in charge to the civil register, before the child were taken to the Spanish territory.

Certificate of aptitude\textsuperscript{686}. When adopting parents are Spanish and reside within Spain, they should be titular of a certificate of aptitude before the constitution of the adoption.

Assent of the Spanish service of protection of the minors (Entidad Publica). If the adopting parents are Spanish citizen at the time of the constitution of the adoption by the foreign authority, the service of protection of the minors’ assent of the last residence of the adopting parents in Spain will be necessary.

Finally, if in the country of origin were made up a simple adoption, the article 30 of law 54/2007 provides that it will be consider as a pre-adoption reception and the conversion into a full adoption will be subjected to the following conditions which will be analysed under the scope of the national’s adoptee law:

- every people who must give their assent understand the extent of the effects of the adoption, including the rupture of the bond with the biological family,
- their assent was given freely and written,
- their assent was not obtained with the help of payment of money,
- he assent of the mother was given after the birth of the child,
- the child, according to his age and maturity, had been informed of the nature and the effects of the adoption,
- the child, according to his age, had been heard.

when the assent of the child is necessary, it was given freely, in the correct legally form envisaged and without any monetary compensation.

b) The recognition by the Spanish judge of the adoption decision made up in a country signatory of The Hague Convention of 1993\textsuperscript{687}.

\textsuperscript{683} For example if the assent of the mother were given before the childbirth. This is not possible in Spain and thus the Spanish legal authority can ask that the assent were given before recognizing the adoption decision.

\textsuperscript{684} The article 26.2 of law 54/2007.

\textsuperscript{685} This does not mean that the adoptive child cannot know its origins. This is envisaged by the convention on the laws of the child but also by the law 54/2007 relating to the international adoption which envisages in its article 12 the right of the child to know biological origins, owen thus the public Spanish authorities to collaborate with him and to store all the relatives information about his birth, situation, biological parents, etc.

\textsuperscript{686} the article 26.3 of the law 54/2007.
At this case, the recognition must be concluded pursuant the system laid down in The Hague convention text relating to the protection of the international child and the matter co-operation of adoption. Thus the conditions of the recognition are as follows:

Absence of control of the jurisdiction of the authority granted the adoption. The principle of the higher interest of the child is guaranteed by the Central Authorities indicated within the framework of Convention.

Absence of control of the applicable law to the adoption. The scope of the Convention includes either the adoptions made up in the country of origin or those made up in the country of reception after the child is moved there.

Emission of certificate envisaged in article 23 of Convention. The certificate emitted by the authority guarantees that the adoption observes The Hague convention's conditions. It is about a document emitted by the central authority of the country of origin which will determine when and which granted the adoption and at which circumstances. In the majority of the cases, the qualified authority is the central Authority indicated by each country at the time of the signature's Convention.

Under article 24 of Convention, only the fact the adoption is obviously contrary to the law and to the public order law could made up the reason of not recognition of the adoption decision and always in the respect of the higher interest of the child. Actually such an exception is not that formal since if the country of origin and reception are signatories of The Hague Convention, this one comprises the mutual recognition of the adoption procedure concluded under the terms of convention.

Finally, the protection measures which do not constitute an adoption within the meaning of the Spanish law could be the conversion object according to the procedure of article 27 of convention in condition that:

the law of the State of reception allows it: it is the case of Spain,

the assents of the people or institutions which hold the guard of the child are given by knowing that it carries on the breaks of the bonds with the biological family,

the central authority having jurisdiction issued the certificate complaining the standards of The Hague Convention.

Thus, according to the article 26 of The Hague Convention, the effects of the recognition of the adoption decision are:

the recognition of the filiations bond between the adoptee and adopting,

the responsibility of parental authority in the chief of adopting parents,

he rupture of the biological bond.

c) The recourses.

c-1. The recourse against the administration’s decisions.

688 In Spain they are the Autonomous Communities.
689 It should not be forgotten that the principal objective of convention is the automatic recognition of the certified adoption conforms to the convention.
The decisions stated by the administration within the framework of the international adoption can be object of recourse to the first instance court of the residence of the public entity of protection of the child.

The legal recourse should not be preceded by an administrative recourse. Thus once the request presented to the tribunal having jurisdiction, this last one will require to the administration to provide him the complete file within 20 days. Once received the aforementioned file, the applicant will have a 20 days deadline to present his complete request. Later than the request will be transmitted to the Public Ministry and to the administration they will answer this in writing within 20 days. After that, the court will fix the date of the lawsuit.

c-2. The recourse against the judgements of the first instance court and the magistrate in charge of the civil register.

The decisions taken by the first instance court which can be object of recourse are as follows:

- those relating to the granting or not of the certificate of aptitude,
- those relating to the refusal of constitution of adoption when the child is within Spanish territory under a protection measure made up in the country of origin,

The decisions taken by the magistrate in charge to the civil register are those regarding the refusal of recognizes adoption made up abroad.

Against these decisions could be submitted an appeal to the Court of Appeal (audiencia provincial). The recourse should be announced within five days following the notification of the judgement and, once admitted, the complete writing will be presented within 20 days.

The recourse in appeal will then be transmitted to the other parties that will have a 10 days deadline to be opposed or to require the confirmation of the judgement decision.

In Spain, the Court of Appeal hands down its judgment against which it is not possible to get in the cassation court.

3. – Different bodies or services which take part in the adoption proceeding.

A) The Autonomous Communities.

a) Nature: on a juridical way, they obey to the territorial division of Spain. Each one of them creates its own service of protection of the children managing the crisis situations (ill-treatment, etc), the protection measures like the adoption as well as the assistance to the families.

b) Moment of intervention: Their intervention are immediate and constant since they are which receive the initial request for adoption and they are which finally accompanies the parents in the adoptive follow-up. Their presence is thus constant and necessary.

c) Missions: Their mission consists in the protection of the children and this principle must govern their action. Thus they evaluate the adopting candidates, giving them or not the

690 The article 779 has 781 of the Legal Law 1/2000. (Ley de Enjuiciamiento Civil).
691 Judicially, they are the working days from Monday to Friday being excluded Saturdays, Sundays and public holidays.
certificate of aptitude, advising them on the ECAI corresponding to each country and carrying out the adoption follow-up.

d) Composition: The composition depends on each Autonomous Community and obeys mainly a political diagram. Generally is about civil agent belonging to an Autonomous community who received some formation.

e) Formation: They are civil agents who passed a concourse and who had some formation as psychologist, social assistant or lawyers.

B) The collaboration entities in the international adoption (ECAI)

Nature: they are a non-profit-making associations which must be accredited for a country and for a determined duration over the children’s service of protection of each Autonomous Community where they operate. The accreditation is carried out by contest and is based on an economic report as well as motivations, which must be provided to the administration.

a) Moment of intervention: They intervene only in the international adoption and under condition that the country chosen by adopting parents has an ECAI accredited within its Autonomous Community. They intervene once they adopting parents had obtained the certificate of aptitude. They are paid directly by adopting parents for the rendered professional services.

b) Missions: information, council, intermediation with the original country, intervention in the constitution of the file and adoptive follow-up.

c) Composition: multi-disciplinary team which must take into account at least a psychologist, a social assistance officer and a lawyer.

d) Formation: according to their profession.

C Associations of adopting parents.

Since the creation of the ECAI in 1996, their role strongly decreased. Nevertheless they especially constitute a refuge for the parents during the adoptive time post. Much of them carries out days parents/children in order to create bonds and also to envisage the problems involved in the arrival in Spain: the language, the school, the development of the adoption, the will of the child to travel to his country, etc.

All these associations have a lucrative goal and they live only from the donations carried out by their members. In the majority of the Autonomous Communities they do not receive any subsidy. They play a role of “garde fou” and very often they denounced the not very advisable practices of certain ECAI that carried as a consequence the withdrawal of their accreditation by the service of protection of the minors.

D- The public ministry

It is present in all the legal procedures relating to the adoption as well national as international.

693 Law 54/2007 provides that only the professional services will be paid and that no benefit could be perceived because of an international adoption. In practice each ECAI thus fixes its prices two ECAI which deal with the same country can practise different prices.


695 The Organic law 1/1996 of Legal Protection of the Minors.
E- The consulting council relating to international adoption


2. **Mission**: only within the framework of the international adoption. Its mission is to develop collaboration among the qualified public administrations and to constitute an observatory where the draft amendments of the material and legal laws could be the object of analysis in order to improve the situation of the international adoption in Spain.

3. **Composition**: one representative of associations of adoptees; two representatives of associations of the adopting parents; two representatives of the ECAI, one representative of the Ministry for Foreign Affairs and co-operation; the general subdirector of the childhood of the Ministry of Labour and social affairs; one representative of each Autonomous community (17 + 2 autonomous cities (Ceuta and Melilla)); the general director of the consular businesses; the general director of the family and childhood; the Secretary of State to childhood.

4. **Post-adoptive follow-ups set up**

The article 11 of the law 54/2007 relating to the international adoption lay down the adopting post obligations. Indeed, the adoptive follow-up set up can be asked by the public entity of protection of the Spanish child but also by the qualified authority of the country of origin. Adopting parent have the obligation to facilitate in the time given to them all information, and documentation asked by the public utility of protection of the child or by the public entity of collaboration of the adoption international. They also will have to take part with the child to the foreseen interviews and they will have to complete the adoptive procedure envisaged by the country of origin and this with the assistance of the public entity of protection of the child or the ECAI.

As for the adoptive follow-up set up in the national adoptions, it is carried out by the ECAI or the service of protection of the minors if the parents did not choose ECAI.

5. **Cases of the European adoptions treated differently compared to the international adoptions?**

The procedure of national adoption applies when the child is Spanish citizen or has his usual residence in Spain. Regarding the adopting parents will be Spanish citizen having its usual residence in Spain in the foreign sense law. The international proceeding envisages a mode for the citizens of the Member States of the European Union/Schengen space and for the citizens of a non-member country of the first category. In both cases, it will be necessary to be provided with the Spanish resident identity card and to have a bond of stability with Spain (arraigo).

The procedure of the international adoption applies when an adoption of a child of foreign nationality is carried out abroad by Spanish adopting parents or having their usual residence in Spain. Here also the criteria to be followed when adopting parents have their usual residence in Spain are those of the law foreign law.

In both cases are valid the principles of non discrimination and higher interest of the child without existing a simplified procedure when adopting parents belongs to the European union.

6. **The conditions to adopt.**

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696 Ukraine and Russia had at a certain time ceased the adoptions with Spain because of lack of follow-up of the adoptions carried out.
a) Common Conditions to the national and international adoption.

The following analysed conditions are these fixed by the national legislation. Indeed, the Autonomous Communities may in their legislation add their own criteria, which nevertheless cannot be restrictive about national criteria.

1. The age.

According to the article 175.1 of the Civil code, adopting who wishes to adopt a minor must meet the following conditions:

- to have at least 25 years.
- if it is a couple, at least one of them must have reached the 25 years ages.
- it must exist a minimum difference of 14 years between adopting and the adoptee.

a-2. The marital status.

With regard to the marital status of adopting, is able to adopt:

- Married couples
- unmarried but stable couples
- an unmarried, divorced or widowed person.

Regarding to homosexual couples, of the many Autonomous Communities had legislated in order to allow the adoption by the homosexuals. Finally, the Spanish State modified its legislation by adopting the Law /2005, of June 30th, 2005 relating to the marriage of the homosexual people, granting to them the same rights as the married heterosexuals couples, including regarding adoption.

Therefore the married homosexual couples can also be adopting parents. Before the legislative modification, the homosexual couples had only the choice to adopt like as a single adopting parent.

a) The certificate of aptitude. (certificad o de idoneidad)

Any person wishing to be adoptive parent must have obtained the certificate of aptitude. This last certifies that the parents meet the psychological and economic conditions necessary to adopt a child. Law 54/2007 relating to the international adoption states in its article 10 about the certificate of aptitude and more precisely about the criteria to be held in account: the stability familiarly, socially, professionally, assistance for education, etc. Thus it can be defined as the document of public order, which entitles the adopting candidates to carry out the adoption of one or several minors in a concrete country (Spain or foreigner), in the circumstances done and within a three years delay.

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697 Major the part of the Autonomous Communities give priority to the married couples as with the couples in fact which prove relation a one minimum duration 3 years.
698 According to the definition of the 3rd additional Provision of the Law 21/1987, of November 11th which defines the unions in fact like those formed by a man and a woman who are living in a permanent way by an emotional relation similar to the marital relation.
699 Navarre was the first in 2000, followed in 2003 by the Pays Basque y, 2004 by Aragon and 2005 by Cataluña.
700 Introduced by the Organic Law 1/1996 of Legal Protection of the Minor.
The certificate is issued by the service of protection of minors (entidad publica) of the Autonomous Communities at the end of a process, which, in general, is composed as a whole of the Autonomous Communities of the following stages:

presentation of the request for adoption and the documents requested,

the obligatory meeting of information to the service of protection of the minors,

the meeting of the training group,

the meeting of psychologist and/or social assistants officers with the adopting candidates and, in many cases, with other members of the family, for example when there are other children,

the visit of the residence where the adoptive child will live,

emission of the psychosocial report which can be carried out either by the team of psychologist and social assistant officers depending of the service of protection of the minors of the Autonomous Community or by the multidisciplinary teams of the ECAI appropriately accredited by the service of protection of the minors.

Each Autonomous Community fixes the estimating criteria of the aptitude of the futures adopting parents, nevertheless there is a hard core which is composed of personal parameters\textsuperscript{701}, social ones\textsuperscript{702}, economic ones\textsuperscript{703}, family ones\textsuperscript{704} and of the health\textsuperscript{705} of the adopting parents. Also the law 54/2007 enjoins services of protection of the minors from the Autonomous Communities to coordinate the criteria of evaluation envisaging to reach a homogenisation of these communities.

4. Other necessary documents.

The essential documents are, as we described, the request for adoption, the psycho-social report and the certificate of aptitude. To these last are added a series of documents, which must also be given to the authorities of the country of origin. Although these countries did not make its own documents list to provide, we can, according to the nature of the documents, to carry out a classification.

Documents of personal nature of the adopting candidates: as certificates of birth, certificate of marriage, certificate of couples in fact, certificate of residence, certificates of criminal antecedents, identity card, passport.

Documents of professional and economic nature: as the declarations of income tax and of the patrimony tax on the last three years, the declaration by the honours of their physical possessions, notary acts of the real states goods or certificates of the land register.

Medical documents: certificates of health to realize by the family practitioners. In general these certificates must expressly exclude the presence of infectious disease or chronic illness.

\textsuperscript{701} The personal balance, the stability of the couple, the adaptability in front of the new situation, etc.

\textsuperscript{702} The social and family entourage favourable to the integration of the child, etc.

\textsuperscript{703} The economic situation which make it possible face to the needs of the child, an adequate house, etc.

\textsuperscript{704} The joint project of adoption in the case of couples, entourage which accepts the adoption and causes support.

\textsuperscript{705} The physical and psychic health which makes possible to take care of the child.
Documents relating to the everyday life: photographs of adopting parents and their family, letter of recommendation, etc

B) Characteristics of the international adoption.


The international adoption lives in a double reality: that one of the petitioning country and that one of the country of origin. Therefore the conditions of the one and the other must be present in a cumulative way in the chief of adopting. Indeed, many countries of origin do not allow the adoption by unmarried couples, imposing some limit to the people alone or excluding the homosexual ones.

For example, in the Colombia’s case, which is one of the countries where Spain is large applicant for adoption, the priority is given to the heterosexuals married couples with or without a child. Regarding the unmarried heterosexuals couples, they must accredit a common life together for at least 3 years and regarding the single people, their request is held only in account if they want to adopt a child older than 7 years or handicaps.

Ultimately, the decisive step given by Spain within the framework of the recognition of the equal rights between homosexual married couples and heterosexuals has only a little importance regarding the international adoption since adopting parents will remain cumulatively subjected to both legislations, the legal conditions required by Spain and the legal system of the country of origin.

2. The certificate of aptitude and international adoption.

The certificate of aptitude is concrete and inflexible document having as consequence the request for international adoption will be registered in a designed country and if, for example, this country closed itself to the international adoptions after the obtaining by the parents of the certificate of aptitude, they will be obliged to initiate a new procedure in order to be declared suitable adopting parents in front of another country.\[706\]

Also, the process of selection of the futures adopting parents bases not only on the parameters seen at the preceding paragraph but also those relative, among them:

- with the reasons justifying the will to adopt a foreign child,
- with the availability to accept the different ethnic features, the cultural differences and the historical luggage of the child,
- with the knowledge of the child’s original country culture,
- with the acceptance of the after-effects of children have suffered the ill-treatment, the abandonment or presenting certain diseases.

In conclusion, the fact the certificate of aptitude is conceded to the adopting parents to adopt a child coming from a determined country constitutes a negative aspect of the procedure of adoption. Indeed, the aptitude should be considered in a larger way in order to do not constitute in itself an obstacle to the adoption procedure as well national as international and especially in order to avoid that one names “the adoption à la carte”.

7. The conditions to be adopted

\[706\] That was the case for the adoptions in Russia and Ukraine which had decided to temporarily suspend the adoptions with Spain because of the lack of the adoptive follow-up.
a) National adoption.

The conditions which must be met in the chief of the adoptee are, according to article 175.1 of the Civil code, the following ones:

the adoptee must be a minor not emancipated

Exceptionally, the adoptee can be major if a situation of common life was initiated with the adopting parent before the adoptee was 14 years old.

B) International adoption.

b-1. The circumstances attached to the origin country.

Although the conditions of the children given in adoption are defined by the legal system of the country of origin, Spain also envisages conditions for the adoptee within the new Law 55/2007, from December 28th 2007 relating to the international adoption. The law provides in its article 4.1 that no adoption of minor of another State could be carried out when occur the following circumstances:

when the original country of the child is in situation of conflict or natural disaster,

when the original country of the child did not establish an institutional authority which controls and guarantees the adoption,

when there does not exist in the original country of the child all the guarantees necessary for the adoption and in the higher interest of the child as well as the ethical and legal international principles are not respected, understood by those last the included in the Children’s Rights Convention of November 20th 1989 and in The Hague Convention of May 29th 1993.

2) The circumstances regarding the adoptee.

As we saw in the preceding paragraph, the Spanish law envisages a difference age of at least 14 years between adopting parents and the adoptee. It is possible that in certain cases, this condition is not observed by the law of the original country, thus creating an irreconcilable situation with the Spanish legal system and being able to constitute a sufficient reason to refusal the recognition of such adoption. This is why since the approved organizations of adoption, the Collaborator Entities of the Adoption International (ECAI), it is advised to coordinate the requests for adoption with the countries of origin which establish similar criteria of age.

8. The placed procedure to hear the child

The article 177.3 of the Civil code provides that the minor youngest than 12 years old will be heard obligatorily by the judge providing a sufficient maturity. Once reached the 12 years old, the hearing by the Judge is obligatory because in these cases the child must give its assent to the adoption.

In practice, the courts have tendency to always hear the child as soon as this one reaches an age where he could communicate with the judge. The principle of the higher interest of the child as well as the will to constitute an adequate protection measure constitute the legal bases of this hearing.

9. People who must give assent to the adoption
The Spanish legislation relating to the adoption envisages two forms of emission of the will: the assent and the acquiesce. Thus, the defect of assent will carry as a consequence the absolute nullity of the adoption; besides the defect of consent will depend on the sovereign appreciation of the judge. Finally, it is also envisaged the hearing of certain people.

a) Who must give the assent.

Under article 177.1 of the Civil code, must give their assent:

- the adopting parents (S),
- the adoptee being older than 2 years.

As we said, without these assents the judge is not able in any case to constitute the adoption.

b) Who must give its consent.

According to the contents of article 177.2 of the Civil code, must give their acquiesce:

- the spouse of adopting except in the event of judicial or in fact separation.
- biological parents of the adoptee not emancipated when they are titular parental authority.

Nevertheless, if they have no possibility to give their consent, this one will not be necessary under the condition that impossibility were justified by the judge in the decision which constitutes the adoption. By impossibility it is necessary to hear any situation, which does not make possible the courts to locate the couple or the biological parents.

The Spanish laws are deeply "biologists" and the judges stir up, in the majority of the cases, the sky and the ground in order to obtain the necessary consent that the article 180 of the Civil code provides from the biological parents, who would have had no possibility to give their acquiesce for an independent reason of their will, may require the extinction of the adoption within two years from the judgement which constitutes the adoption and under conditions that this irrevocability decision does not carry serious damage to the child. This constitutes the only exception to the principle of the irrevocability of the adoption.

c) Who must be heard.

Article 177.3 provides that will have to be simply heard by the judge:

- The biological parents of the non emancipated minors who were not private of the parental authority,
- the tutor,
- The public entity when the adoptee has been in situation of reception for one year and this in order to give his opinion on the aptitude of adopting.

10. The moment from which the mother is authorized to give her assent to the adoption

As we saw, the mother must simply agree to the adoption, nevertheless this consent could be given only once passed the 30 days deadline since the childbirth. Nevertheless if before the childbirth the mother is already under observation of the services of child welfare

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707 The case for example of married people but whose spouse is in situation of absence.
708 The article 177 of the Civil code.
(for example in the event of drug-addiction, ill-treatment or delinquency), she can give her assent so that the child is placed in a pre-adoptive reception after the childbirth but before the 30 days deadline. In these cases, the service of childhood welfare makes apply the law relating to the reception and make to place the child within a family. Within one year delay and under condition the foster family had obtained the certificate of aptitude, the service of protection of the children will be able to initiate the procedure of adoption pursuant the article 176 of the Civil code.

a) The inexistence or not of granting the adoption in white.

1. National adoption.

Regarding the assents, that is impossible because either the adoptee (when he’s has older than 12 years old) or the adopting parents ought to give their assent without that the legal relation would remain empty of sense.

Regarding the consents, we saw that the judge may pass over those when the people who must give their consent have no possibility to do it, the impossibility which the judge will appreciate in a sovereign way since it will have to justify his judgement at any point. Nevertheless, the procedure of article 180 of the Civil code allows ONLY the father and the mother who were not private about theirs parental authority and who could not give their consent at the moment of the constitution of the adoption, for an independent reason of their will, to ask for the extinction of the adoption and only if this do not damage seriously the child.

2. International adoption.

As for international adoption, everything will depend of the situation.

If the child is on the Spanish territory under a measure protection made up in Spain, he will create the adoptive bond and with this intention he will have to check if the assents were given according to the applicable law; in the Spanish law case, as we saw previously, it is foreseen it can be given a later on in Spain or in front of the qualified foreign authority.

If the adoption were consisted the qualified authority in a country not signatory of The Hague Convention, the judge ought to check if the assent of the service of protection of the minors of the last residence of adopting parents in Spain has being given if not it will be necessary.

If in the original country non signatory of The Hague Convention a simple adoption was granted, the article 30 of the law 54/2007 provides that it will be regarded as a pre-adoptive reception and that its conversion into a full adoption will be subjected to the following conditions which will have to be analysed under the angle of the national law of the adoptee:

That all the people who must give their assent understand the extent of the effects of the adoption, meaning the rupture of the bond with the biological family,

That their assent was given freely and written,

That their assent was not obtained by payment of money,

That the assent of the mother was given after the birth of the child,

That the child, according to his age and maturity, was informed about the nature and the effects of the adoption,
That, according to his age, he was heard,

That when the assent of the child is required, it was given freely, in the legally form envisaged and without any monetary compensation.

If the adoption were consisted by the qualified authority of a signatory country of the The Hague Convention and if the certificate were emitted, the recognition is automatic as we saw. Nevertheless, the protection measures, which do not constitute an adoption regarding the Spanish law, could be object of a conversion according to the proceeding of the article 27 of the convention under condition of the reception State law allows this: it is the case of Spain,

The assents of the people or institutions which hold the guard of the child are given by knowing that it is about an adoption which breaks the bonds with the biological family,

The qualified central authority issued the compliance certificate of the procedure to the standards of The Hague Convention.

11. Impossibility of passing over the refusal of the necessary assent.

The Spanish judge could pass over the necessary assents only when the refusal is obviously contrary with the interest of the child. But once again, it could not pass over to the assent of adopting parents and the adoptee older than 12 years because the adoption remains a protection measure for the child when his biological family could not or did not know to assure him the protection and of well-being necessary to him.

Finally it should be observed that the assents/consent/hearing are always attached either to the administrative authority of guard or to their parents but ONLY when these last ones are titular of parental authority. IF it is not the case their shrinking is not necessary.
1. Introduction

The adoption of children from other countries became a topical question in Sweden after the end of the Second World War, with reference to children from countries involved in the war that had come to Sweden as foster children and were found after the war to have lost their near relatives. In the late 1950s, initiatives for adoption were taken by Swedish persons whose work abroad or personal contacts had put them in touch with children from other countries that needed parents. Sweden has had adoption contacts with other countries since the mid-1960s.

Since the mid-1970s, between 900 and 1800 children have come to Sweden every year for adoption. Today there are an estimated 45,000 Swedes from different parts of the world who have been adopted in Sweden. Statistics show that one out of every hundred new children in Sweden today is adopted from abroad. The overwhelming majority of children adopted in Sweden come from countries outside Europe.

2. Swedish Policy on inter-country adoptions

The Swedish Parliament in 1979 declared the Swedish policy in intercountry adoptions stating that the best interests of the child are paramount in accordance with the basic principles of Swedish child and youth care policy. Thus consideration for the child and its future development is the overriding principle in all adoption activities.

The decision on what is considered the best for a child should be settled in the child’s country of origin. The official Swedish view is that the preferences of the countries of origin concerning the children’s future and the ability of Sweden as the receiving country to guarantee their security should together constitute the preconditions governing intercountry adoption. The Swedish viewpoint is that the scale of intercountry adoptions should hinge on the prospects of providing these children with secure surroundings and family links by means of adoption. The decision whether a child is available for adoption must be made in the child’s country of origin.

According to Swedish law, intercountry adoptions should preferably be carried out through authorized non-profit organizations. When somebody wants to adopt a related child, or if there are other special reasons, the Swedish Intercountry Adoptions Authority (MIA) can allow the adoption to be carried out without assistance from an authorized organization.


3. The Swedish Intercountry Adoptions Authority (MIA)

In 1973 the Government set up The Swedish Council for intercountry Adoptions (NIA) to be the central public agency in general charge of adoptions from other countries. A government
resolution of July 1, 1981 gave NIA the status of a national board – The National Board for Intercountry Adoptions – an executive body under the Ministry of Health and Social Affairs. In 2004 the Swedish Government decided that NIA should be wound-up and reorganized as the Swedish Intercountry Adoptions Authority (MIA).

MIA is the central administrative authority for issues concerning intercountry adoptions intermediation, with the task of establishing high quality intercountry adoption operations in Sweden. This means that MIA monitors the Swedish adoption organizations’ work in intercountry adoption intermediation to ensure that it is conducted in compliance with the law and the principle of the best interests of the child as expressed in the UN Convention on the Rights of the Child and in the Hague Convention of 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption. MIA shall monitor that adoption intermediation is conducted in an ethically acceptable way and shall perform the tasks referred to in the Intercountry Adoption Intermediation Act (1997:1192).

MIA considers whether an individual case of adoption should be allowed to be implemented and also considers in certain cases whether foreign adoptions decisions should apply in Sweden.

According to the Instructions issued by the government, MIA shall in particular:

1. Authorize and supervise voluntary organizations;
2. Consider whether the procedure is acceptable or not, before the child leaves its country, in certain individual cases such as family-related adoptions;
3. Observe international developments and gather information on issues relating to adoption of foreign children;
4. Negotiate with authorities and organizations in other countries;
5. Conduct information operations and provide information and assistance to authorities and organizations;
6. Consult with organizations of adopted persons and also with the National Board of Health and Welfare and other authorities and organizations whose operations affect adoption issues.

MIA has a special Council, comprising six members, which shall monitor the operations. The Director General of MIA shall be a member of the Council and its chairperson. The Authority has twelve employees and is located in central Stockholm.

The Intercountry Adoption Intermediation Act (1997:192., which came into force on July 1, 1997, prescribes that practical activities concerning adoptions in Sweden are to be conducted by authorized voluntary organizations. Guidelines for these activities are issued by MIA, which also decides on questions of authorization.

It is the concern of the Swedish authorities to ensure that a child coming to Sweden for adoption is intended for adoption and is accompanied by documents making it possible for the adoption to be valid in Sweden or for the adoption process to be fulfilled.
4. Swedish rules and regulations on adoption

The rules of adoption are dispersed throughout several statutes. The core provisions of the Swedish adoption statutes are mainly found in Chapter 4 to Children and Parents Code (1949:381..709 With regard to international adoptions, there are provisions in Act (1997:191. consequent on Sweden’s accession to the Hague Convention on Protection of children and co-operation in respect of inter-country adoption.710 There are also general provisions on Swedish justiciary, applicability and recognition in the Act (1971:796) on International Legal Relations Concerning Adoptions. The rules concerning mediation on international adoptions can be found in Intercountry Adoption Intermediation Act (1997:192.. The most important legal provisions relating to adoptions can be found in the Social Services Act (2001:453.. A summary of all the main important regulations and acts are in an appendix to this report.

5. Adoption procedures

Families who want to adopt a child must secure the consent of the local social welfare committee according to the Social Services Act, Chapter 6. The local social welfare committee caries out a careful investigation of conditions in the prospective adoption family before such consent can be granted. The result of the investigation is presented in a report which includes the following details about the prospective parents:

- History of personal circumstances such as childhood and adolescence, education, occupations and relationships with parents and brothers/sisters, Current personal conditions such as home environment, school situation, work, income and general wealth, Current and history over state of health, Personality such as distinctive characteristics and interests, membership of clubs and associations, leisure pursuits and friends and acquaintances.
- Religious affiliations and/or attitudes.
- Marriage and martial relationships; the view they take of their own and any previous relationships. Attitude of the people and their plans for adoption. Intention to have more children. Any other children in the family,
- Motives for adoption,
- Knowledge, experience of children and way of upbringing. Expectations of and preparations for parenthood,
- References from at least two persons who know the applicants well, and
- Assessment of the resources of the applicants as adopting parents and their ability to take care of children of a certain age and with certain needs.

The investigation is carried out by a professional social worker – an official of the local social welfare committee – who furnishes the documentation for the decision by the committee as well as for the authorities in the other country representing the child.

Consent may be granted if the applicant is suited for adoption. When making this assessment particular regard is paid to the applicant’s knowledge and understanding of children to be adopted, their needs, and the implications of the planned adoption. Furthermore, other details are also assessed such as the applicant’s age, health status, personal qualities and social network. The applicant should also have participated in a parental course assigned by the municipality prior to the adoption. If the applicant(s) obtain consent then the consent is valid for two years.

709 Föräldrabalken (SFS 1949:381.
Before the adoption procedure starts in the children’s country of origin the social welfare committee in Sweden will consider whether consent should be granted for the adoption procedure to continue. An applicant whose application for consent is rejected by the local social welfare committee can appeal to an administrative court.

As soon as the child arrives in Sweden this must be reported to the local social welfare authority. During the time that elapses between the arrival and the completion of the adoption in Sweden, the family is under the supervision of the social welfare authorities. The supervisory and counselling function shall be performed by a specially appointed social worker.

If the adoption is completed in the child’s country of origin, the adoptive parents must apply to MIA in order to have the adoption order declared valid in Sweden. However, an adoption in accordance with the Hague Convention is automatically valid in Sweden.

If the child has not been adopted in its country of origin, the prospective adoption parents have to apply for adoption by petitioning a Swedish court of law (a district court). The district court consults the local welfare committee before making a decision.

The rules of adoption contained in the Children and Parents Code stipulate the following conditions with regard to the prospective adoption applicants:

The adopting parents must be at least 25 years old.

The child’s biological parents (or a specially appointed custodian) must have given their consent to the adoption.

No consideration must have been given or promised for the adoption. A married couple can only adopt jointly. Two persons of the same sex can also adopt jointly if they live together as registered partners. It is also possible for a single person to adopt a child.

Once the process of adoption has been completed, the child acquires the same status as if it had been born in the family. The adoptive parents become the child’s guardians and custodians and as such are bound to make provision for the child’s upkeep and upbringing. The legal relations between the adopted child and its biological relatives no longer apply. The social welfare authority has however to make provision, in its care of children and young persons, for the special needs of support and help which may exist following the conclusion of judicial or other proceedings concerning adoption.

In the process of adoption the child acquires the family name of its adopting parents. However, he/she can also be given permission to retain his/her former family name in combination with the new name if so desired.

The child becomes a Swedish citizen as part of the completion of adoption formalities in Sweden. Swedish law does not allow the cancellation of an adoption.

6. Swedish citizenship due to adoption

The family relationship which arises from a decision on adoption in a Swedish court must be accepted when a residence permit application for an adopted child is being considered. This also applies to adoptions which have taken place abroad and are valid in Sweden, unless there are strong grounds suggesting that such an adoption might not be valid. The family relationship which arises from an adoption is normally the most important factor when a residence permit application is considered at a later date. The strength of the family
relationship is assessed in a similar way to the procedure with biological children, but adapted somewhat to the special situation of the adopted person.

Therefore, a foreign adopted child under the age of 18 may be granted a Swedish residence permit without the requirement of having lived with the adoptive parent, if the latter was resident in Sweden at the time of the adoption. When an adoption has taken place before a foreign adoptive parent has taken up residence in Sweden, it is a requirement that the adopted child and the adoptive parent must have lived together previously, for them to be reunited in Sweden. In the case of adopted children over the age of 18, the same rules apply as for grown-up biological children, namely that a residence permit on the grounds of relationship with an adoptive parent is not normally granted. In such cases, there would need to be special circumstances for those applying to be granted a permit.

As a general rule, applications for a residence permit are to be made before entering Sweden. They are to be made at a Swedish Consulate or Swedish Embassy in the person's country of domicile. Citizens of EU member states and states which have applied for EU membership do not need to pay for a residence permit application, in accordance with the Regulation on Fees. Children under 12 years of age who are adopted by a Swedish citizen in accordance with a decision on adoption which is valid in Sweden are granted Swedish citizenship when they are adopted. In such cases, it is not necessary to apply for a residence permit.

7. Swedish adoption Organization

Currently, six organizations have been authorized according to the Act on Intercountry Adoption Intermediation. These organizations have contacts in more than 30 countries. A Swedish organization on being authorized receives a certificate showing that it has permission from MIA to give such adoption assistance. The authorization is a guarantee that the organization fulfills the conditions of the Act and conditions laid down by MIA. The authorized organizations are accredited according to the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.

Authorisation to work with intercountry adoption intermediation in Sweden may only be granted to associations whose main purpose is the intermediation of inter-country adoptions. If an association also conducts operations other than intercountry adoption intermediation, the other operation may not jeopardize confidence in the adoption operation. Authorisation may be granted only if it is clear that the association will intermediate adoptions in an expert and judicious manner, on a non-profit basis and with the best interests of child as its foremost guiding principle. Authorisation is also subject to the association having a board and auditors as well as statutes providing for the association to be open.

An association that is authorized in accordance with section 6 of the Act on Intercountry Adoption intermediation may be granted authorization to work with intercountry adoption intermediation in another country on condition that:

the other country has adoption legislation or some other reliable regulation of intercountry adoption, which takes into account the fundamental principles for intercountry adoption expressed in the United Nation's Convention on the Rights of the Child and in the Hague Convention of 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption,

(ii) the other country has a functional administration concerning intercountry adoption operations,
(iii) The association reports the costs abroad and how they are distributed, and

(iv) With regard to the cost profile, the balance between the Swedish associations and the circumstances generally, it is considered to be appropriate that the association commences or continues adoption co-operation with the other country.

An association that has been granted authorization to work with intercountry adoption intermediation in another country may operate in that country only if the relevant authority in the other country has granted permission for it to do so or has declared that it is prepared to accept the association operating in the country.

An authorized organization shall require the applicants to complete the adoption as soon as possible and to make the necessary arrangements concerning the child’s citizenship. The organization shall notify the child’s country of origin of the adoption and naturalization orders. The organization shall also ensure that reports concerning the child’s development are sent to the relevant agencies in the child’s country of origin, insofar as such reports are prescribed by the national authorities of that country or have been otherwise agreed on.

An authorization shall be revoked if the association no longer fulfils the conditions of the Act on Intercountry Adoption Intermediation or conditions laid down by MIA.

8. Swedish Modernisation of the adoption procedures

In 2007, the Swedish government issued a review process with the view to review the current Swedish legislation concerning adoption and in particular international adoptions.711

The fundamental rules concerning adoptions are laid down in the Children and Parents Code (1949:381. which focus mainly upon national adoptions. The last decades the national adoptions have gradually decreased, while adoptions from outside of Sweden increased successively and today represent the majority of adoptions in Sweden. Parallel with this development, questions concerning these children’s legal status and rights at adoption have come more into focus. The UN Convention on the rights of the child (Resolution 44/25 of November 1989) establishes important main principles that shall be taken into account whenever a member country adopts rules and provisions concerning children.

711 Kommittédirektiv (DIR 2007:150) – Modernare adoptionsregler
2.27. **United Kingdom**

1. Introduction

Adoption law first became legal in England and Wales by virtue of the Adoption of Children Act 1926. Adoption law in England and Wales has undergone radical reform very recently.

In December 2000 the UK Government published a White Paper on adoption (Adoption - a new approach; Cm 5017, Department of Health, December 2000). This set out the Government's plans to promote greater use of adoption, improve the performance of the adoption service, and put children at the centre of the adoption process. The White Paper included a commitment to introduce new adoption legislation in 2001. The legislation, the Adoption and Children Act 2002, ("the Act") only fully came into force on 30 December 2005, repealing the Adoption Act 1976 (apart from part IV of the 1976 Act which deals with the status of adopted persons).

England and Wales is a common law jurisdiction, however, the law relating to adoption derives entirely from statute. There is no procedure for adoption under common law box, but common law does give recognition to some foreign adoptions.

As Wall LJ in the recent Court of Appeal case, Re F (a child) (placement order) [2008] 2 Family Court Reports (FCR) p. 93 set out, "The 2002 Act reformed the law of adoption. It is not, I think, controversial to say that the 2002 Act had four main objectives. The first was to simplify the process. The second was to enable a crucial element of the decision-making process to be undertaken at an earlier stage. The third was to shift the emphasis to a concentration on the welfare of the child; and the fourth was to avoid delay. "

2. The Act, a summary

As set out in the explanatory notes to the Act, "In summary, the Act:

- aligns adoption law with the relevant provisions of the Children Act 1989 to ensure that the child's welfare is the paramount consideration in all decisions relating to adoption;

- places a duty on local authorities to maintain an adoption service, which must include making and participating in arrangements for the adoption of children and for the provision of adoption support services (to include financial support);

- provides a new right to an assessment of needs for adoption support services for adoptive families and others;

- sets out a new regulatory structure for adoption support agencies, requiring them to register under Part 2 of the Care Standards Act 2000, to ensure that adoption support services are provided to a high standard;

- enables the appropriate Minister (defined in section 144) to establish an independent review mechanism in relation to qualifying adoption agency determinations;

- makes provision for the process of adoption and the conditions for the making of adoption orders, including new measures for placement for adoption with
consent and placement orders to replace the existing provisions in the Adoption Act 1976 for freeing orders;

• provides for adoption orders to be made in favour of single people, married couples and unmarried couples;

• provides for a new and more consistent approach to access to information held in adoption agency records and by the Registrar General about adoptions which take place after the Act comes into force, by ensuring that the release of this sensitive information about adopted people and their birth relatives is protected and that its disclosure is subject to safeguards;

• provides for adoption support agencies to have a role in assisting adopted adults to obtain information about their adoption and to facilitate contact between them and their birth relatives where the person was adopted before the Act comes into force;

• incorporates with amendments the Adoption (Intercountry Aspects) Act 1999 (other than sections 1, 2 and 7, and Schedule 1., as respects England and Wales;

• provides additional restrictions on bringing a child into the United Kingdom in connection with adoption, aimed at ensuring that British residents follow the appropriate procedures where they adopt a child overseas or bring a child into the United Kingdom for the purposes of adoption;

• provides for restrictions on arranging adoptions and advertising children for adoption (through traditional media and electronically) other than through adoption agencies, and prohibits certain payments in connection with adoption;

• makes provision enabling the Secretary of State to establish an Adoption and Children Act Register to suggest matches between children waiting to be adopted and approved prospective adopters;

• makes provision obliging courts to draw up timetables for resolving adoption cases without delay;

• amends the Children Act 1989 to provide that an unmarried father acquires parental responsibility where he and the child's mother register the birth of their child together;

• amends the Children Act 1989 to introduce a new special guardianship order, intended to provide permanence for children for whom adoption is not appropriate;

• amends the Children Act 1989 to make provision in respect of local authorities' power to provide accommodation for children in need under section 17 of that Act;

• amends the Children Act 1989 to amend, and widen the application of, the procedure for making representations under that Act and to impose a duty on
local authorities to make arrangements for the provision of advocacy services to children or young people making or intending to make representations;

- amends the Children Act 1989 to provide that regulations may require a local authority to review the care plan of a looked after child;

- amends the definition of "harm" in the Children Act 1989 to make clear that harm includes any impairment of the child's health or development as a result of witnessing the ill-treatment of another person;

- amends the Children Act 1989 to make the application for a placement order specified proceedings and to enable rules of court to make applications for section 8 orders specified proceedings and to provide for the representation of children in proceedings”.

“The Act replaces the Adoption Act 1976 (except provisions about the status of children already adopted) and reforms the existing legal framework for domestic and intercountry adoption in England and Wales. It also consolidates some of the provisions in the Adoption (Intercountry Aspects) Act 1999. In the Adoption (Intercountry Aspects) Act 1999, sections 1 and 2 (regulations to give effect to the Convention and Central Authorities), section 7 (amendments to the British Nationality Act 1981. and Schedule 1 (the text of the Hague Convention so far as material), are to continue in force for England and Wales, as well as Scotland. The remaining provisions as respects England and Wales will cease to apply in England and Wales and will instead be incorporated into the Act. The Act will affect all adoptions and arrangements for the adoption of children in England and Wales and all adoption applications from persons resident and settled in England and Wales who seek to adopt children living abroad. Some parts of the Act extend to Scotland and Northern Ireland. It is intended that the current mutual recognition of adoption and cross border placement for adoption between England, Wales, Scotland and Northern Ireland will continue.

3. How the Act is structured

a) The Act has three Parts:

- Part 1 sets out the framework of adoption law for England and Wales. Chapter 1 provides for the welfare of the child to be paramount (section 1.). Chapter 2 covers the adoption service. It places a duty on local authorities in England and Wales to maintain an adoption service, which includes making and participating in arrangements for the adoption of children and for the provision of adoption support services (section 3.; provides a statutory right to request an assessment for adoption support services (section 4.; amends Part 2 of the Care Standards Act 2000 to provide for the registration of adoption support agencies (section 8); enables the appropriate Minister to establish a new independent review mechanism to consider determinations made by adoption agencies about the suitability of prospective adopters and the disclosure of protected information (section 12.; provides for default powers (section 14., inspection (section 15) and inquiries (section 17). Chapter 3 covers placement for adoption and adoption orders. It introduces placement by consent and placement orders (sections 18 to 29); makes provision for the removal of children who are or may be placed for adoption (sections 30 to 35) and makes provision for adoption orders (sections 46 to 51.). It also makes provision for disclosure of information prior to and following a person's adoption (sections 54, 56 to 65 and 98). Chapter 4 covers
the status of adopted children (sections 66 to 76). Chapter 5 makes provision for the Adopted Children Register (sections 77 to 79) and the Adoption Contact Register (sections 80 and 81). Chapter 6 makes provision for intercountry adoption (sections 83 to 91). Chapter 7 covers miscellaneous provisions. It makes provision for offences relating to arranging adoptions (section 93), reports (section 94) and making certain payments (section 95).

- Part 2 makes amendments to the Children Act 1989; it provides for the acquisition of parental responsibility by an unmarried father who jointly registers with the mother their child's birth (section 111); introduces a more straightforward process for step-parents to acquire parental responsibility either through the courts or with consent (section 112); provides for a local authority foster parent to apply for a section 8 order if the child has lived with him for one year rather than three years (section 113); provides for enhanced residence orders (section 114) and special guardianship (section 115); makes provision in respect of local authorities' powers to provide accommodation for children in need (section 116); amends the complaints procedure by allowing for regulations to impose time limits for the making of representations and establish an informal resolution stage, and extending the procedure to some services provided under Parts 4 and 5 of the Children Act 1989 and under this Act (section 117); makes provision regarding care plans and the review of plans for looked after children (sections 118 and 121); places a duty on local authorities to make provision for the arrangement of advocacy services for looked after children and young people leaving care who wish to make a complaint under the Children Act 1989 (section 119); amends the definition of "harm" in that Act (section 120) and provides for the representation of children in court proceedings (section 122).

- Part 3 makes miscellaneous provision, including on advertising (sections 123 and 124), and establishing the Adoption and Children Act Register (sections 125 to 131)."

B Key principles

The process of adoption has sometimes been referred to as the "transplanting" of a child from its natural family into its adopted one. The adopted person is to be treated in law as if born as the child of the adopters or adopter, section 67 (1). The child is deemed to be the legitimate child of the adopter, and, if adopted by a couple or one of a couple, is to be treated as the child of the relationship of the couple in question, section 67 (2). Accordingly, adoptive parents are treated in law as the parents of the child.

An adoption order is one which gives to the adopters "parental responsibility" for a child who is subject to the adoption application, section 46 (1). 2002 Act. Parental responsibility is defined in section 3 Children Act 1989 as "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property."

An adoption order extinguishes permanently parental responsibility which a person has for a child immediately prior to the adoption order being made, section 46 (2), except in the case of adoption by a single step parent, section 46 (3). (b).
In line with the Children Act 1989, whenever any court or adoption agency makes a decision concerning adoption, the paramount concern is the child’s welfare throughout its life, section 1 of the Act.

The court or adoption agency must at all times bear in mind that, in general, any delay in coming to the decision is likely to prejudice the child’s welfare, section 1(3).

Section 1(4) provides that:

The court or adoption agency must have regard to the following matters (among others)—

(a) the child’s ascertainable wishes and feelings regarding the decision (considered in the light of the child’s age and understanding),

(b) the child’s particular needs,

(c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,

(d) the child’s age, sex, background and any of the child’s characteristics which the court or agency considers relevant,

(e) any harm (within the meaning of the Children Act 1989 (c. 41.) which the child has suffered or is at risk of suffering,

(f) the relationship which the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including—

(i) the likelihood of any such relationship continuing and the value to the child of its doing so,

(ii) the ability and willingness of any of the child’s relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child’s needs,

(iii) the wishes and feelings of any of the child’s relatives, or of any such person, regarding the child.

In placing the child for adoption, the adoption agency must give due consideration to the child’s religious persuasion, racial origin and cultural and linguistic background, section 1(5).

Section 1(6) sets out the “no order” principle: The court or adoption agency must always consider the whole range of powers available to it in the child’s case (whether under this Act or the Children Act 1989); and the court must not make any order under this Act unless it considers that making the order would be better for the child than not doing so.

Each local authority must continue to maintain within its area a service designed to meet the needs, in relation to adoption, of children who may be adopted, their parents and guardians; persons wishing to adopt a child; adopted persons, their parents, natural parents and former guardians and for these purposes must provide the requisite facilities, section 3 (1.) of the Act. These services may be collectively referred to as “The Adoption Service” and the local authority or registered adoption society may be referred to as an “adoption agency”.

4. Procedure
a) Who can adopt?

A child can be adopted by a single person, or by a couple, section 49. If the application is made by a couple, each applicant must be married, in a civil partnership or in an enduring family relationship, section 144. An applicant must be over 21 years of age, section 51. The applicant, or at least one of the applicants, must either be domiciled in the British Isles all have been habitually resident in a part of the British Isles of at least one year prior to the application, section 49.

b) Who can be adopted?

An adoption order can only be made in respect of a child, namely a person under the age of 18, on the date of the application and still under 19 and unmarried or have never been a civil partner, at the date of the order. A child must live with its adopters for a probationary period, section 42.

c) To which Court can an adoption application be made and how?

The application can be made in a Family Proceedings Court, Adoption Centre County Court, or the High Court, Children (Allocation Of Proceedings) Order 1991 as amended. Application is by Form A58. The respondents to such an application would be each parent with parental responsibility or guardian of the child, unless they had given notice of not wishing to be informed; a person in whose favour there is provision for contact; any adoption agency that has parental responsibility under a placement order; any adoption agency involved in the adoption arrangements; any local authority to whom notice has been given under section 44 of the Act.; any local authority or voluntary organisation which has parental responsibility for, or is looking after or caring for, the child; the child in specific circumstances. Under rules 23 (2. and (3. Family Procedure (Adoption) Rules 2005, “the 2005 Rules” the court may direct that the child or any other person be made, or removed us, a respondent.

As set out under the 2005 Rules, with the Form A 58 must be filed particular documents including a copy birth certificate, statement of facts (if applying for dispensation of consent), a copy of any relevant order, a copy of relevant certificates of marriage, civil partnership, divorce, dissolution of civil partnership or death, medical report on each applicant and the child (not required in agency cases). The relevant adoption agency or local authority must file a report on the applicant’s suitability as a report on the child’s placement that adoption.

The President of the Family Division, the senior High Court judge dealing with family law matters in England and Wales, has issued guidance, President's Guidance (Adoption: the New Law and Procedure) [2006] 1 Family Law Reports (FLR) 1234. This is aimed at guiding all Court users through the reforms of the Act affecting the court process. The President states that "new legal process placing children for adoption... is intended to provide greater certainty and stability of the children by dealing as far as possible with consent before they are placed with prospective adopters. A child may only be placed that adoption: (i) where there is the consent of the parent; or (ii) where there is no parental consent, under a placement order.” These options are governed by sections 19 and 21 respectively and authorise adoption agencies (local authorities and registered voluntary adoption societies) to place a child for adoption. There is an exception to the placement of children under six weeks of age as a mother cannot give effective consent to her child's adoption within six weeks of birth, section 52(3).
Under section 20 a parent who consents to a child being placed that adoption may at the same time, or at a subsequent time, give their advance consent to the making of a future adoption order (which may be withdrawn, section 20 (3.). However, purported withdrawal will not be effective if made after an adoption order, section 52(4.). “Consent” means consent given unconditionally and with full understanding of what is involved, section 52 (5). There are prescribed forms for the giving of consent. The form must be witnessed by a court appointed reporting officer, an officer of the Children And Family Court Advisory And Support Service, CAFCASS, in England, rule 69, 2005 Rules.

The court may dispense with the consent of a parent or guardian to adoption, or to a placement order either if they cannot be found or is incapable of giving consent (lacking capacity will within the meaning of Mental Capacity Act 2005) or the welfare of the child requires the consent to be dispensed with.

A child who is to be the subject of an adoption application must live with the prospective adopters for a probationary period prior to the making of the application, section 42. The period varies depending on the type of placement. The court must be satisfied that sufficient opportunities to see the child with the applicant (s) in the home environment have been given to the adoption agency or local authority.

5. Placement order

A placement order under section 21 authorizes a local authority to place a child for adoption with any prospective adopters chosen by the authority. When a placement order is made, parental responsibility for the child is given to the adoption agency and the prospective adopters. The parents’ parental responsibility is not extinguished but is shared with the prospective adopters and the agency. It is for the agency to decide on any necessary restrictions of the exercise of parental responsibility.

In applications to make or revoke placement orders the child will be a party and a children’s guardian will be appointed by the court. The guardian will appoint a solicitor to represent the child.

Once a placement order is made only a local authority may remove the child and it continues in force until it is revoked, the child marries or becomes a civil partner, reaches 18 years or the adoption order is made in respect of the child. In addition: any care order which the child is subject to is suspended; any other order under section 8 Children Act 1989 and any supervision order ceases to have effect; no prohibited steps, specific issue or child assessment order can be made; no application for a residence order under section 8 Children Act 1989 can be made unless the applicant has obtained the leave of the court and an application for an adoption order has been made; no application for a contact order under section 8 Children Act 1989 can be made unless the application is to be heard together with an application for the adoption of the child (The court can make an order for contact under section 26 of the Act); the child may not be given a new surname or removed from the UK for more than a month unless each parent consents or the court grants leave.

a) Conditions for making a placement order

The court may not make a placement order in respect of a child unless: the child is subject to a care order; the court is satisfied that the threshold conditions for the making of a care order are met; the child has no parent or guardian; where the child has a parent or guardian that: they have consented to the child being placed for adoption or the parent’s or guardian’s consent should be dispensed with.
The welfare of the child is the paramount consideration and the welfare checklist, no order and no delay principles apply.

b) Reports

The court will appoint a guardian for the child who is required to advise the court on matters relating to the welfare of the child. The court will also consider any report filed by the local authority giving its reasons for placing the child for adoption and addressing other matters as stipulated by the regulations.

c) Contact whilst subject to a placement order

Before making a placement order the court must consider the arrangements that the adoption agency has made or proposes to make for allowing any person contact with the child, and invite the parties to the proceedings to comment on those arrangements.

Under section 26 of the Act the court may require the person with whom the child lives or is to live to allow the child to have contact with the person named in the order. The court may of its own initiative make an order under this section or the following can apply for an order: the child or adoption agency; any parent, guardian or relative; any person in whose favour there was a contact or residence order in force under the Children Act 1989 which ceased to have effect as a result of the placement order being made; any person who had care of the child as a result of the exercise of the inherent jurisdiction of the High Court; or any person who has obtained the court’s leave to make the application.

The court may make any conditions for contact that it sees fit on the making of a contact order.

The welfare of the child is the court’s paramount consideration and the welfare checklist, the no order and delay principles apply.

A contact order under the Act may be varied or revoked by the court or on an application by the child, the adoption agency or the person named in the order.

A contact order under this section only has effect whilst the adoption agency is authorised to place the child for adoption.

d) Conditions for making an adoption order

The court may only make an adoption order if the child has resided with the applicants for the prescribed periods and either: the parent or guardian consents to the making of the adoption order; the parent or guardian has given advance consent to the child being adopted by any prospective adopters and does not oppose the making of the order or the parent’s or guardian’s consent should be dispensed with (Where a parent has given advance consent to the making of the adoption order they can only oppose the making of the order with the leave of the court) or: the child has been placed for adoption with the consent of the parent or guardian; the child was placed for adoption under a placement order and no parent or guardian opposes the making of the order (Where a child is subject to a placement order or has been placed with the consent of the parents the application for the adoption order can only be opposed with the court’s leave.) or the child is subject to a freeing order.

The welfare of the child is the court’s paramount consideration and the welfare checklist, the no order and no delay principles apply.
The making of an adoption order operates to extinguish the parental responsibility that any person other than the adopters had before the making of the order. Where the applicant is the partner of the parent of the adopted child the parental responsibility of that parent is not extinguished.

Where the applicants wish their identity to be confidential they may apply for a serial number to be assigned to them. This number will be used instead of their names.

e) Reports

The local authority is required to submit a report to the court on the suitability of the applicants to adopt the child and regulations stipulate the matters the local authority must address in the report. Where the parents have consented to the placing of the child for adoption a reporting officer (CAFCASS) will be appointed who will witness the signature on the consent form and make a report in writing to the court. Where an adoption order is opposed, the arrangements for contact are opposed, or for any other reason the child is made a party, then a children’s guardian will be appointed and will file a report with the court. In all other cases a CAFCASS officer will be appointed to report on the welfare of the child.

6. Leave to oppose an application

When considering an application by the parents for leave to oppose the adoption application the court must be satisfied that there has been a change of circumstances since the making of the placement order or the giving of consent by the parents to the placement of the child. The welfare of the child is the court’s paramount consideration and the no order and no delay principles apply.

7. Consent

The consent provisions apply generally to consent to placement and consent to adoption. ‘Consent’ to the placement of a child for adoption or the making of an adoption order means: ‘consent given unconditionally and with the full understanding of what is involved, but a person may consent to adoption without knowing the identity of the persons in whose favour the order will be made’.

The persons who have the right to consent are the parent ‘having parental responsibility’ or the guardian of the child (which includes a special guardian). Those ‘parents’ who qualify are: the birth mother; the birth father where he is married to the child’s mother at the time of the child’s birth or if he subsequently marries the mother; an unmarried father if: he becomes registered as the child’s father; he makes a parental responsibility agreement with the child’s mother; he is granted a parental responsibility order by the court; the child’s adoptive parent, where the child has been the subject of a previous adoption.

Where the application is based on the consent of the parents a prescribed form signed by the parents or guardian and witnessed by a CAFCASS officer must be filed with the court.

8. Dispensing with consent

There are two grounds for dispensing with a parent’s consent, namely where the court is satisfied that: the parent or guardian of a child cannot be found or is incapable of giving consent; or the welfare of the child requires the consent to be dispensed with.

9. International
Section 1 of the Adoption (Intercountry Aspects) Act 1999 gives full effect to the Hague Convention on Protection of Children and Cooperation with respect to Intercountry Adoption, incorporating the Convention in Schedule 1.

The UK Government says that for humanitarian reasons it allows inter-country adoptions to proceed where:

- The child cannot be cared for in any suitable manner in his or her own country;
- The adoption would be in the best interests of the child and with respect for his or her fundamental rights as recognised in international law; and
- The adopter has been assessed as eligible and suitable to adopt from overseas by an adoption agency.

10. Registration of foreign adoptions

Certain adoptions made in countries outside the UK can be registered in the Adopted Children Register. The types of adoption which can be registered are those made in Designated Countries and those made in Hague Convention Countries under the provisions of the Hague Convention. This is because the effect of an adoption order made in these countries is recognised in the UK.

The effect of recognition is that, for most practical purposes, the adoption is treated as if it were the result of a court order in the United Kingdom: there is no need for the child to be re-adopted under British law.

11. Adopted Children Register

The Registrar General is responsible for maintaining the 'Adopted Children Register'. The register is created from adoption orders which date back from the present day to 1927. It contains particulars of all adoptions granted by a court in England and Wales and foreign adoptions and convention order adoptions. The latter categories include those registrable foreign adoptions that meet the legislative requirements and where an application has been made for registration. Two forms of birth certificate are issued, at a fee, from the Register: a full certified copy of the entry and a short certified copy that omits any mention of adoption.

The information held in the register is:

- Number of entry
- Date and Country of birth or date and registration district and sub-district
- Name and surname of child
- Sex
- Name and address and occupation of adopter or adoptee if available
- Date of adoption order and description of court by which made
- Date of entry
- Signature of officer deputed by the Registrar General to attest the entry

12. Applications to Register an Intercountry Adoption
An application to register a foreign adoption may be made by the adoptive parent (or in the case of a joint adoption, one of the adoptive parents), any other person who has parental responsibility for the adopted child (within the meaning of Section 3 of the Children Act 1989) and an adopted person aged 18 or over.

13. Miscellaneous

In his Introduction for the Summary of the Family Court reports for the year ended 31 March 2006, Sir Mark Potter, President of the Family Division stated,

"Adoption
The implementation of the Adoption and Children Act 2002 with its new approach and procedures is likely to be challenging for the professionals initially coming to grips with the new legislation and regulations this year. One of the Designated Family Judges writes in his report the large amount of foreign adoptions is having a detrimental effect on our adoption figures as these cases usually require more directions hearings and longer delays due to the complexity of the cases and possible need for documents to be translated. The change from freeing orders to placement orders will mean that such proceedings are likely to be linked to care proceedings at an earlier stage. Some courts are now familiar with the new rules and some have identified that they require more time to develop a greater familiarity with the changes. One judge comments 'Court staff is labouring with difficulties relating to software, which is only in course of being updated to take account of the new Act. Also there is sometimes a tension between the desirability of achieving targets and the need to deal sensitively with parties, for example, patience in obtaining parental consent'. I understand that there is a delay by the IT contractors in Familyman to adapt to the changes of the Adoption Legislation and I am concerned about the extra pressures this has on Adoption staff. I have notified this concern to Ministers and HMCS.
Placement for Adoption: a flowchart
3. CONVENTIONS

3.1. The Hague convention of 29 may 1993 on Protection of children and cooperation in respect of inter-country adoption.

OVERVIEW AND PRINCIPLES

Concerning the history, the convention was projected twenty years before entering into force, either since 1985 the evaluations of the draft text that finally got in force in 1995 after five years of negotiation and after its signature in 1993. Always the intention and the objectives of the convention were the same the respect of the best interest of the child aiming to prevent the abduction and the bad treatments in the respect of theirs fundamental rights.

The general principles of the Convention are to ensure the adoptions preventing the abduction, sale and trafficking of children in the cases of the inter-country adoptions; envisaging the co-operation between states and ensuring the authorisation of competent authorities.

On this sense the main pillar on which the convention lays exposes fourth principles as to know: the best interest of the child; the safeguard of the child against abduction, sale or trafficking; the establishment of a framework of cooperation between authorities and the establishment of a framework of authorisation of competent authorities to approve inter-country adoptions. The adoption law institution must be understood as a social and legal measure for the protection of children under the responsibility of the authorities states involved.

In the way to protect the "best interest of the child", the principle of "non discrimination" of any kind, irrespective of the child's or his parents; or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status; and the right of a child who is capable of forming his or her own views to express these views freely and to have these views given due weight in accordance with the age and maturity of the child. Some of the measures should be taken on this way are to ensure that the child is adoptable, to preserve information about the child and to match the child with a suitable family.

Another principle concerned is the "subsidiarity" one, present in the convention text considering the inter-country adoption to the last resort. This principle interacts with the main principle of the best interest of the child in the sense of looking for him the best permanent family life. On this way the adoption authority has to recognise that a child should be raised by his or her birth family or extended family whenever possible. If that is not possible or practicable, other forms of permanent family care in the country of origin should be considered. Only after due consideration has been given to national solutions should inter-country adoption be considered, and then only if it is in the child's best interests. Subsidiarity principle is central to the success of the Convention. It implies that efforts should be made to assist families in remaining intact or in being reunited, or to ensure that a child has the opportunity to be adopted or cared for nationally's families.

Finally the principle of "co-operation" between parties nations at the convention remain essential to the good functioning of the values' convention. Certainly the information among
the countries’ authorities charged on the implementations tasks of the measure is the central key of the system. The communication between many other public authorities and accredited bodies performing the functions of Central Authorities have a vital importance; also through intra-State co-operation between authorities and agencies regarding Convention procedures and to prevent abuses and avoidance of the convention law. Moreover it is really important on this field to have and keep a real and permanent exchange of information among the European convention’s countries and; especially between the origin and the receiving adopting countries in the meaning of shared problems and usual implementing problems. Also the exchanged information must exist among the European convention’s countries and the rest of the world’s countries’ convention parties, just because there’s a connexion between these last ones and the European ones in the sense of the relationship as original’s and receiving counties in the inter-country adoption proceeding under The Hague convention.

At last on this field the contracting countries are encouraged to keep and organise meetings to discuss and improve the implementation of the convention.

In the way to prevent the abduction, sale and traffic of the children the protection of the families is one of the safeguards envisaged. As one of the best protections against misuse of a system and exploitation of children is transparency. Laws, regulations, policies, fees and processes should be clearly defined, and clearly communicated to all who use the system. This transparency enables users to see what protections are in place and to identify where actual or potential abuse of the system may occur.

The keys operating principles to carry on the legal convention are: the Progressive implementation: this means that all Contracting States are encouraged to view implementation of the Convention as a continuing process of development and improvement; Resources and powers: without adequate resources and powers, it is not possible for authorities and bodies to perform their functions or obligations effectively; Co-operation: In each country there may be many different authorities and bodies involved in the inter-country adoption process. Co-operation, whether between authorities and bodies within each Contracting State, as well as co-operation between Contracting States, is essential to achieve the objects of the Convention; Communication as with co-operation, there are many authorities and bodies involved. Good co-operation cannot be achieved without good communication, and vice versa. Expeditious procedures: are essential to protect the interests of children. The procedures must not be so fast as to circumvent or bypass proper procedures, but they must not be so slow that children are left too long in institutions. Transparency: Transparent procedures (including fees and charges) are a practical and effective way to limit malpractice in adoption. Minimum standards: The Hague Convention only provides for minimum standards to be observed within the inter-country adoption process. Contracting States are encouraged to develop and apply higher standards.

INSTITUTIONS

The Hague convention established by itself several institutions that must be accredited by the member states in the different ways. There’s must be on this way a body charged to assist policy makers during the previous time of the ratification or accession planning, envisaging to consolidate the Central authority. This authority must account with the adequate powers and resources and must always be contacted as the principal point of the convention.

The central authority must be clearly defined in the way of its functions and representation about national or international adoption cases; either the functions designed by the convention that should be carry on exclusively by the Central authority must be also clearly defined. It remain obvious that the rest of the function may be delegated to the others accredited bodies.

Regarding these functions accorded to the Central Authority; The Article 9 establishes: “Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to – a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption; b) facilitate, follow and expedite proceedings with a view to obtaining the adoption; c) promote the development of adoption counselling and post-adoption services in their States; d) provide each other with general evaluation reports about experience with inter-country adoption; e) reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation”.

The accreditation of the designated bodies takes also much time because of the Convention’s requirements about the supervising of the accredited authorities. The articles 11 and 12 of the convention explain the functions, attributions and responsibilities of the accredited bodies.

Finally the Article 13of the Convention establishes “The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law”. That oblige the member states a permanent communication within the Hague Convention.

To recognise the bodies proposed by the member states, the Convention has overtaken some accreditation criteria based on a Canadian experience about the supervision of the accredited bodies by the central authority. All the international adoption have to be carried out by certified bodies, except in especial cases; those bodies are monitoring and supervised by the central authority and their accreditation is granted for a period of two years and can be renewed for three years; the accredited bodies are also inspected by the central authority.

This criteria were based on two pillars: the child’s best interests and the subsidiarity principle including the prevention of child abandonment. At the same time criteria was overtaken on the base of others international documents as follows: “The UN convention of 1989 on the children’s rights (CRC), “The UN declaration about the social and legal principles regarding the protection and the welfare of the children, with an special mention on the foster placement and national and international adoption (UNDec), “The guide ICSW of 1996 about the national and international adoption and the foster family; the children rights to grown up in a family (ICSW). These international documents added up to the Hague Convention in discussion over this text are the corner of the children welfare and the international adoption.

On this sense the accreditation is given only to the bodies having respect to principles and leading behaviour described by the Convention, but some of the criterias applying to the bodies requesting to get the agreement are disposed on a proposition document given by the EurAdoption713 and some of them are described as follows.

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The body ought to ask the agreement in front of the state where it has its headquarter and in conformity with the national law. A contract agreement should enounce every and each of the obligations and faculties delegated to the accredited body, besides the responsibility of the body in front of the family candidates and the period of validity of the agreement not shorter than 3 years. Otherwise it would be specified that the agreement may be retired or suspended in cases where the obligations were not accomplished by the central authority.

The objectives and the structure of the organism must be stetted and registered or under licence or under a non lucrative organisation within the member state law where it’s accredited. The policy work and the direction strategies must be designed and must to be in conformity with the national law. The personal quality must be either taken into account, and on this side the raised ethical standards, the knowledge of the principles, conventions, laws and regulations which control the international adoption, the theoretical and practical experiment, the exercise of work among several cultures, the exercise of social work and wellbeing of the child, and the administrative knowledge and qualities of “leadership” should be consider. Moreover the psychological, the legal and medical council must be granted by qualified people.

Regarding the financial side, the bodies have to assure their non lucrative object, their transparency, stability. The section regarding the services relatives to the adoption explains the way to supply the information the counsel, the availability of the service and the preparation of the candidates; the behaviour to follow during the adoption process and the follows-up services; the confidentially about the candidates’ documentation files. At last the accredited organization will have to subscribe to a whole of written ethical rules which will be in conformity with the four international instruments referred previously above and their principles and fundamental rules. The rules would be also acceptable by a broad whole of organizations engaged in the work of the children’s care. The organization should cooperate with the other organizations of adoption to improve the standards and the practice of the international adoption.

To sum up this part two different institutions must exist under the Hague Convention, the first one is the Central authority highest engaged to the Permanent Bureau of the Hague Convention. The second ones are the accredited bodies under the directions lines of the Hague Convention but being directly engaged by the Central authority and receiving from this last one the delegation of their tasks.

THE POSSIBLE ACCESSION OF GREECE TO THE CONVENTION

As we were able to see on this report, the only European Union country not being part of the Hague Convention, that mean not having the same law system in the international adoptions, is the Hellenic Republic. In the way to inspire this last country to become member of this international convention we were explaining the basics institutions and principles of the Convention. To become part to the CONVENTION it is necessary at the beginning a good evaluation of the national’s situation regarding the adoption subject and these rights within the European countries could be really appreciated in the way to became part of the Convention. On this way the convention, applying now within 26 over the 27 European countries (Greece is not still part to this convention but it is part to many others Hague’s Conventions). The European Council should che ck the Greece adoption system as it’s working in the actuality and, one finishing its analysis about the Greek national and international proceedings, to suggest this country to become party of The Hague Convention.

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d’organismes qui remplissent les fonctions et les obligations contenues dans la Convention sur l’’adoption internationale ». page 3.
Some of the experts on the field consider that it is interesting and important a progressive implementation that is consider one of the keys operating principles of the adoption proceeding.

Besides it is important to stress that the European Community is already member by itself to the status of The Hague Convention that means knows the Hague Convention system and how to implement this. It is able using the principle of proportionality and subsidiarity to “suggest” in a deep manner to the Hellenic Republic to sign as a Convention’s member.

In the cases of foreign countries, meaning countries that are not European ones, some of them showed the ways to implement the convention. As for example putting in service national's committees regulating national and international adoption. We were able to see that in the explanation given by some of the European Countries.

At the same time the Hague convention published in 2005 a document putting in order the implementation way. On this sense the “Guide to good practice under the Hague Convention of 29 May 1993 on protection of children and co-operation in respect of inter-country adoption”714 annexed to the main document. Within the contents of this annex we find the explanation of the way to take aiming to sign the convention, the first element is the understanding of the terminology of the Hague convention.

In the case of Greece, the Convention should be taken by the way of the Accession that means the process by which a State which was not a Member State of the Hague Conference at the time the Convention was adopted (on 29 May 1993), or did not participate in the diplomatic Conference, may nevertheless become a full Party to the Convention and be bound by its terms.

The only difficulty being able to appeared on this field is where one of the rest of the part countries at the convention does not agree with the Greek accession the convention will not apply in their bilateral relation. However the effect of the convention is exactly the same either if it is about ratification or accession.

Regarding the way to put in force the convention within the Hellenic Republic, as we were able to see in the report presented by the Hellenic experts; this country has the international adoption proceeding regulated by the national civil code, meaning the national civil law. Therefore, being a dualist system because of the necessity of the national instrument to put into force the convention; in the case to the accession to the Hague Convention this national law 2447/96 and the rest of the legislation contained in the civil code regarding the international's adoptions cases should be changed by the Greek Parliament to get into the contains and to agree with the Hague Convention text and proceeding. In the same way, the Hellenic republic having the international adoption proceeding incorporated within its own internal law is able to use the most of the authorities as for example the recognized social welfare.

The Hellenic national report agrees as well to the accession to the Hague Convention; that in resume means that the structure is already placed but the only thing needed is the adaptation to the Convention. The measures to get on this way in a progressive implementation of the Convention is either to eliminate all the obstacles existing within the national law preventing the good functioning of the Convention or to have a permanent Consultation with the Permanent office of the Hague Conference and the others members, that in such case, being an European Community member, Greece has the approach of the

26 other European countries that are part of this convention. We believe that the implementation would be really painless; taking not more than a year.

The transformation approach of the legislation has to pay attention to the convention will be capable of being interpreted within its international context; All essential Convention provisions should be included in the domestic implementing legislation or in regulations; provisions not included will have no force in domestic law.

The successful operation of the 1993 Hague Convention requires that the Convention will be consistently applied by all Parties because of the objective of the convention. The national and regional legal frameworks in which the Convention has to operate may require significant changes and the contracting States that have already implemented the Convention should continue to evaluate the operation of the Convention within their domestic systems in the way to improve the application.

Implementation should be seen as a continuing process of development and improvement and Contracting States should continue to consider ways in which to improve the functioning of the Convention, if appropriate, through modification or amendment of existing implementing measures.

3.2. The convention on the right of the child

The United Nations Convention by itself regards to anything relating to children. The concept of child under the Convention target conceived about its age, less than 18 years old or older if the country in case determines another age of adulthood. This is important to stress because either if all the European Countries are part of this Convention some of them provide, within their national legislation, the possibility to adopt adult people; for example Germany, Austria, Cyprus, Denmark, Spain, Finland, Greece, Italy and Sweden, clearly under particular conditions and every country following its owns procedural and legal legislation.

The convention recognises every and each right of the children and put in order the different ways to save and protect those by the states members. The situations regarding family reunifications are also consider and the prevention of the illicit transfer and the non-return children is ordered, finally the accession to the existing agreements and the promotion to increase the bilateral and multilateral relationship among countries on the ground are at the same time considered. This became Important to stress in the sense that this Convention make part of the legal sources of The Hague Convention of 29 may 1993 and the rest of the international documents signed in the Hague framework, as we considered here above.

The convention establishes also the right of the child to be heard within a judicial or administrative proceeding affecting the child. At length the article 20 consider directly the adoption cases in its third paragraph stating “1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. 2. States Parties shall in accordance with their national laws ensure alternative care for such a child. 3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.”

The article 21 continuous touching more expressly and specifically the question concerning the children adoption declaring: “States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall: (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view
of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary; (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin; (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption; (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it; (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs”.

These two articles introduce the fundamental stone to the international adoption proceedings and the principles to respect and maintain under adoptions systems in the inter-countries adoptions. On this way the article 20 prepare the field to get within the international adoption, explaining all the different possibilities that the member states have in the cases of orphan or other kind of deprived family’s children, foresees the adoption of these children cases. Is within the followed article that the United Nations members of this convention and within those the European Community countries are oblige to the international adoption. This Convention is obviously one of the international law sources of The Hague’s Convention about international law in the children ground. Certainly the article 21 is one of the international strikes regarding the international adoption regulation. The principles exposed on this article are: the existence of the competent central authority being a State’s responsibility to carry on this task; taking the adoption proceeding as a way to take care about children; the principle of non discrimination between national and international adoptions cases; the principle of not children’s sales; the promotion of the agreements about the subject among the signers countries.

Despite the main principles are exposed this convention is not really detailed on the ground of the international adoption and its first worry concerning the prevention against children's abduction. However we are able to understand one other step in the construction of the international legal system.

Finally regarding the two protocols additional to the Convention only the “Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography” regulates the international adoption cases attempting to avoid the sale or prostitution or pornography of the children by the disguise of an international or national adoption institution. On this sense the recital number 8 declare “Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour”. And at the same time the article number 3 explains: “ 1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:… (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;… 5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments”.

These protocols are always optional and only Hungary, Latvia and Czech Republic did not sign that one concerning the adoption cases.
3.3. The European convention on the adoption of children

The European Convention on the adoption of children on April 24th 1967 was signed for sixteen countries from the European Union, and just fourteen of them have the convention in force within their countries. This convention was signed within the framework of the Council of Europe715.

Although this international document was not signed by all the Council’s European Member States as said above, the Convention ensures that national law on the protection of children applies either for adoptions of children among the Parties, or for intercountry adoption where one of the party’s citizenship was not from a signer State.

The main document states essential premises on adoption practice, obliging the states parties to incorporate in its legislation. Secondly there’re others principles granted that parties are not obliged to integrate directly within theirs national legislations, having the discretionary about the way or not to complain.

The main principles are similar to those that we already know, as for example, adoption must be granted by a judicial or administrative authority. The decision authorising the adoption must be freely accepted by the parents; and the adoption must be in the interest of the child.

The new civil rights and obligation created within the new family between the fathers and mothers after the adoption decision granted has been also stated; on this way the adopter has, in respect of the adopted person, the rights and obligations of every kind that a father or mother has in respect of a child born in lawful wedlock; the child shall be able to acquire the surname of the adopter; in succession’s matters, an adopted child is treated as if he/she were a child of the adopter born in lawful wedlock; acquisition of parent’s nationality by the child must be facilitated.

Some recommendations and new obligations has been given in the way of the training of social workers, to enable adoption to take place without the identity of the adopter being disclosed to the child's family, and to enable adoption proceedings to take place in camera.

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715 47 member States: Albania (13.07.1995), Andorra (10.11.1994), Armenia (25.01.2001), Austria (16.04.1956), Azerbaijan (25.01.2001), Belgium (05.05.1949), Bosnia and Herzegovina (24.04.2002), Bulgaria (07.05.1992), Croatia (06.11.1996), Cyprus (24.05.1961), Czech Republic (30.06.1993), Denmark (05.05.1949), Estonia (14.05.1993), Finland (05.05.1989), France (05.05.1949), Georgia (27.04.1999), Germany (13.07.1950), Greece (09.08.1949), Hungary (06.11.1990), Iceland (07.03.1950), Ireland (05.05.1949), Italy (05.05.1949), Latvia (10.02.1995), Liechtenstein (23.11.1978), Lithuania (14.05.1993), Luxembourg (05.05.1949), Malta (29.04.1965), Moldova (13.07.1995), Monaco (05.10.2004), Montenegro (11.05.2007), Netherlands (05.05.1949), Norway (05.05.1949), Poland (26.11.1991), Portugal (22.09.1976), Romania (07.10.1993), Russian Federation (28.02.1996), San Marino (16.11.1988), Serbia [*] (03.04.2003), Slovakia (30.06.1993), Slovenia (14.05.1993), Spain (24.11.1977), Sweden (05.05.1949), Switzerland (06.05.1963), "The former Yugoslav Republic of Macedonia" (09.11.1995), Turkey (09.08.1949), Ukraine (09.11.1995), United Kingdom (05.05.1949).

State candidate for membership: Belarus (12.03.1993); The Observers to the Committee of Ministers: Canada (29.05.1996) - Holy See (07.03.1970) - Japan (20.11.1996) - Mexico (01.12.1999) - United States of America (10.01.1996); The National Parliaments Observers to the Parliamentary Assembly: Canada (28.05.1997) - Israel (02.12.1957) - Mexico (04.11.1999).

For more information contact the website: www.coe.int
In the scope of the signature of this document a basic document was the recommendation number 292 of the Consultative assembly of the Council of Europe, that used to declare within its recitals the “...intention of studying ways of unifying and harmonising legislation in member States...” And “…that adoption exists as a legal institution in all member countries of the Council of Europe, but that national legislation on the subject differs both as to the form and as to the substance of adoption...”

Despite that the document was ready in 1967, entering into fore a year later, the reason of several social and legal crisis within the signer’s countries has done that the dispositions given by the convention were not updated systematically in all of them. Every year, an explanatory report, is given by the Secretary General of the Council of Europe, providing all the updated data and new legislation achieved in each of the member states. On this sense, the last report was granted the last session had having time in may 7th 2008, the session number. At this time the committee of experts on family law under the direction of the European Committee on legal cooperation of the Council of Europe has granted a report to facilitate the application of the provisions contained in the convention file.

On the report the Family law committee explains that the updating of the text convention was waited the outcome of the Hague Convention on the same field, which finally took place within the text of 1993, already cited above. While the 1967 Convention is the main instrument of the Council of Europe in the field of adoption, a new document dated on 2000 the Parliamentary Assembly Recommendation 1443 (2000) on international adoption: respecting children’s rights was declared in January 26th 2000 by the 5th sitting of the Assembly. Either if the text does not bind parties because it is not an international convention; it gives the main text the awaited update.

On this sense the document takes as base documents, the UN conventions and states the following “...The Assembly therefore calls on the Committee of Ministers of the Council of Europe to give a clear indication of its political will to ensure that children’s rights are respected, by immediately inviting the member states to:
1- Ratify the Hague Convention on Adoption if they have not already done so, and undertake to observe its principles and rules even when dealing with countries that have not themselves ratified it;
2- Conduct information campaigns to give professionals and couples contemplating international adoption a full understanding of the commitments entailed in the Hague Convention and their implications;
3- Develop the bilateral and multilateral cooperation essential for the convention’s effective application;
4- Help those countries from which foreign children come to develop their own adoption laws and to train the relevant personnel in public authorities and properly accredited agencies and all other professionals involved in adoption;
5. Ensure that prospective adoptive parents are eligible and suited to adopt, provide them with compulsory, in-depth preparation for international adoption and ensure that the situation, and particularly the psychological well-being, of foreign adopted children is monitored;
6. Ensure that in an event such as the divorce of the adoptive parents, the desertion of the foreign child or the emergence of difficulties with the adoption procedure, the child’s fundamental rights, such as the right to a name and to citizenship, will be respected;
7 Ensure the right of adopted children to learn of their origins at the latest on their majority and to eliminate from national legislation any clauses to the contrary...”.

The Recommendation recall all the principles we are able to find everywhere we seek for adoption law and the respect of the children’s rights. Besides, the document remains the member States to revise their laws since the 1960s.
Finally and because it appears necessary to introduce the contents of the European Convention text; we are going to explicate the articles of the document. The European Convention exposes four parties, the first one put in order the legislation regarding the obligation among the signatory countries and the scope of the law. The second part goes directly to the legal enclose establishing the validity of the adoption granted by a competent authority. The article 5 explains the question regarding the consent of parents or parental rights holder authority to the adoption decision. The article 6 authorises the condition to adopt, allowing doing that only to two married persons. The 7th article order the range age that adopters should have. The article 8 explains that the adoption decision must be granted in the “best interest of the child” giving the child a stable and harmonious home…

The article 9 exposes the contents of the previous investigation and the documents that have to be provide to each single adoption file. The article 10 and 11 explains the new rights and obligations between each member of the new concerned family including the obligation to maintain, family name, nationality, property and succession. The following articles states that the number of adoptions should not be restricted by law, even that the adoption decision may be revoked by juridical decision or serious administrative one.

The part III of the convention provides the supplementary provisions regarding as for example the previous period where the children must be fostered by the further adopting family. The promotion of the public and private agencies to help and advise the further adopting parents; the formation of the social workers, etc.

The final clauses exposing the formalities of signature, deposing of instruments and entering into force, or the responsibilities of the Secretary General of the Council of Europe. The articles 23 up to 27 specify several faculties that each member state may take and finally, the article 28, put in place the obligations and responsibilities of the Secretary General in front of the member states regarding the information about the ratifications, or entering into force of the conventions and the updating of any of the national legislation on the field.

However, recognising that some of the provisions of the 1967 European Convention on the Adoption of Children are outdated and contrary to the case-law of the European Court of Human Rights and noting the content of Recommendation 1443 (2000) of the Parliamentary Assembly of the Council of Europe on “International adoption: respecting children’s rights”, and the Council of Europe’s White Paper on principles concerning the establishment and legal consequences of parentage, the European Convention on the Adoption of Children (revised) is open for signature since 27 November 2008.

This new convention allows among others for the consultation of the child, the possibility of a subsequent adoption, the minimum age of the adopter, preliminary inquiries, a probationary period as well as counselling and post-adoption services. States Parties shall also ensure that social workers dealing with adoption are appropriately trained in the social and legal aspects of adoption.
4. **EUROPEAN UNION COMPETENCES**

The treaties of Amsterdam and Nice endow the European Communities with the competence to legislate in the field of “judicial cooperation in civil matters having cross-border implications.” The European Community adopted various private international law instruments and endowed herself with new external competences exclusive.

The international private law of the European Community’s Member States was for many years based on the Brussels convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters. Later, it was complemented by the Rome convention of 19 June 1980 on the law applicable to contractual obligations, coming into force on 1 April 1980 and successively applicable to all Member States. The Member States however were not able to agree on an instrument concerning non contractual obligations, nor on conventions in other fields, in particular family law.

The Tampere European Council meeting on 15 and 16 October 1999 gave specific orientations to this cooperation. This was put in concrete form with the adoption of several regulations on notifications, divorces and parent responsibilities, as well as competences and implementations of decisions in civil and commercial matters, replacing the Brussels convention.

On 30 November 2000, the Council approved a programme of measures on the implementation of the principle of mutual recognition of decisions in civil and commercial matters. Then, the Hague programme gave a wider dimension to the creation of a European space of Justice aiming at reinforcing justice and complemented by an action plan.

Simplifications in civil and commercial law also targeted family law. Brussels II regulation first dealt only with divorce but was then broadened to the whole field of child protection measures.

The treaties of Amsterdam and Nice provided a horizontal competence, whose exact scope and modalities are respectively defined in articles 65 and 67-69, for the adoption of measures in the field of “judicial cooperation in civil matters having cross-border implications.” The competence as such is determined by the treaty of Amsterdam; the treaty of Nice only brought some slight changes to the modalities to exercise it.

Since the coming into force of the Treaty of Amsterdam, the Community took advantage of this new competence at several occasions by adopting various international private law instruments and by being granted new external exclusive competences in the matters related to these instruments.

The Treaty of Lisbon granted new competences in judicial cooperation and civil matter to the European Community. On this basis, the Council may, on the proposal of the Commission, adopt a decision determining the aspects of family law having cross-border implication which could be subject to acts adopted in compliance with the ordinary legislation procedure. The Council acts unanimously, after consulting the European Parliament.

The approved proposal is transmitted to the national parliaments. If a national Parliament notifies its opposition to the proposal within 6 months from its transmission, the decision is not adopted. In the absence of opposition, the Council may adopt the decision. Otherwise, the measures concerning family law having cross-border implication are set up by the...
Council, adjudicating according to a special legislative procedure. The Council acts unanimously, after consulting the European Parliament.

Intercountry adoption is a measure concerning family law having cross border implication. In compliance with the Treaty of Lisbon, the procedure must thus be followed.

Currently, there are no clear rules that will facilitate the lives of citizens in the European Union in family law cases such as for divorce proceedings, adoption, last will, etc.

A recent survey commissioned by the European Commission (Eurobarometer Survey N°188) asked citizens of the European Union to voice their opinions on various questions related to international Family Law.

The survey's fieldwork was carried out between 31st of March and the 5th of April 2006. Over 25,000 randomly selected citizens aged 15 years and above were interviewed in the twenty-five Member States of the European Union. Interviews were predominantly carried out via landline telephone, approximately 1,000 in each country. Due to the relatively low fixed telephone coverage in the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland and Slovakia, we sampled and interviewed 300 persons face to face as well.

The majority of people expect the EU to play a role in facilitating family law between Member States.

Overall, the majority of the population of the European Union expects the EU to play a role to facilitate legislation in another Member State in adoption of children from different Member States, recognition of civil status certificates, divorce, child custody dealings, and inheritance.

Helping with the adoption of children and recognition of civil status certificates such as birth Certificate and marriage certificate in another Member State top the list of what people expect from the EU the most. Seventy-six percent of the overall EU population expect the EU to facilitate legislation with regard to adopting children from different Member States and the same percentage expects the EU play a role to facilitate legislation for recognizing civil status certificates (birth certificate, marriage certificate) in another Member State.

Two-thirds (67%) of the citizens of the European Union expect the EU to facilitate legislation in child custody dealings in another Member State and another 63% expect the EU to facilitate inheritance in another Member State.

Divorce related facilitation by the EU is at the bottom of the list of expectations, as almost one third of the EU population does not expect the EU to play such role. But even in the case of this least often mentioned item, the majority of the citizens (60%) do expect the EU to play an active role on behalf of the EU to facilitate legislation in divorce in another Member State.

This demand for a European intervention towards a European adoption procedure came not only in our study but also on the websites of parents associations consulted by our experts.

Moreover, we note that the European Parliament and in particular Mrs. Claire GIBAULT and Mr. Jean-Marie CAVADA come to the same conclusions as we do and that they among others pleaded on 9 November 2007 for a European adoption policy at the occasion of a colloquium organized by the European Parliament.

The conference of 9 November 2006 on “a European adoption Policy?” brought the most famous experts on international adoption together to ask a fundamental question for the future of Europe: “Does Europe protect its children?” The situation in orphanages and the
different European legislations were discussed. The responsibility of the European Union towards these children was highlighted.

We also note the press release of Claire GIBAULT and Jean-Marie CAVADA on 19 February 2008 in Strasbourg, where Mrs. GIBAULT presented a joint declaration inviting the Member States of the European Union to develop a European adoption procedure.