



COMMISSION EUROPÉENNE
EUROPEAN COMMISSION



Joint Council of Europe and European Commission Conference
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**CHALLENGES IN ADOPTION PROCEDURES IN EUROPE:
ENSURING THE BEST INTERESTS OF THE CHILD**

30 November - 1 December 2009

Strasbourg, Palais de l'Europe

CONCLUSIONS

The participants of the Adoption Conference held in Strasbourg on 30 November and 1 December 2009 would like to express their thanks to the European Commission and the Council of Europe for organising this event and for providing the opportunity for them to discuss this important matter.

Speakers have referred to a number of legally binding instruments adopted at both national and international level safeguarding the rights of the child during the adoption process in order to ensure the best interests of the child. Particular attention was paid to the revised European Convention on the Adoption of children of the Council of Europe, as well as to the 1993 Hague Convention on Inter-country adoption, in highlighting good practices which help to ensure the rights of children during this sensitive and emotional procedure. Speakers noted that those instruments are adoption-neutral: they neither encourage nor discourage adoption. The hierarchy of choices available to State parties for the care of children must respect the rights of the child. However, when adoption proceedings take place, they should always be in the best interests of the child.

Participants agreed that accession to and ratification of both of these international legal instruments should be strongly encouraged. When ratified, they should be effectively and scrupulously implemented and monitored to set minimum standards for the further development of national legislation and policies. Only three ratifications are needed for the revised Convention of the Council of Europe to enter into force, and we all hope that this instrument will be a binding one sooner rather than later.

A number of participants have indicated that their countries are in the process of promulgating national legislation to implement both conventions to ensure that the best interests of the child are safeguarded. The revised Adoption Convention should even now have a resonance in national courts and has been referenced in adoption cases coming before the European Court of Human Rights.¹ Participants are particularly grateful to the two judges of the European Court for their insights into the evolving case law of the Court on adoption.

The importance of the role of both governmental and non-governmental institutions promoting children's rights, and governmental monitoring mechanisms, cannot be overemphasized. These institutions have a vital role in issuing guidelines for the implementation of adoption policies and procedures for professionals working in this area, in accordance with relevant international norms. Clear processes and procedures should minimise unnecessary bureaucracy.

International cooperation needs to be further developed to promote the exchange of information and experiences, to identify good practices, to support best practice standard setting and effective implementation, and to promote the development of national integrated strategies to prevent and combat all forms of child trafficking. The Council of Europe and the European Union could play a crucial role for the benefit of national forums following insights gained from the conference, and building upon study already undertaken and to be published.

All professionals - in particular judges, psychologists, social workers and lawyers – who become involved with a child in contact with the judicial system should receive appropriate information and opportunities for training in appropriate methods for interviewing a child. The role of responsible media reporting of adoption issues is recognised. The issue of the

¹ Wagner v. Luxembourg (76240/01), E.B. V France (43546/02) and Emonet and others v. Switzerland (39051/03).

adoption of children needs to be de-politicized, by giving paramount consideration to the best interests of children rather than the political sensitivities of sending or receiving countries. Whether residential care, foster care, national or international adoption is the best solution for an individual child in need of a home, must however depend upon the specific facts presented by each case.

The mature child's consent to adoption is now necessary. The interpretation of the child's wishes and best interests should be facilitated through child psychologists and other qualified professionals. It is vitally important that children's views are duly taken into account in all adoption proceedings. The awareness of all professionals working in this area should be raised in this respect. A multidisciplinary interaction between various professionals involved, including judges, lawyers, psychologists, social workers, and other professionals involved in adoption proceedings, must be encouraged, in order to give practical substance to the concept of the best interests of the child, their right to be heard and to articulate their views. Information conveyed to the child should be age-appropriate, and their psychological needs taken into account. There may be a role to appoint a guardian *ad litem* for the child in this regard. We have heard the encouraging experience of the members of the judiciary who consider it necessary to hear the child directly before making a decision on adoption.

Participants noted divergences in practices and procedures on the requirement for the consent of unmarried fathers, notwithstanding the case law of the European Court of Human Rights on this matter. A lively debate on a possibility of joint adoption for same-sex couples highlighted a divergence of views on this issue. The revised Convention remains flexible on this topic. Everybody agreed that the best interests of the child should once again be the paramount interest guiding every decision on adoption. Every effort should be made to avoid discrimination including discrimination based on ethnicity or disability of children.

The severance of ties of filiation arising from full adoption brings into sharp focus the rights of siblings, parents and grand parents. The question was raised as to whether this represents a disproportionate effect on adoption and as the discussion from the floor developed, it became clear that these issues may need to be further developed.

The right to know one's origins and the importance of that to adopted persons became very clear through the testimony of several adult adopted persons, who spoke with great emotion about their personal experiences which were very powerful and persuasive. The need to complete their life stories and quest for identity was perceived as important for their psychological well-being. Questions surrounding the collection data storage and protection might need to be re-considered in the coming years.

It should be borne in mind that the revised Adoption Convention is an instrument of harmonization, setting minimum standards, one would hope and expect that States parties will continue to improve and raise national standards over time. Work continues on other international conventions, promoting the rights of children, and recalibrating the balance between the rights of children and of adults.

The focus of the Hague Convention is to provide a framework for the process the inter-country adoption which is aimed at protecting the best interests of the child by establishing a system of co-operation between contracting countries to prevent the abduction, sale, or the trafficking of children. This gives practical expression to the international standards set out in the UN Convention on the Rights of the Child. States of origin and receiving

countries participated in formulating the Convention to ensure the best adoption procedures acceptable to all the contracting States. The Convention like all legal instruments is a framework document and, by definition, incomplete and imperfect. Co-operation and transparency are the key ingredients to improving its implementation. States parties must be vigilant in complying with the Convention's obligations. Participants were encouraged to take an active part in the review process of this Convention scheduled for 2010.

Every country which engages in inter-country adoption should become a party to the Hague Convention because it embodies 'best practice' standards for regulating Inter-country adoption thereby protecting the rights of children in adoption situations. All States which are parties to the Convention should, when dealing with non Contracting States, apply as far as possible the safeguards and procedures set out in the Hague Convention.

The co-operative framework of the Hague Convention is based on an agreed division of responsibilities between sending and receiving countries. The 'best interests' of the child in inter-country adoptions is safeguarded by:

- establishing specific safeguards to ensure the 'adoptability' of the child;
- ensuring that due consideration has been given to alternative permanent forms of care for the child in the sending/receiving country,
- ensuring that the necessary consents have been knowingly and freely given after counselling;
- regulating the financial aspects of the adoption;
- accrediting and authorizing adoption agencies; and
- verifying that the Convention procedures are followed.

Receiving countries must ensure that the adoptive parents are eligible and suitable to adopt, that they have been appropriately counselled and that the child is allowed to enter and permanently reside in the State.

The responsibilities of sending and receiving countries are not mutually exclusive. Indeed, they share the responsibility for developing the safeguards and procedures protecting the best interests of the child. Receiving countries should avoid placing pressure on sending States and should help them to improve their child protection systems. Central Authorities have both international and national aspects to their functions. Attention was drawn to the Inter-country Adoption Technical Assistance Programme, coordinated by the Hague Conference, which assist Contracting States in developing the infrastructure and procedures required to meet international standards. Co-operation and harmonisation between central authorities are important and must be supported through training courses and exchange of best practices. Several participants expressed their opinion that financial support from the European Union member States would be welcome in this report.

In accordance with the fundamental principles of the freedom of movement within the European Union, it is important that there should be mutual recognition of certificates of eligibility and suitability of prospective adoptive parents and publication and circulation of adoption decisions.