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CO-OPERATION PROGRAMME
TO STRENGTHEN THE RULE OF LAW

**LEGAL FRAMEWORK FOR ADOPTION:
PUTTING CHILDREN'S INTERESTS FIRST**
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*CURRENT CHALLENGES IN COUNCIL OF EUROPE MEMBER STATES IN GENERAL AND IN
THE RUSSIAN FEDERATION IN PARTICULAR*

"CURRENT SITUATION IN SWEDEN"

by
Ass. Prof. Dr Anna SINGER
Senior Lecturer, Department of Law
Uppsala University, Sweden

- Presentation Outline -

Background – development of the legislation

- First law on adoption in 1917. An alternative to foster care and a more permanent solution for the child.
- Limited legal consequences of adoption at first. Limited legal ties remained to the birthparents, (weak adoptions).
- After 1958 all adoptions became strong adoptions, that is no legal ties to the birthparents remained.
- In 1970 all adoptions, regardless of when they had been granted were turned into strong adoptions by law.

Statistics

In 2005 only 172 children born in Sweden were adopted. 132 children were adopted by a step parent, 17 children placed in foster care were adopted by the foster parents and 23 children between 0-1 years born in Sweden were adopted.

In 2005 1 083 children between the ages of 0-10 years came to Sweden from other countries. 773 children came from Asia, China in particular (462) and Korea (104). 110 children came from Europe, of them 34 from Russia. From Africa 129 children, the biggest group, 46 children from South Africa followed by 37 children from Ethiopia.

National regulation on adoption

Requirements on the adopters

Children and Parent Code (CPC), chapter 4.

- Adoption decided by court. Permission to adopt only when it is considered to be in the best interest of the child and the adoptive parents have brought the child up or intends to bring the child up or if there otherwise considering the personal relationship between the child and the adoptive parents are special reasons for allowing adoption (CPC ch. 4 s. 6).
- The adoptive parents have to be at least 25 years (CPC ch. 4, s. 1).
- Only married couples can adopt together, married couples have to adopt together (CPC ch. 4, s. 3–4).
- Same sex couples can adopt under the same conditions as different sex couples as long as they have registered their partnership.
- Cohabiting couples can not adopt together.
- Single parent adoption possible but it has been very limited in practise.
- It is also possible for a spouse to adopt the other spouse's child – step child adoption – (CPC ch.4, s 3).
- A person above 12 years can not be adopted without his or her own consent (CPC ch. 4 s. 5).
- The opinion of a child under 12 years shall be taken into consideration when judging whether the adoption is in the best interest of the child (CPC ch.4 s. 6 and 10).
- A person under 18 years can not be adopted without the consent of the parents (CPC ch. 4, s. 5a).

- Non-consent by a parent without custody rights does not stop adoption that is considered to be in the best interest of the child (CPC ch. 4, s. 10). European court case *Söderbäck v. Sweden*. (Judgment 28 October 1998, 113/1997/897/1109)
- Adoption can not be granted if there from either side has been given or offered economical compensation (CPC ch 4, s. 6).
- Investigation of the adoptive parents' suitability as parents. Information should also be given about the child and if possible about the child's view on adoption (CPC ch. 4. s. 10).

Legal consequences of adoption

- After adoption no legal ties remain between the child and the original parents.
- An adoption can not be revoked.
- The child has a right to information on the birth parents.

International adoptions

Regulation

Swedish Intercountry Adoptions Authority (MIA). Central administrative authority for issues concerning intercountry adoption intermediation.

- *Act (1971:796) on International Legal Relations Concerning Adoption*
 - Application concerning adoption is considered by a Swedish court if the applicant or the applicants have Swedish citizenship or are domiciled in Sweden (s. 1).
 - An application will be considered in accordance with Swedish law (s. 2).
- An adoption order made in a foreign state shall apply in Sweden if the applicants were citizens of or were domiciled in the foreign state when the order was made.
- MIA can approve a foreign decision regarding adoption according to the *Ordinance (1976:834) on Examination of Foreign Decisions on Adoption*.
- According to the *Act (1997:191) consequent on Sweden's accession to the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption*, the Hague convention has the standing of law in Sweden. Adoptions in accordance with the convention automatically are valid in Sweden.
- In other cases the question of adoption will be tried by a Swedish court according to the *Children and Parent Code*.
- Intercountry adoptions should according to the *Intercountry Adoption Mediation Act (1997:192)* should be carried out through a MIA authorized non-profit organization (s. 3).
 - In individual cases private adoptions can be allowed if MIA has given permission before the child leaves its home country (s. 4).
 - Breach of this regulation can result in fines, (s. 15).

Procedure

- According to the *Social Services Act (2001:453) (ch. 12, s. 12)* the applicants must secure the consent of the local Social Welfare Committee to receive a child for adoption before applying to an organization for a child the adoptive parents.

- Before consent can be granted the Social Welfare Committee carries out an investigation of the conditions of the prospective adoptive family including among other things the prospective parents' previous and present conditions, state of health, personality, religious affiliation, marital relationships, motive for adoption, knowledge and experience of children etc. Consent to receive a child will only be granted if the applicants are suitable as adoptive parents.
- The applicants should also have participated in a parental course assigned by the municipality prior to the adoption.
- The consent is valid for two years as a basic rule.
- Once the consent has been received the applicants can apply to one of the adoption organizations.
- When a certain child has been proposed for adoption the applicants must ask apply for permission of the Social Welfare Board to continue with the adoption procedure (Social Services Act ch. 12, s. 14).

Concluding remarks