



European Convention on the Adoption of Children (revised)

The adoption of children within the member states of the Council of Europe needs to be carried out with the best interests of the child in mind at all times. It is the responsibility of the member states to ensure that international legal standards are met and that national adoption is made possible to prospective adoptive parents who fulfil the necessary requirements. The European Convention on the Adoption of Children (revised) is an up-to-date set of rules which takes into consideration the social developments of today's Europe thereby ensuring that adoptions are carried out in the best possible conditions, and that children are brought up in harmonious and favourable family environments.

Just as importantly, this convention underlines a need for genuine co-operation between the authorities dealing with adoption of children in all member states.

The aim of the revised convention is to harmonise the substantive law of the member states by setting out common principles and practices with respect to the adoption of children. The standards laid down in the revised convention go further than those contained in the European Convention on the Adoption of Children (ETS No. 58) prepared by the Council of Europe in 1967, while remaining fully consistent with the case law of the European Court of Human Rights. For instance, any difference in treatment between children born in or out of wedlock has been eliminated.



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WHAT KIND OF ADOPTION?

The revised convention mainly deals with "full" adoption (which is an adoption that severs all ties with the family of origin) without preventing those states that provide "simple" adoption (which does not sever the relationship with the family of origin so that the adopted child is not entirely integrated into his or her adoptive family) from continuing to use this form of adoption.

THE CHILD

► *The best interests of the child*

The principle of the best interests of the child is of paramount importance in the revised convention and no adoption should be permitted, or on the contrary annulled, if this requirement is not met. As it is not sufficient to simply state this principle, the convention has therefore developed it and defined its scope.

► *Who can be adopted?*

Any child under the age of 18, who has not reached the age of majority and is not or has not been married or in a registered partnership, can be adopted under the revised convention. The age of 18 has been identified as the usual age of majority in the Council of Europe member states and it is also in line with the requirements in the United Nations Convention on the Rights of the Child.

► *Does the child have a say?*

The consent of the child is necessary if the child has sufficient understanding of the adoption process. It is up to national law to fix the age at which a child must give his or her consent to the adoption process; however, consent must always be obtained from children who are 14 or older.

If the child's consent is not necessary, the child should, as far as possible, be consulted and his or her views and wishes should be taken into account.

► *What is the status of the adopted child within the new family?*

In cases of full adoption, the convention aims at ensuring that an adopted child is treated from every standpoint like a child of the adopter and that, in principle, all ties with the family of origin are severed.

► *Can the adopted child find his or her parents of origin?*

The adopted child should have access to information about his or her origins unless the parents of origin have expressly and legally requested otherwise. In that case, it is up to the authority in charge to decide whether or not the identity of the parents of origin should be disclosed.

THE ADULTS

Who can adopt?

- ▶ Two people of different sex who are married to each other;
- ▶ Two people of different sex who have entered into a registered partnership together, in states where such an institution exists;
- ▶ One person.

States are free to extend the scope of the convention to the following prospective adopters:

- ▶ Same-sex couples who are married to each other or who have entered into a registered partnership together;
- ▶ Different-sex couples who are living together in a stable relationship;
- ▶ Same-sex couples who are living together in a stable relationship.

Minimum age to adopt

- ▶ The minimum age to adopt can be prescribed by each member state in its national law; however this minimum age should be neither less than 18 nor more than 30 years old (the upper age limit previously being 35 years). The appropriate age difference between the adopter and the child should preferably be of at least 16 years. This requirement can be waived on the ground of exceptional circumstances.

The consent of the parents

- ▶ The consent of both the mother and the father of the child to the adoption is required, irrespective of whether the child was born in or out of wedlock. The possibility of a dispensation of this requirement exists in exceptional circumstances, such as when the father is not a holder of parental responsibility.



THE AUTHORITIES

Role and responsibility of state authorities

- ▶ An adoption is valid only if it is granted by a competent authority, namely a court or an administrative authority.
- ▶ The competent authority can only grant an adoption when appropriate enquiries have been made concerning the adopter, the child and his or her family.
- ▶ The competent authority is responsible for taking into account a list of factors concerning the prospective adopters before concluding that the proposed adoption will be in the best interests of the child, such as their personality, health, social environment and their ability to bring up the child.

The competent authority is the only body that can pro-

- ▶ nounce the revocation and annulment of an adoption.

NATIONAL ADOPTION

National or international adoption?

- ▶ The revised convention lays down standards that pave the way for national adoption. It does not contain precise rules for international adoption, which is governed by the 1993 Hague Convention on intercountry adoption. However, as the revised convention will undoubtedly lead to a harmonisation of national laws by setting minimum standards, it will also have an important influence on the manner in which international adoptions are performed. The two conventions are therefore considered to be complementary to each other.

OTHER TEXTS

Other European and universal instruments protecting the rights of the child and directly related to the adoption of children

When drafting the revised European Convention on the Adoption of Children the drafters took many considerations into account, including:

- ▶ The principle of the best interests of the child as stipulated in the United Nations Convention on the Rights of the Child of 1989;
- ▶ The notion of the best interests of the child, the respect for his or her fundamental rights, and the prevention of the abduction, the sale of, or traffic in, children contained in the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption of 1993;
- ▶ The provisions concerning the involvement of children in family proceedings before judicial authorities, as provided by the European Convention on the Exercise of Children's Rights (ETS No.160) of 1996;
- ▶ Recommendation 1443 (2000) of the Parliamentary Assembly of the Council of Europe on "International Adoption: respecting children's rights" affirms that "all children have rights, as set out in the United Nations Convention on the Rights of the Child, and, in particular, the right to know and be brought up by their parents in so far as this is possible. The purpose of international adoption must be to provide children with a mother and a father in a way that respects their rights, not to enable foreign parents to satisfy their wish for a child at any price; there can be no right to a child."



BUILDING A EUROPE FOR AND WITH CHILDREN

About the Council of Europe

The Council of Europe has 47 member states, covering virtually the entire continent of Europe. It seeks to develop common democratic and legal principles based on the European Convention on Human Rights and other reference texts on the protection of individuals, including children. With its programme "Building a Europe for and with children", the Organisation aims to ensure respect for children's rights. Through one of its standard-setting bodies, the European Committee on Legal Co-operation (CDCJ), and its Committee of Experts on Family Law (CJ-FA), the Council of Europe strives to continue to set standards that protect children's rights.

For more information: www.coe.int/justice,
www.coe.int/family and www.coe.int/children
The full text of the revised convention can be consulted at:
www.conventions.coe.int