

INTER-COUNTRY ADOPTION

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Annotation

The inter-country adoption (international adoption) is a special type of adoption, when the adopter (adoptive parent) and the child stem from different countries. The most important reasons of inter-country adoption are the wars or other prolonged armed conflicts, poverty and in some countries even cultural issues may lead to it, if „the girls have been considered to be inferior to boys.”³³ For these children, who are abandoned or orphaned because of the reasons mentioned above, the only chance to grow up in a family, is given by international adoption. The Hungarian legal system divides this institution into two parts. The first, when a Hungarian individual or married couple adopts a child from a foreign country, and the second, when a Hungarian child is given up to be adopted in a different country.

Key words: Adoption, The New York Convention on the Rights of the Child, The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption

Introduction

I chose the topic of inter-country adoption, because I was inspired by personal experience, from among which I would only like to emphasize the two most important events. One relates to the workplace of my grandmother, the Child Protection Institute and Child Care Center of Jász-Nagykun-Szolnok county in Hungary, where I spent a significant part of my childhood, and where I met children without families and faced the importance of adoption, already at a young age. The second motivation is relevant to the family of one of my close friends, who have just recently adopted a teenage girl, since then a full-fledged member of the family. In possession of these memories and the legal knowledge later on acquired, I decided to more thoroughly examine the institution of adoption in Hungary and abroad.

The New York Convention on the Rights of the Child

This Convention was concluded on 20th of November 1989 in New York by the General Assembly of the United Nations. It was signed by all of the countries, except the USA and Somalia, because this Convention was the first comprehensive regulation for protecting the children's rights. According to Standley this is very important „not only because it consolidated much of the civil law relating to children, but because it introduced new principles and policies.”³⁴

The primary aim of the Convention is, to provide special protection and support for the children, because of their lack of physical and mental maturity. Moreover, it promotes to prepare the children for independent life.

The Convention has three main parts. The first part declares the rights of children, the second deals with the implementation of these rights by the signatories, and the last part contains the general provisions.³⁵ In this topic the most important provision is the Article 21. The significant meaning of this Article is, that it constitutes an obligation for the signatories to ensure that the „best interest of the child shall be the paramount consideration.”³⁶ Therefore, the

³³ Kate Standley, Family law, Fifth Edition, Palgrave Macmillan Law Masters 2006, p. 507

³⁴ Id. p. 300

³⁵ See: Dr. Filó Erika – Dr. Katonáné dr. Pehr Erika: Gyermekjogok, gyermekvédelem HVG – ORAC Budapest 2009, p. 25 – 26

³⁶ Article 21 in Convention on the Rights of the Child New York 1989

adoption shall be „authorized only by competent authorities“⁵⁷. In this Article we could find all the important principles of inter-country adoption, which are obligatory for all Parties. The signatories:

„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 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;“⁵⁸

If we analyze the above mentioned provision, we could make the observation that inter-country adoption shall be the ultimate solution, because before this procedure is initiated, states shall to do everything to find an adoptive family in the child's country of origin. If it is impossible, then the child shall enjoy the same safeguards, standards and treatment, like in the case of and adoption in his/her country. A crucial point of inter-country adoption is that it can never amount to financial gain for anyone, who is involved in any part of the process.

The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption

The Convention was concluded on 29 May 1993, in the Hague, by the Hague Conference on Private International Law. „The purpose of the Convention is to establish safeguards to protect the best interests of children and to produce a system of co-operation between countries to prevent child trafficking.“⁵⁹ Furthermore, this document obliges the Parties to establish a system, which helps co-operation among the Contracting States. This provision is necessary to conduct international proceedings in intercountry adoption, because every country has its own national legal system, with its own regulation about adoption. Last, but not least a crucial point is that the States shall to accept the legal effect of the adoptions concluded based on their respective rules, when these are in conformity with the Hague Convention.

The Convention contains every requirement mentioned in the New York Convention, moreover, it extends their scope. For example „(4) the consent of the mother, where required, has been given only after the birth of the child... d) have ensured, having regard to the age and degree of maturity of the child, that... (2) consideration has been given to the child's wishes and opinions“⁶⁰.

The Third Chapter of the Convention deals with Central Authorities and accredited bodies and the duties of these organizations, e.g. how these shall co-operate with each other. One of the most important duties of these authorities is that only they are competent to certify inter-country adoption. This certification shall be accepted by every Contracting State, except when the adoption is manifestly contrary to its public policy.

After this short introduction of the most important provisions of the Hague Convention, I would like to take two examples and demonstrate how these really work in practice.

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Government of United Kingdom: A guide to inter-country adoption for UK residents, (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/221756/Guide_20to_20intercountry_20adoption_20for_20uk_20residents.pdf last visited: 17.09.2013)

⁶⁰ Article 4, in The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption 1993 Hague

First of all, I am going to present the effect of the Convention in the United Kingdom. Since it came into force (1 June 2003), British citizens, who would like to adopt a child from abroad, shall undergo the same process, like in a domestic adoption. That means if someone concluded an overseas (inter-country) adoption, then it is unnecessary to re-adopt the child in the United Kingdom. This is one of the biggest advantages of a Convention-conform inter-country adoption. However, if someone fails to meet the requirements of international adoption, (s)he shall be prepared for worse consequences, e.g imprisonment, than in the case (s)he fails in a national adoption process.

In my opinion, one of the other advantages of Hague Convention adoptions is that the child automatically gets the British citizenship, if the prospective parents fulfill certain conditions:

*...the prospective adopters are habitually in the British Islands and at least one of the prospective adopters is a British citizen.*⁴¹

Second of all, I would like to mention some aspects of the inter-country adoption system of the United States of America, which refers to the Contracting States as well. The USA signed this Convention in 1994, but it only came into force in April 2008. Similarly to the the UK system, in the United States as well, are a lot of identical parts between domestic and inter-country adoptions.

In the USA there are some key differences between the adoption from a Convention or Non-Convention Country. In the USA system the *prospective adoptive parents receive more protections, when adopting from Convention countries.*⁴²

In the table below, I emphasize some interesting aspects of inter-country adoption in the United States. I compare the cases when US citizens adopt from a Convention or a Non-Convention foreign country.⁴³

Aspects	Convention Countries	Non-Convention Countries
Parents Education	10 hours of parent education	Parent education only if mandated by U.S. State of residence or voluntarily provided by agency
Child's Medical Records	Prepared, and provided by Convention country's competent authorities; Prospective adoptive parents given at least 2 weeks to review	
Visa Application	Submitted <u>before</u> foreign adoption/legal custody proceedings	Submitted <u>after</u> foreign adoption/legal custody proceedings (except Guatemala and Vietnam)
Adoption Records	Preserved for 75 years	

The USA system tries to provide as much protection as possible for those prospective adoptive parents, who would like to adopt a child from a Convention Country. We can clearly read from the table above, that the parents should meet more requirements in this case, which gives more protection not just to them, but for the child as well, e.g: obligation to take part in education. Therefore, to give the child's medical records to the prospective adoptive parents

⁴¹ Government of United Kingdom: A guide to inter-country adoption for UK residents; (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/221756/Guide_20to_20intercountry_20adoption_20for_20uk_20residents.pdf last visited: 17.09.2013)

⁴² http://adoption.state.gov/hague_convention/hague_vs_nonhague.php (last visited: 17.09.2013)

⁴³ Id.

makes the beginning for both parties easier, because the parents could prepare for any known diseases of the child, before he/she really lives with them.

The Hungarian Inter-country Adoption System

In Hungary there are two parts of the inter-country adoption, adoption to and from abroad. Adoption to abroad means that a couple or individual from a foreign country adopts a Hungarian child, which is more common than the second type. The second type (adoption from abroad) is when a Hungarian married couple or individual would like to adopt a child from a different country. Below I am going to present some details about these two systems.

1. Adoption to abroad

The first step of these proceedings is when the prospective adoptive parent sends an application to the Central Authority of Hungary, i.e. the Minister responsible for Children and Youth. Before the second step, adoptive parents are divided in two groups based on their habitual residence. If the adoptive parents habitual residence is not in a country that is a signatory to the Hague Convention (Non-Convention Countries), then they shall produce more documents, e.g. certificate of income issued no later than 6 months; certificate of citizenship; field study of their immediate environment.

When they meet these requirements then comes the second step: waiting. Adoptive parents should wait until the Hungarian Authority finds the perfect child for them and the Authority informs them about it. If this happens, they then shall travel to Hungary, because they shall live together with the child for one month. During this period, the experts of the Authority visit them a few times, in order to check how their relationship works out. If at the end of the month everything is right, they give the permission to begin the adoption process. For the rest of the process, the adoptive parent can take the child to his/her country.

2. Adoption from abroad

In this type of inter-country adoption we make the same distinction as in the first case. There are Convention and Non-Convention Countries. If the child's habitual residence is in a Convention country, then the adoptive parent should send his/her application to the Hungarian Minister, who will then forward it to the competent country, according to the habitual residence of the child.

However, if the child lives in a Non-Convention country, then the whole process is much more complicated, because after the prospective parent has sent the application, the Guardianship Office examines the conditions of adoption and gets the approval from the competent authority in the country of citizenship (of the child), in order to put together an expert report about the adoptive parent. Sadly, in practice, this does not work, because the prospective adoptive parents shall travel to the child's country, and they have to wait out the whole adoption process in that country, and when they travel back to Hungary, they have to readopt the child under the Hungarian provisions.

For these reasons mentioned above, adoption from abroad is very rare in Hungary. The experts in this topic are pretty divided; some of them suppose that we do not to promote adoption from abroad, while in Hungary there are a lot of children waiting to be adopted, who are also adoptable as well.

The statistics say that in Hungary there are only average 12-15 children are adopted from abroad annually. I suppose this number could be higher, if my solutions to the problems, described below, will be heard one day.

Conclusions

Inter-country adoption is a very important topic, because this is the only one opportunity for children without a family in their own country.

1. In my opinion the Convention on the Rights of the Child was the first breakthrough in children rights, including adoption.

2. The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption continued to lay down the principles of the Convention on the Rights of the Child; moreover, it extended the rights and the safeguards protecting the children. I think, the problem of inter-country adoption will disappear, if every country ratifies the Hague Convention.

3. The biggest advantage of the UK adoption system is that the child gets the British citizenship automatically. I suppose, it facilitates the child's integration.

4. The adoption system of USA builds upon the Hague Convention, and the system in itself is a proof, that the Convention can work in practice, because we could see it in the table, if a US citizen adopts from a Convention Country, (s)he enjoys much more protection, than if (s) he/she would adopt from a Non-Convention Country.

5. Last, but not least: I figured out a solution for the Hungarian problem. We should establish an NGO responsible for the management of inter-country adoptions from Non-Convention Countries. This NGO could help individuals or couples in any part of the adoption process, such as the NGO should get in touch with the Central Authorities of the children's country of citizenship. Furthermore, these organizations should co-operate during the whole process, from the seeking of the child, until the end of the adoption process. Thus, re-adoption in Hungary could be avoidable, which would facilitate the parent's position during the adoption process. In my opinion, if this system is realized, more couples or individuals will have enough courage to begin an inter-country adoption proceeding.

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