

EUROPEAN SEMINAR ON POST ADOPTION
Florence, Istituto degli Innocenti, 26 January 2006

Post-adoption: which approaches, models, and support services to adoptive families relations

Post adoption services as an instrument of implementation of the Hague Convention

Jennifer Degeling
Principal Legal Officer
Hague Conference on Private International law

OUTLINE OF PRESENTATION

- A. Introduction to the Hague Convention on Intercountry Adoption**
- B. Special Commission September 2005, The Hague**
- **C. Post adoption obligations in the Hague Convention**

A. Hague Convention on Intercountry Adoption

Purpose

To create a multilateral instrument which would -

- Define certain principles for the protection of children.
- Establish a legal framework of co-operation between authorities in different countries.
- Unify certain private international law rules on intercountry adoption.
- Expand on Article 21 of the UN Convention on the Rights of the Child.

Hague Convention on Intercountry Adoption (2)

Objects - Article 1

"The objects of the present Convention are –

- a) to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;
- b) to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
- c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention."

Hague Convention on Intercountry Adoption (3)

Importance of the Hague Convention

- The only modern global instrument regulating standards and procedures for intercountry adoption.
- Provides a framework of minimum standards and general procedures.
- Contracting States decide how to implement.
- Establishes a network of Central Authorities.
- Sets minimum standards for appointment and operation of accredited bodies.
- Strong emphasis on co-operation between Contracting States, authorities and bodies.

Parties

- 68 Contracting States (list at www.hcch.net)

B. Special Commission September 2005, The Hague

What are Special Commissions?

- Special Commission meetings are held regularly at The Hague.
- To monitor and review the practical operation of Hague Conventions.
- They usually occur every 4 years for each Convention.
- All Contracting State and member states and some international organisations are invited.

Special Commission September 2005, The Hague (2)

Why are they important?

- An international forum to examine all aspects of the Conventions.
- An opportunity for Central Authority personnel to meet, discuss cases, resolve difficulties, build trust and confidence
- Delegates gain a better understanding of the procedures, problems and personnel in other countries

Special Commission September 2005, The Hague (3)

Developments in September 2005

- A draft Guide to Good Practice on Implementation of the Hague Convention was prepared by the Permanent Bureau.
- The draft was approved in principle.
- Chapter 8 of the Guide is devoted to Post adoption matters.

C. POST ADOPTION OBLIGATIONS IN THE HAGUE CONVENTION

- 1. Adoption information**
- 2. Post adoption services**
- 3. Post adoption reports**
- 4. Breakdown of the adoption**

POST ADOPTION OBLIGATIONS

1. Adoption information

- a) **Collection and Preservation (Articles 9a , 30(1))**
- b) **Access to information (Article 30(2))**
- c) **Limits on disclosure / protection (Article 31)**
- d) **Use of information (Articles 7(2), 9d and 9e)**

C. Post adoption obligations in the Hague Convention

1. Adoption information

a) Collection and Preservation (Articles 9a , 30(1))

- Convention obligation to collect and preserve information about the child, biological parents, adoptive parents.
- Obligation usually arises before and during adoption but also important for post adoption phase.
- information is required for reports on the child (Article 16) and on the prospective adoptive parents (Article 15).
- The obligation benefits adopted persons seeking origins - need for co-operation among the Contracting States.

b) Access to information (Article 30(2))

- Convention obligation to ensure the child has access to information under certain conditions.
- Child's right to obtain information about his or her origins comes from the right to know his or her parents: Article 7(1) UN Convention on the Rights of the Child.
- Child's right to have information is only "in so far as is permitted by the law of that State." (Article 30)
- States of Origin may withhold information identifying the biological parents: Article 16(2).
- Access to records is regulated by national laws.

c) Limits on disclosure / protection (Article 31)

- Necessary to limit the misuse of personal data collected during the adoption process.
- Convention establishes minimum safeguards.
- Information on the child and the prospective adoptive parents should only be used for the purposes for which it was gathered or transmitted.

d) Use of information (Articles 7(2), 9d and 9e)

- Information may be used in a general sense for statistics (Article 7(2)), and general evaluation reports about intercountry adoptions (Article 9d).
- In particular cases - to reply to specific requests for information (Article 9e).
- Article 31 does not prevent such usage.
- National laws should regulate the confidentiality of information about the adoptive parents and the child.

POST ADOPTION OBLIGATIONS

2. Post adoption services

- a) **Counselling**
- b) **Services providers**
- c) **Links with country of origin**

2. Post adoption services

a) Counselling

- Convention obligation on Central Authorities to promote counselling and post adoption services (Article 9c).
- Emphasis on pre-adoption counselling (Articles 4 and 5).
- Post adoption counselling is recommended good practice.
- Post-adoption services are usually performed by receiving States.
- States of origin could establish services for adult adoptees in search and reunion cases.

b) Services providers

- Convention does not specify –
 - who will provide post adoption services.
 - what services will be provided.
- Countries must take “all appropriate measures” to promote the services.
- Services may include –
 - counselling and support immediately after adoption.
 - information on long term adjustment and needs of adoptees.
 - information for adoptees who wish to search for their origins.

c) Links with country of origin

- Article 9c recognises the importance of post-adoption services.
- Purpose of post adoption services - to ensure:
 - the child's adjustment into his or her new home or environment,
 - the successful outcome of the adoption,
 - the social and cultural protection of the adopted children. (Explanatory Report, paragraph 235.)

POST ADOPTION OBLIGATIONS

3. Post adoption reports

- a) Progress reports/probationary reports
(Art 20)
- b) General reports and particular situations
(Art 9)

3. Post adoption reports

a) Progress reports/probationary reports (Art 20)

- During the adoption process and prior to its completion
 - an obligation on the Central Authorities of both countries to keep each other informed on the progress of the adoption;
- For a probationary placement
 - when the child has been transferred to the receiving State, the Central Authority of the receiving State must report on progress of the placement.

b) General reports and particular situations (Art 9)

- After the adoption is completed
 - an obligation on Central Authorities to provide general reports about experiences with intercountry adoption (Article 9c).
 - an obligation on a Central Authority to reply “to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.” (Article 9e).
- Post-adoption reports on individual children is not regulated by the Convention.
- Recommendation 18 on Post-adoption reporting made during Special Commission of September 2005 states:

“The Special Commission recommends to receiving States to encourage compliance with post-adoption reporting requirements of States of origin; a model form might be developed for this purpose. Similarly, the Special Commission recommends to States of origin to limit the period in which they require post-adoption reporting in recognition of the mutual confidence which provides the framework for co-operation under the Convention.”

Comptes-rendus sur le suivi de l'adoption

Recommandation 18

La Commission spéciale recommande aux Etats d'accueil d'encourager le respect des exigences des Etats d'origine en matière de rapports de suivi d'adoption. Un formulaire modèle pourrait être développé à cet effet. De même, la Commission spéciale recommande que les Etats d'origine limitent la période pendant laquelle les rapports de suivi d'adoption sont exigés, reconnaissant ainsi la confiance mutuelle, fondement de la coopération en vertu de la Convention.

POST ADOPTION OBLIGATIONS

4. Breakdown of the adoption

- a) Pre- adoption breakdown (Article 21)
- b) Post adoption breakdown

4. Breakdown of the adoption

a) Pre- adoption breakdown (Article 21)

- Convention procedures deal with the breakdown of pre-adoption placements (Article 21).
- Co-operation between the authorities of both sending and receiving countries to manage the situation.
- If the placement is not in the child's best interests, the Central Authority (RC) must terminate the placement and put the child in temporary care (Article 21(1) *a*)).
- the Central Authority must arrange another placement "without delay", in consultation with the Central Authority of the State of origin (Article 21(1) *b*)).
- Only as a last resort will the child be returned to the State of origin (Article 21(1) *c*)).

b) Post adoption breakdown

- The Convention does not provide procedures for the breakdown of completed adoptions.
- The adopted child will be protected in the same way as any other child, by the measures of care and protection available to children in the country where he / she now has his / her habitual residence.