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CROSS-BORDER ADOPTIONS WITHOUT CONSENT

Judicial cooperation in cross-border adoptions without parental consent

TEAM SLOVAKIA

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"But in many cases it's transparently obvious that the threshold has been crossed - the mothers are drug addicts, the father's in prison, the children are not going to school very often. There are innumerable instances in which the threshold has obviously been crossed. And then the only issue in the case is what should happen in the future in the search for child welfare."

Matthew Thorpe¹

Boórová's children were seized by social workers on grounds of alleged mistreatment. Strict legal restrictions in the UK on the reporting of cases involving children mean that the exact nature of the allegations concerning the parents has not been revealed. The boys were put into temporary foster care by a court ruling on 19 July 2010. ...

Apparently, everyone in Slovakia has heard about the Boor's case. Two Slovak minors living in the UK, which were going to be unwillingly adopted in contradiction to law. Fortunately, this case had a happy end ...

But what about the others? Weren't they successful only because of media coverage of the case? Boor's family live in other country and each family member has habitual residence in this state. Shouldn't they be subjected to the law of the country of their habitual residence? Has the citizenship priority over the habitual residence in the intercountry adoptions? Are the cross-border adoptions real problem? Is it necessary to have a consent of biological parents with adoptions of their child in every case? What is the real interest of child? What about the judicial cooperation in this matter, is it necessary to cooperate among the EU member states in intercountry adoptions? If so, what kind of cooperation should it be?

So many direct questions, but no clear answers.

1. Development of legal regulation

Intercountry adoptions have increased since the 60s and the early 70s of the 20th century. The reasons are mainly the population explosion and extreme poverty linked to food shortages in the underdeveloped countries on the one side and the growing childlessness combined with a lack of children suitable for adoption in the developed countries on the other hand. As the process of adoption is costly, the organizations specialized in this activity has began to form. However, the danger of child trafficking often linked to the kidnapping, counterfeiting of identification documents and similar scheming increased substantially. All

¹ <http://spectator.sme.sk/c/20048983/slovaks-misunderstood-boor-case.html>

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these situations resulted into enactment of international adoptions, both, at national and international level.

International adoptions are governed by the UN Convention on the Rights of the Child of 1989, Articles 20 and 21 express the basic principles to be respected:

On the basis of the Article 20, *a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.*²

On the basis of the Article 21, *States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:*

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(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 standards 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;

*(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.*³

The UN Convention on the Rights of the Child of 1989 regulates standards for international adoptions, however, it didn't create a system of cooperation between the states.

² <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

³ <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

2. The Hague Convention

Convention on protection of children and co-operation in respect of intercountry adoption concluded on 29 May 1993 (hereinafter referred to as "The Hague Convention") deals with the legal co-operation among States in the sphere of the international adoption. This convention was adopted at the 17th meeting of the Hague Conference on Private International Law bottom of 29 May 1993, which was attended by representatives of 36 Members of the Conference and 30 non-member states. Convention entered into the force on 1 May 1995. Hague Conference on Private International Law is international organization, which members are all the Member States of the European Union, including the European Union itself.

The Hague Convention builds on the Convention on Children's Rights. It follows from Article 21, letter e) of Convention on Children`s Rights. Convention improves, strengthens and enlarges spacious principles and norms enshrined in The Hague Convention by adding substantive and procedural measures. The Convention sets out minimum standards, but is not intended to create uniform rules of adoption.⁴

The objective of the Hague Conference on Private International Law was a primary legal framework in order to guarantee the best interests of children:

- the creation of security to international adoption performed in the child's best interests, and that would respect the fundamental rights of the child recognized by international law,

- to create a system of cooperation between the contracting states which would ensure the respect for the created guarantees and prevent the abduction, sale and trafficking of children,

- to ensure the recognition of the adoption performed in accordance with The Hague Convention in a contracting state.⁵

*The Hague Convention is applied in situations when shifting of a child for the purpose of adoption from a country (the state of origin) to another state (the state of receipt). Both of states, the state of origin and the receiving state must be the contracting states to The Hague Convention. State of origin is a state of which is a child, to be adopted, national or in which territory the child is habitually resident at the time the motion for adoption.*⁶ The concept of

⁴ www.hcch.net draft guide to good practise

⁵ www.hcch.net draft guide to good practise

⁶ Art. 2 of The Hague Convention

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habitual residence of the child is not defined in The Hague Convention, however, it will be the place where the future adoptive parents and children refrain for long-term with the intent to be in that country permanently residing.

The requirements for adoption are:

- removal of the child,
- removal of the child from one contracting state to another contracting state,
- removal of the child in connection with adoption.

It is not decisive, what is the nationality of the child and of the future adoptive parents, as well as city and time of the performance of adoption.

Article 3 of The Hague Convention addresses the issues for which children the convention applies. It lays down a maximum age of the child, 18 years, before that must be granted the consent for adoption of the central issuing authority of the state of origin and the state of receipt. It follows that in terms of age is crucial to granting consent, which means that consent must be granted prior to the entry 18 years of age, while adoption can be performed even after this age.

The main tool of The Hague Convention in cases of adoption is institutional communication for the exercise of rights and obligations under the Convention. *The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.*⁷

The actual process of adoption is provided in Articles 14 and 21 of The Hague Convention. States parties (of origin and of receipt) shall cooperate as follows:

the application for adoption and verification of the suitability and eligibility of applicants,

- a) a report on the applicant,
- b) receipt of the application in the State of Origin,
- c) proposal of a specific child (so. Matching),
- d) sending an report of a child to the Receiving State,
- e) acceptance of a child by potential adoptive parents,
- f) the consent of the central authority for adoption in the State of Origin,
- g) authorization of entry and residence,
- h) child custody by potential adoptive parents,

⁷ Art. 20 of The Hague Convention

- i) the removal of the child to the Receiving State,
- j) sharing information about a child,
- k) the archiving of data on child and access to them.

A particularly important point is the provision of Article 17 letter c) of The Hague Convention, which states: *Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if the Central Authorities of both States have agreed that the adoption may proceed.*⁸ That article allows the competent authorities of the participating States to block the execution of the adoption in that event, when serious legal obstacles under the law of one of the states prevent from adoption. When the authority court withhold the approval, the process of adoption can not be finalized with the establishment of family ties.

Competent court deciding on adoption can be either a court of the State of origin or the court of the State of receipt. Guiding to address this issue is the international private and procedural law of the state concerned.

3. Intercountry adoptions without parental consent

The Hague Convention lays down set of requirements that must be fulfilled to enable intercountry adoption between contracting states of the Hague Convention as mentioned above. There are many issues arising from the application of the Hague Convention and meeting the requirements set forth therein. This section of the presentation focuses on the previous parental consent with adoption as one of such requirements, which sometimes causes disputes among the society in cases when such consent may be dispensed with. According to the matter of fulfillment of the requirement of parental consent, we may distinguish:

1. intercountry adoptions which take place after prior parental consent,
2. intercountry adoptions which take place without prior parental consent.

Ad 1) Intercountry adoptions with prior parental consent may only take place, if this consent is granted in accordance with Article 4 letter c) of the Hague Convention, which sets forth basic prerequisites, as follows: *Competent authorities of the State of origin have ensured that*

(1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular

⁸ Art. 17 of The Hague Convention

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whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,

(2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,

(3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and

(4) the consent of the mother, where required, has been given only after the birth of the child.

These prerequisites are set forth to protect parental rights and responsibilities of biological parents as well as the rights of children and to avoid the threat of child trafficking. There aren't many practical problems with this type of intercountry adoptions if contracting states and their competent authorities act in compliance with this provision of the Hague Convention.

Ad 2) Intercountry adoptions without prior parental consent represent the second way of performing the adoption according to the Hague Convention. But the requirements under which it is possible to carry out the adoption without parental consent are not expressly stated in the Hague Convention. These requirements are governed by national legal order of each contracting state of the Hague Convention and therefore these requirements differ substantially among some of the contracting states.

There are contracting states, which try to protect the biological family by their legal order as far as possible and the adoption is considered to be the ultima ratio solution. These countries face a big amount of foreign decisions on permanent severance of biological family ties and subsequent adoption of a child upon reasons, which are often considered not to be that serious, that complete withdrawal of the parental rights would be the resolution according to the best interests of the child, who has, among others, the right to preserve biological family relations. Such decisions of competent authorities of contracting states are often considered controversial and causing indignation among people and society.

The issue of different requirements for adoptions without consent among contracting states, including member states of European Union, generates public interest as well as interest in some of the European Union institutions. Thanks to the interest of different member states of European Union and their petitions a special study called „Adoption without consent“ was drafted under the auspices of European Parliament, Policy Department C: Citizens' Rights and Constitutional Affairs, in 2015⁹ (hereinafter known as „the Study“).

⁹ The Study „Adoption without consent“ was drafted by Dr. Claire Fenton – Glynn of King's College London and is available on the Internet at: <http://www.europarl.europa.eu/supporting-analyses>

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According to the abstract of this Study *at the request of the PETI Committee and on the basis of petitions submitted on the matter of adoption without parental consent in England and Wales, this study examines the law and practice in England and Wales, in comparison to other jurisdictions within the European Union. It further details the procedures followed by the English courts in relation to child protection proceedings involving a child who has a connection to another EU Member State, and gives recommendations for cooperations between States in future proceedings.*

With the aim to convey you the results of the work done by the European parliament and to provide you with the objective overview of relevant legislation of particular member states of the European Union we attach the Annex III of the Study dealing with „Comparison of grounds for adoption without consent in EU member states“ to our presentation (Annex no. I of the presentation).

We would like to inform you about the Slovak legislature in the issue of adoption without parental consent. It will be compared with the relevant law in England, because this is a country, where many Slovak citizens live and that is why we face a lot of cases, where international private law is applied, including the Hague Convention. Different views on adoptions without parental consent will be described upon the comparison of relevant law of these two countries.

In Slovak Republic the issue of adoptions without parental consent is governed by the Act on family No. 36/2005 Coll. of laws, as amended, which sets forth:

The consent of parents to adoption can be dispensed with if

- a) they systematically did not manifest proper interest in child for at least 6 months, by not visiting the child, by not fulfilling their maintenance duties regularly and voluntarily, by not trying to rectify their family and social situation within the limits of their possibilities so that they can personally care for the child, or*
- b) they did not manifest any interest at all in child within the time for at least 2 months after the birth of a child even though no serious obstacle prevented them from doing so, or*
- c) the parent is a woman, who ask for nondisclosure of her identity in connection with the childbirth according to special act¹⁰ and did not manifest any interest at all in child within the time for at least 2 months after the birth of a child, or*

¹⁰ Act on healthcare, services connected with the provision of healthcare and amending certain acts No. 576/2004 Coll. of laws, as amended

*d) consent to the adoption was given in advance without regard to certain adoptive parents.*¹¹

The parental consent to adoption can also be dispensed with if both parents of a child are dead, unknown, were deprived of their parental rights, were deprived of legal capacity or they are unable to assess the consequences of adoption. In such cases the parental consent is replaced with the consent of guardian, who was appointed to the child by court.¹²

The requirements for adoption without prior parental consent are significantly different in England. According to Article 53 Section 1 of Adoption and Children Act 2005 *the court cannot dispense with the consent of any parent or guardian of a child to the child being placed for adoption or to the making of an adoption order in respect of the child unless the court is satisfied that a) the parent or guardian cannot be found or is incapable of giving consent, or b) the welfare of the child requires the consent to be dispensed with.*

Comparing the excerpts from legal order of Slovak Republic and England stated above, we have to admit that the legislation of the Slovak Republic in the issue of adoption without parental consent is considerably more strict than in England and it consistently protects both, the rights of children and the rights of their biological parents at the same time. In England, it is sufficient to state that adoption is in the best interests of a child and adoption without parental consent may take place. It is not possible in Slovak Republic, where the requirement of best interests of a child must be combined with conditions for adoption without parental consent stated in Article 102 of Act on family No. 36/2005 Coll. of laws, as amended.

It may be stated that Slovak legislation dealing with adoptions without parental consent is similar to legislation of other member states of European Union such as Bulgaria, Croatia, Czech Republic, Estonia, Slovenia, etc. Legislation similar to the one in England, where statement of best interests of a child is usually enough for a competent body to decide on adoption of a child without parental consent, may be also found in Finland or Norway.

The best interest of a child is always the most important factor when deciding on parental rights and responsibilities, including deciding on adoption in every contracting state of the Hague Convention, which arises especially from the Convention on the Rights of the Child¹³ from 1989. Competent authorities are always obligated to act in the best interests of

¹¹ Sec. 102 of Act on family No. 36/2005 Coll. of laws, as amended

¹² Art. 101 Sec. 3 of Act on family No. 36/2005 Coll. of laws, as amended

¹³ According to Article 3 Section 1 and 2 of the Convention on the Rights of a Child *in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into*

a child. These authorities answer the question of the best interests of a child at their discretion (ideally judicial, administrative and social bodies in mutual cooperation). But this may sometimes induce doubts in case the rights of biological parents are not taken into account when deciding on best interests of a child, especially when considering adoption.

Primary protection shall be provided to the biological family, any breakdown of the family is an interference with the right to family life according to the judiciary of the European Court of Human Rights and therefore must be based on sufficiently serious and compelling reasons motivated by best interests of the child.¹⁴

The issue of the best interests of a child needs to be considered individually in every single case. When assessing the fulfillment of the prerequisites of the best interests of the child, the judiciary of the European Court of Human Rights must be taken into account because it deals with the issue of best interests of a child in the context of the interpretation of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁵ Regarding the question of adoptions and the best interests of the child the European Court of Human Rights states: *In cases concerning the placing of a child for adoption, which entails the permanent severance of family ties, the best interests of the child are paramount. In identifying the child's best interests in a particular case, two considerations must be borne in mind: first, if it is in the child's best interests that his ties with his family be maintained except in cases where the family has proved particularly unfit; and second, if it is in the child's best interests to ensure his development in a safe and secure environment. It is clear from the foregoing that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, where appropriate, to "rebuild" the family. It is not enough to show that a child could be placed in a more beneficial environment for his upbringing. However, where the maintenance of family ties would harm*

account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

¹⁴ Case of Scozzari a Giunta v. Italy (Applications no. 39221/98 and 41963/98)

¹⁵ Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms – The Right to respect for private and family life: *1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

*the child's health and development, a parent is not entitled under Article 8 to insist that such ties be maintained.*¹⁶

There are many cases in different contracting states of the Hague Convention, where the urgent need to sever a child from a biological family was expressed. The reasons for such a statement and following proceedings of social services and courts are sometimes at least disputable. To depict some examples of controversial cases, where the decision to withdraw the child from biological family and decision on possible adoption exceeded the generally accepted reasons for such proceedings, we would like to refer for some specific cases.

4. The case of the Boor family

The issue of the withdrawal of (not only) Slovak children and their possible following adoption without prior parental consent got to the attention of the public in the Slovak Republic particularly through the case of the Boor family.

The Boor family, consisting of parents and two sons, lived in the United Kingdom since 2004. Their problems began in 2010 when Mrs. Boorová took her older son to the doctor to medical examination because of genital infection. The doctor alarmed workers of the Social Service with the suspicion of sexual abuse by their father. The interesting thing is, that the older son had already been treated for the same health problem in another hospital, but the treatment hadn't been successful so the parents had decided to change the doctor and the hospital. Having the suspicion of sexual abuse, social workers decided to remove two boys from their home and eventually take them away for potential adoption. This happened in a scene involving police cars, social workers, crying children, mother and grandmother, who were being held on the other side of the street as the children were being forcefully removed. After that, children were placed in the temporary care of the American pastor. And this was the beginning of the legal fight involving many court hearings, expert witnesses statements, doctors, psychologists, interpreters, social workers and dozens of lawyers.

The suspicion of sexual abuse of children has never been proved and father of the children was acquitted of all charges. But it was not enough for the Social Service to return children to their parents. Paradoxically, the mother of two sons, who is authorized to work as a

¹⁶ Case of Y.C. v. The United Kingdom - Application no. 4547/10; Case of Gnahoré v. France - Application no. 40031/98, etc.

carer and got qualified in the United Kingdom to run a nursery and be responsible for children, could not take care after her own children.

The social services workers were determined not to return the children to their parents, which led to the accusations that there should be some collateral interest of Social Service, not just the aim to protect best interests of children. The whole process of „fight“ for the children finally broke the couple’s relationship. Spouses filed for divorce three times, but their applications were always rejected. Mrs. Boorova was convinced, that the reason their marriage wasn’t divorced, is the fact, that the social services authority would have to return the children if the ‘threat’ had gone, i.e. if she were no longer in a relationship with the „potentially abusive father“.

Another important thing about the case of the Boor family was the passivity of the Slovak institutions. The Centre for International Legal Protection of Children and Youth (hereinafter referred to as „CIPC“)¹⁷ was informed of the case, but the CIPC didn’t interfere to the proceedings and didn’t provide any help or legal assistance to parents, although they should have done so. The Slovak authorities did not react properly or on time, at least to battle to have the boys delivered to their grandmother in Slovakia. Subsequently the court in England issued a ruling that the children are to be put up for adoption.

The situation changed in 2012. The member of parliament of United Kingdom for Birmingham, Mr. John Hemming, who as a chairman of the group called „Justice For Families Campaign Group“ helped people dealing with unlawful adoptions. Mr. John Hemming took a special interest in the case of Boor family and informed Slovak Republic of the possibility to enter the proceedings as a secondary party to proceedings and of the right to move the court to forgive default in term of appeal. Thanks to the legal advice and help of Mr. John Hemming, the new director of the CIPC, Mrs. Andrea Cisárová and the Government Agent of the Slovak Republic before the European Court of Human Rights (JUDr. Marica Pirošíková), Mrs. Boorová was successful with her re – trial petition filed with British court. The court allowed the CIPC to enter the trial as a secondary party to proceedings and finally the court granted an application of mother for custody of her children.

Upon the case of the Boor family and other similar cases the Government Agent of the Slovak Republic before the European Court of Human Rights expressed serious doubts upon cases of adoptions without prior parental consent without relevant reasons, taking place on the

¹⁷ The Centre for International Legal Protection of Children and Youth is a central authority designated by Slovak Republic to discharge duties imposed by Article 6 and the foll. of the Hague Convention

basis of decisions of British courts, subjects of which are also Slovak citizens. The Government Agent of the Slovak Republic before the European Court of Human Rights noted, that this situation is criticized also by British media, which draw attention to systemic weaknesses.

5. Best interests of a child v. the right to respect for private and family life

Concerning the case of the Boor family, the strictness of the procedure of (international) adoptions in England may be noted. This country is also considered to be one of the member states of the European Union, with the biggest amount of decisions withdrawing children from their biological families and with their subsequent adoption without parental consent. All of that on the ground of declaration of the best interests of a child made by Social Services and confirmed by British courts. As a result of some controversial decisions, English adoption system caused tension between the government and several other member states of the European Union.

And the case of the Boor family is not an isolated case. There are many other cases in different member states, where the procedure and decisions of competent administrative bodies and courts are at least disputable. Here are some examples of cases concerning deprivation of a child from biological family with prospective adoption without parental consent, where the violation of the Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms has been pronounced:

- the case of *R.M.S. v. Spain* (Application no. 28775/12, Judgement delivered 18 June 2013) regarding the placement of the child in a foster family with a view to the adoption due to mother's financial situation and without taking into account subsequent change in circumstances;
- the case of *Zhou v. Italy* (Application no. 33773/11, Judgment delivered 21 January 2014) regarding the placement of a child with a foster family, suspending the visiting rights of a mother and declaration of eligibility for adoption on the grounds that mother was not capable of exercising her parental role and fostering the development of her personality because of her partial incapacity and lack of statutory power. Italian authorities failed to fulfill their obligations prior to the decision on the suspension of family ties by not developing adequate and sufficient efforts to ensure mother the right to live with her child;

- the case of *Kutzner v. Germany* (Application no. 46544/99, Judgement delivered 26 February 2002) regarding the withdrawal of parental rights over their two daughters and ordering their placement with foster parents, on the ground that parents did not have the intellectual capacity required to bring up their children, but also on the ground that the girls were late in their mental and physical development and the parents had failed to cooperate with social services.

6. Intercountry adoptions and the Slovak Republic

Slovak Republic is a signatory state of the Hague Convention since 1993. The central authority responsible for administrative cooperation among signatory states according to the Hague Convention, is the CIPC. The CIPC has provided us with the following information (upon a special request):

The CIPC does not keep or publish statistics on the amounts of children entered to the register of children, who may be or were adopted to another contracting state according to the Hague Convention. Individual statistics on intercountry adoptions, classified by the age of children and the state of origin are published on the website of the Hague Conference on Private International Law.¹⁸ Annual adoption statistics of children of Slovak citizenship are attached to this presentation as the Annex no. II. Currently, adoptions from another state of origin to Slovak Republic are not possible. The CIPC seeks to ensure the setting process to make it possible for applicants having their habitual residence in Slovak Republic to adopt a child from another signatory state.

Regarding the „success“ of adoptions of Slovak children, the CIPC does not record any case of intercountry adoption, when the adopted child was withdrawn from the prospective adoptive parents or a case where the order for the return of the child to the state of origin was issued (in the period between 2005 – 2015). The CIPC is not aware of special application shortcomings or difficulties in administrative cooperation with other contracting states in the performance of the tasks set forth by the Hague Convention.

7. Recommendations for judicial cooperation in intercountry adoptions

The Hague Convention establishes the system of intercountry adoptions founded on a principle that intercountry adoption may offer the advantage of a permanent family to a child

¹⁸ <https://www.hcch.net/en/instruments/conventions/publications1/?dtid=32&cid=69>

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for whom a suitable family was not found in his or her State of origin. The intercountry adoption system enables children to live in a real, loving family in case their biological parents don't care or don't protect the best interests of a child. But this idea, which was introduced into the real life through procedures set forth by the Hague Convention, shows few weaknesses. The most significant of these drawbacks is a procedure of adoptions without parental consent. But the Hague Convention is not to blame as this is a matter governed by the national law of signatory states.

Intercountry adoptions without parental consent cause doubts not only among some of the signatory states but also in international organizations, such as the Council of Europe and the European Union. The issue of intercountry adoptions without parental consent is being widely discussed „on the floor“ of both organisations today. The conclusions of such discussions resulted in different studies and resolutions of recommendatory character, as follows:

Parliamentary Assembly of the Council of Europe adopted the Resolution 2049 (2015) "Social services in Europe: legislation and practice of the removal of children from their families in Council of Europe member States" on 22 April 2016. Besides the other things, the resolution expressed concern over the violations of children's rights in some countries where welfare authorities too hastily took children into their care. MEPs stressed that it is all the more tragic in the case of irreversible decisions, such as in the case of an adoption without parental consent. In paragraphs 8.2, 8.6, 8.7 and 8.10 the Assembly recommends that member States:

- *put into place laws, regulations and procedures which truly put the best interest of the child first in removal, placement and reunification decisions;*
- *ensure that any (temporary) placement of a child in alternative care, where it has become necessary as a measure of last resort, be accompanied by measures aimed at the child's subsequent reintegration into the family, including the facilitation of appropriate contact between the child and his or her family, and be subject to periodic review;*
- *avoid, except in exceptional circumstances provided for in law and subject to effective (timely and comprehensive) judicial review, severing family ties completely, removing children from parental care at birth, basing placement decisions on the effluxion of time, and having recourse to adoptions without parental consent;*

- *ensure that, except in urgent cases, initial removal decisions are based only on court orders, in order to avoid unwarranted removal decisions and to prevent biased assessments.*¹⁹

Even the European Union has mentioned problem of cross-country adoptions. The abovementioned Study on adoption of children without parental consent aims to review the law and practice of the adoptions without parental consent in England and Wales and the procedures applied by the English courts in proceedings relating to child protection for children with links to other Member States. In conclusion, the author also put forward recommendations that should help better cooperation between States in such proceedings in the future. Recommendations to the institutions of the European Union:

That a guide to good practice be drawn up by the European Union concerning cooperation between Member States under the "Brussels II a" Regulation, and in particular focusing on:

- a) guidance for child protection services in dealing with cross-border cases;*
- b) providing information on the workings of child protection systems in different Member States;*
- c) setting out guidance as to the correct test for asking another state to assume jurisdiction under article 15.*

That consideration be given to strengthening the provisions of the "Brussels II a" Regulation, including:

- a) placing a duty to inform foreign authorities of child protection proceedings before the court be made mandatory, unless the safety or welfare of the child demands otherwise;*
- b) including a common, autonomous understanding of habitual residence, as defined by the Court of Justice of the European Union;*
- c) strengthening cooperation in cases of placement of a child in another jurisdiction under article 56, including: creating a specific mechanism for a request for transfer to be made under the Convention and setting clear rules for when a transfer should take place, and what factors should be considered.*

That a greater understanding is encouraged between Member States of the different approaches to child protection. In particular:

¹⁹ Resolution 2049 (2015) of Parliamentary Assembly of the Council of Europe

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- a) that research be undertaken concerning different forms of public care be used in each jurisdiction, including both short-term and long-term care options;*
- b) that statistics and information be compiled concerning the outcomes for children in different forms of public care in different jurisdictions;*
- c) that statistics be compiled concerning the number of adoptions in each jurisdiction, disaggregated by age, gender, reasons for adoption, ethnic and religious minority status, immigration status and socio-economic background, and whether parental consent had been given;*
- d) that statistics be compiled concerning successful reunifications of the child with their birth family, following a period in state care.²⁰*

Finally, we would like to point out the fact, that currently the cooperation between contracting states of the Hague Convention is conducted especially on administrative level. This is caused by the fact, that the amount of contracting states of the Hague Convention exceeds the boundaries of both, the European Union and the Council of Europe. But there is no obstacle that would prevent the member states of European Union to establish rules for closer cooperation between their judicial bodies in adoption matters per sample Council regulation (EC) No. 2201/2003 (Brusel II a) concerning judicial cooperation in matrimonial matters and the matters of parental responsibility. For example it may be useful to enact the obligation of every member state to inform of any proceeding concerning the withdrawal of a child from biological family and prospective adoption other member states concerned on the basis of citizenship or habitual residence of the child. Providing legal aid and the option to enter the trial as a secondary party to the proceedings dealing with adoptions should also be enabled between the member states according to the regulation. And last but not least, every member state of the European Union should reconsider relevant legislation and the direction, which takes the decision – making process of courts and administrative authorities in matter of intercountry adoptions. All competent authorities should always take into account the best interests of a child, including the right to preserve biological family relations, in accordance to decisions of the European Courts of Human Rights, especially in cases of adoption without parental consent. Meeting the requirements stated by these judgements may lead to the decrease of disputable decisions on intercountry adoptions and to the preservation of values, which deserve the highest protection on both, the national and international level.

²⁰ The Study „Adoption without consent“ drafted by Dr. Claire Fenton – Glynn of King`s College

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Annex no. I
COMPARISON OF GROUNDS FOR ADOPTION WITHOUT CONSENT IN EU
MEMBER STATES (Annex III of the Study)

	Abandonment or Lack of Contact with Child	Deprivation of Parental Rights	Dispensing with Consent
Austria	Whereabouts or residence unknown (6 months)		Refusal of consent without justification
Belgium	Parent has lost interest in the child	Deprivation of parental rights; has compromised his or her health, safety or morals	
Bulgaria	Resident in a foster home or institutional care, and parent has not requested the termination or modification of this measure and the return of the child (6 months)	Parents continuously fail to provide care for the child, do not provide financial support, or raise and educate the child in a manner harmful to its development.	
Croatia	Abandoned or neglected the child (3 months)	Lost the right to parental care	
Cyprus	Abandoned or neglected the child	Neglect or persistent mistreatment	Unreasonably withholding consent
Czech Republic	Not manifested a proper interest (6 months)	Not trying to rectify their family and social condition within the limits of their possibilities so that they can personally care of the child (6 months)	
Denmark		Deprivation of parental rights	If dispensing with consent it is of decisive importance to the welfare of the child
England and Wales			If dispensing with consent is in the best interests of the child
Estonia	Whereabouts or residence unknown (for “an extended period of time”)	Deprivation of parental rights	
Finland			If the refusal is not sufficiently justified taking into account the best interests of the child
France	Manifest disinterest (12 months)	Risk of compromising the child’s health or morals	Abusively withholding consent
Germany	Shown through conduct to be indifferent to the child	Persistently grossly violating parental duties	Where it would be disproportionately disadvantageous to the child if the adoption did not take place
Greece		Deprivation of parental rights	

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Hungary	Not contacting the child (12 months)		
Ireland		Parents failed in their duty towards the child (12 months)	
Italy	Abandonment: lacking the moral and material care of their parents		
Latvia		Treat the child especially badly or does not care of the child or does not ensure the supervision of the child and it may endanger the physical, mental or moral development of the child.	
Lithuania		Parental authority restricted for an unlimited period	
Luxembourg	Manifest disinterest (12 months)	Lost their parental rights	
Malta	Unjustifiably not having contact (18 months)	Neglect or persistent mistreatment	Unreasonably withholding consent / If dispensing with consent is in the best interests of the child
Netherlands	Have not, or hardly, lived together	Abuse of parental authority or grossly neglected duties to care for the child	
Northern Ireland	Abandoned or neglected the child	Persistently failed in duties towards the child, has persistently illtreated, or seriously illtreated the child	Withholding consent unreasonably
Poland		Deprived of parental authority	If refusal is clearly contrary to the child's welfare
Portugal	Not showing interest (3 months)	Deprived of parental authority	
Romania			Abusively refusing to give consent, and adoption is in the child's best interests
Scotland		Unable to satisfactorily discharge parental duties	
Slovakia	Systematically did not manifest proper interest (6 months)	Deprivation of parental rights	
Slovenia	Whereabouts or residence unknown (12 months)	Parental rights have been taken away	
Spain		Deprived of parental authority	
Sweden		Where a parent has no share in custody	

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Annex no. II – SLOVAK REPUBLIC: ANNUAL ADOPTION STATISTICS 2005 - 2014

Year	Receiving State	Amount of Adoptions	The age of child			
			< 1	1 - 4	5 - 9	10 <
2005	Italy	26		15	11	
	France	10		8	2	
	Netherlands	2		1	1	
	Germany	1		1		
	Sweden	2		2		
Together		41		27	14	
2006	Italy	23		15	7	1
	Netherlands	3		1	2	
	Germany	4		3	1	
	Sweden	2			1	1
	Austria	3		3		
Together		35		22	11	2
2007	Italy	30		19	10	1
	France	2			1	1
	Netherlands	7		5	2	
	Germany	1		1		
	Sweden	6		6		
	Austria	4		4		
Together		50		35	13	2
2008	Italy	29		7	18	4
	Netherlands	10	1	3	6	
	Germany	1		1		
	Sweden	7		7		
	Austria	2		2		
	Monaco	2		2		
Together		51	1	22	24	4
2009	Italy	24		13	11	
	Netherlands	9		5	4	
	Sweden	15		12	3	
	Monaco	1		1		
Together		49		31	18	
2010	Italy	20		8	9	3
	Netherlands	11		8	3	
	Sweden	11		11		
	Monaco	1		1		
Together		43		28	12	3
2011	Italy	12		5	7	
	Netherlands	8		6	2	
	Sweden	8		6	2	
Together		28		17	11	
2012	Italy	5		3	2	
	Netherlands	5		5		
	Sweden	2		2		
Together		12		10	2	
2013	Italy	3		1	2	
	Sweden	1		1		
Together		4		2	2	
2014	Netherlands	4		4		
Together		4		4		
Total		317	1	198	107	11