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## Parliamentary Assembly Assemblée parlementaire

**Doc. 8592**

2 December 1999

**International adoption: respecting children's rights**

Report

**Social, Health and Family Affairs Committee**

Rapporteur: Mr Nicolas About, France, Liberal, Democratic and Reformers' Group

*Summary*

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. The Assembly condemns the current transformation of international adoption into what is nothing short of a market regulated by capitalist laws of supply and demand. To avoid mercantile practices, member states of the Council of Europe should subscribe to and observe the principles laid down by The Hague Convention on Adoption. The Council of Europe must assert its role in the protection and promotion of children's rights and pursue that role in the arena of inter-governmental co-operation, particularly in relation to new member states.

**I. Draft recommendation**

1. The Assembly 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 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.

2. The Assembly therefore fiercely opposes the current transformation of international adoption into nothing short of a market regulated by the capitalist laws of supply and demand and characterised by a one-way flow of children from poor and emerging states into our developed countries. It roundly condemns all crimes committed in order to facilitate adoption, as well as the commercial tendencies and practices that include the use of psychological or financial pressure on vulnerable families, the

arranging of adoptions directly with families, the conceiving of children for adoption, the falsification of paternity documents etc and adoption via the Internet.

3. It wishes to alert European public opinion to the fact that, sadly, international adoption may prove to be a practice that disregards children's rights and that it does not necessarily serve their best interests. In many cases, receiving countries perpetuate misleading notions about children's circumstances in their countries of origin and a stubbornly prejudiced belief in the advantages for a foreign child of being adopted and living in a rich country. The present tendencies of international adoption go against the UN Convention on the Rights of the Child, which stipulates that if a child is deprived of his or her family the alternative solutions considered must pay due regard to the desirability of continuity in the child's upbringing and to his or her ethnic, religious, cultural and linguistic background.

4. In 1993, the international community adopted a set of ethics and rules in the form of the Hague Convention on Adoption, in which the guiding principle is that of subsidiarity, that is to say international adoption may be considered only if domestic solutions are not available. The Assembly is forced to recognise that there is insufficient awareness of the scope of this convention and that few of the member states have ratified it.

5. The Assembly therefore calls on the Committee of Ministers of the Council of Europe to give a clear indication of its political will to ensure that children's rights are respected, by immediately inviting the member states to:

- i. ratify the Hague Convention on Adoption if they have not already done so, and undertake to observe its principles and rules even when dealing with countries that have not themselves ratified it;
- ii. conduct information campaigns to give professionals and couples contemplating international adoption a full understanding of the commitments entailed in the Hague Convention and their implications;
- iii. develop the bilateral and multilateral co-operation essential for the convention's effective application;
- iv. help those countries from which foreign children come to develop their own adoption laws and to train the relevant personnel in public authorities and properly accredited agencies and all other professionals involved in adoption;
- v. ensure that prospective adoptive parents are eligible and suited to adopt, provide them with compulsory, in-depth preparation for international adoption and ensure that the situation, and particularly the psychological well-being, of foreign adopted children is monitored;
- vi. ensure that in an event such as the divorce of the adoptive parents, the desertion of the foreign child or the emergence of difficulties with the adoption procedure, the child's fundamental rights, such as the right to a name and to citizenship, will be respected;
- vii. ensure the right of adopted children to learn of their origins at the latest on their majority and to eliminate from national legislation any clauses to the contrary.

6. The Assembly also calls on the Committee of Ministers to invite the member states to co-operate more closely by every possible means, and notably through Europol, in order to combat trafficking in children and eliminate mafia-type or other criminal networks, and to ensure that in the field of international adoption no abuses, however minor, go unpunished.

7. Moreover, the Assembly asks the Committee of Ministers to:
  - i. assert more firmly the Council of Europe's necessary role, as a guarantor of human rights, in the protection and promotion of children's rights;
  - ii. pursue that role in the arena of inter-governmental co-operation - particularly in relation to the new member states - by developing child-friendly social and family policies designed to prevent children being abandoned and to keep them in their families of origin, and failing that to develop family-based alternatives and to promote domestic adoption in preference to placement in institutions.

## **II. Explanatory memorandum by the Rapporteur**

1. By way of introduction to this report, it should be recalled that when the Social, Health and Family Affairs Committee adopted [Recommendation 1286](#) (1996) on a European strategy for children, it undertook to champion the cause of children in the member states of the Council of Europe and also sought to give substance to that undertaking outside Europe.
2. It was an awareness of serious shortcomings in the protection of children and a realisation that international adoption had stimulated trafficking which led to the drafting and adoption of Order 543, empowering the Committee to tackle this issue.
3. The European Parliament has already addressed the question and in 1996 it adopted a resolution on improving the law and co-operation between [EU] member states on the adoption of minors, in which it also invited the Council of Europe to continue its work on adoption, not least with a view to playing its role as a co-ordinating body between countries making the transition to democracy [the countries supplying children] and the established European democracies.
4. The Committee has spent several meetings studying the report and, in particular, has consulted the UNICEF International Child Development Centre, Florence, and the International Social Service, Geneva. The rapporteur extends special thanks to both these organisations for their advice and expertise.
5. The term "international adoption" is used here to cover all adoptions that are not exclusively domestic, ie adoption in a foreign country, entailing a change in the child's normal place of residence, whatever the nationality of the adoptive parents, as well as adoption that is international in the full sense in that it involves parents whose nationality is not that of the child, regardless of whether they live in the same country as the child.

### **Background information**

6. International adoption is a worldwide phenomenon and by no means a minor one. Initially, western countries' involvement was based on a generous impulse to help abandoned children in distress. In many cases, however, international adoption has nowadays become a solution in our industrialised countries to the shortage of potential adoptees and to infertility.
7. Adoption is too often regarded as an alternative to medically assisted procreation - mistakenly because logic dictates otherwise: adoption presupposes having come to terms with the impossibility of having a natural child.
8. European countries including Sweden, France, the United Kingdom, Italy and Germany engage in international adoption, as do Canada, Australia and the United States. The relevant statistics are often non-existent or not readily obtainable and comparable.

9. In the United States, around 10,000 foreign children are adopted annually - 13,620 in 1997, according to the UNICEF ICDC. Since the late 1960s, Sweden (which seems to be a record-holder concerning the number of international adoptions as compared with its population) is reported to have received 40,000 foreign children - 834 of them in 1997. In Italy, 2,019 foreign children were adopted in 1997. In France, three out of four children adopted are foreign and in 1997 there were 3,500 foreign adoptions, involving children from 77 countries. In total there are more than 30,000 children of foreign origin in France who have been adopted by French families.

10. Worldwide, according to UNICEF, there are 50 prospective adopters for every available child. The states termed countries of origin include several that are members of Council of Europe. Most of these are in central and east Europe - Russia, Romania, Bulgaria, Poland and the Baltic countries, for example.

11. Asian states involved include Korea, Vietnam and the Philippines, while in South America, Brazil, Chile and Guatemala should be mentioned. The UNICEF ICDC has observed that special links tend to form between certain countries: thus, for example, between 1993 and 1997, American families looked mainly to Russia (from where 10,442 children were adopted), then to China (10,177 adoptions) and Korea (8,406 adoptions). Spain has tended in recent years to favour Colombia, while maintaining links with India and China.

### **Abusive practices and tendencies in international adoption**

12. The authorities and vulnerable families in developing countries are being pressured to meet an ever-growing demand and, in the absence of proper procedures and systems, there is a role for commercial intermediaries and alternative, criminal networks that engage in extreme abuses such as kidnapping children, having children conceived for adoption, and "liberating" potential adoptees, who are made available in return for material aid.

13. Adoptive parents are also guilty of illicit practices such as adoption direct from families, the payment of disproportionate sums of money and the falsification of documents. The needs of the child take a back seat as couples claim the right to a child at any price. Public opinion has allowed the spread of something like a belief in the right to adopt, culminating in the emergence of a veritable adoption market, alarmingly illustrated by the phenomena of Internet and catalogue adoption. Children are becoming objects tradable for material goods.

14. Children's rights are being disregarded. Abuses are taking place on both the "supply" and "demand" sides of the process, so action is needed on both fronts.

15. Faced by the sheer scale of such illicit practices, a number of countries - including Romania and Ukraine - have called a halt (though in many cases only a temporary one) to adoption by foreigners. Having taken that step, many of the countries concerned - Albania being one example - have attempted a realistic assessment of the need for international adoption as against the possibilities of domestic adoption or other forms of family placement.

16. Many countries have then taken energetic steps to encourage adoption by their own citizens and almost all have tried to tighten the controls on international adoption (which in some cases have become extremely rigorous). In June 1998, the Federation Council in Russia ratified a number of laws amending the national adoption legislation and introducing much stricter controls.

17. Some such measures are seen in a negative light by foreigners, who regard them as evidence of extreme nationalism and often question the ability of the countries concerned to properly protect within their borders children who could have found good adoptive parents abroad.

18. However, experience would seem to belie both charges: the authorities concerned have simply acted on the realisation that children's rights were being grossly disregarded; and once they raised public awareness of the potential for domestic adoption, there was in every case a substantial upsurge in the number of nationals offering to adopt.

### **The Hague Convention and its limitations**

19. The Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption was adopted on 29 May 1993. It has been ratified by 35 states, among which are 20 countries of origin: Romania, Poland, Burkina Faso, Mexico, Ecuador, the Philippines, Sri Lanka, Costa Rica, Venezuela, Peru etc.

20. The great majority of the states involved in international adoption - whether as receiving countries or countries of origin - had a hand in preparing the Hague Convention and it is therefore fair to conclude that the treaty as a whole reflects the collective vision of those concerned. The 60-70 countries in question include virtually no Islamic and only a few sub-Saharan states.

21. The purpose of the Hague Convention, which is based on the tenets of the United Nations Convention on the Rights of the Child (of 20 November 1989), is to prevent the abduction, sale of, or traffic in children. It rests on three major principles:

- subsidiarity, whereby international adoption may only be considered in the absence of domestic solutions (ie only if the child cannot be brought up by his or her own parents, other members of the family or adoptive parents within the country of origin);
- the prohibition of improper financial gain;
- the primacy of the child's best interests.

22. In order to safeguard the child's biological link with his or her parents, the Convention stipulates that the parents must freely consent to the adoption. It also prohibits any contact between the prospective adoptive parents and the natural parents before the latter have taken the initial steps in the adoption process.

23. In addition, the Hague Convention sets out to establish a co-operation system based on the designation by each contracting state - be it a country of origin or a receiving country - of a "central authority", a type of single official service. The central authority in each country is responsible for all aspects of international adoption - whether children are leaving or arriving in the country - and deals, in each case, with the central authority of the other country concerned.

24. Obviously, it takes time to put such a system in place - and it is a prerequisite to ratification of the convention. The developed nations must therefore help the poorer countries of origin to set up central authorities with sufficient personnel and resources to perform their functions effectively because it is clear that the implementation of the convention depends upon their effectiveness. The convention does not cover the criminal aspects of abuses practised on children, as these questions lie outside the remit of the Hague Conference.

### **The rights of foreign adopted children**

25. The right of children to an identity implies the right to know the truth about their personal history. Under Article 30 of the Hague Convention, states are required to preserve information held by them concerning a child's origins (in particular information concerning the identity of his or her parents and the child's medical history) and to ensure that the child has access to such information in so far as permitted by the law of

the state. In cases of trafficking in children, such information may be entirely and irretrievably lost. Current research increasingly shows that adopted children need to know as much as possible about their real identity in order to be able to develop a balanced personality.

26. Under the UN Convention on the Rights of the Child (Article 20), alternative care arrangements for a child deprived of his or her family environment must take account of the desirability of continuity in the child's upbringing and of his or her ethnic, religious, cultural and linguistic background.

27. Deciding whether international adoption is in a child's best interests requires a comprehensive understanding of the cultural and ethnic issues at stake. In most cases of international adoption there are marked cultural differences between the adoptive parents and the child.

28. There has been recent media coverage in France of specific problems - including drug-taking, suicide attempts and teenage crises - encountered by foreign children adopted during the international adoption boom in the 1980s, and of the despair that parents experience when caught unawares by the consequences of their children's lack of roots. Many children adopted into foreign countries arrive unprepared, ignorant of what adoption means and suffering from a sense of rejection that hits them hard in adolescence. Very many families know nothing of their children's early lives. Such children must be helped to seek their roots and, if necessary, accompanied to their countries of origin for that purpose. In many cases, psychological help is essential to treat particular types of trauma.

29. One highly topical issue, especially in North America, is that of "transracial" adoption. In cases of international adoption, the problems that the adopted children encounter are, in practice, similar to those of Afro-American children adopted by white parents in the United States or children of indigenous origin adopted in Canada.

30. It is instructive to consider here, for example, the extreme position adopted by the National Association of Black Social Workers in the United States, which denounces "transracial" adoption as genocide because the adopted children lose all awareness of, and pride in, their heritage; the association believes that black children should never be placed in white families.

31. The consensus among North American researchers is that, while adoption by parents of the same race is preferable to "transracial" adoption, the latter is a better option for the child than placement in an institution because a child's primary requirement is a stable, continuous relationship with parents.

32. Some members of the Social, Health and Family Affairs Committee reported cases in which problem children of gypsy origin had been adopted then rejected by their American adoptive parents, deprived of American citizenship and sent back to institutions in Hungary and Romania. Such cases - which raise the question of continuity in the child's enjoyment of his or her fundamental rights - are not rare, particularly where trafficking is a factor.

33. The UNICEF ICDC reports the case of pregnant women, from Albania and Romania, for example, being "exported" to give birth in a third country and the subsequent problems with regard to the babies' citizenship, following the dismantling of the export network. The children, having lost their original nationality as the result of adoptions later declared invalid, found themselves stateless in the receiving country.

34. Switzerland is one of a number of countries where, in cases of international adoption, citizenship is only granted after a probationary period - of two years in the Swiss case - and the UNICEF ICDC reports that a study of 57 international adoptions in Switzerland showed that none of the children concerned ever acquired Swiss citizenship.



35. The countries receiving foreign adopted children should undertake that, even where adoptions fail or the adoption procedure is discontinued, children shall not be deprived of their fundamental rights, including the right to a name, a nationality and social insurance cover.

### Conclusions

36. The rapporteur believes that the purpose of adoption is to enable a child to acquire two parents, and not the other way round. There can be no such thing as a right to a child. International adoption has become a market in which children are the goods for sale; the market operates on the capitalist principles of supply and demand and is ruled by competition. The flow of children is from poor countries to rich countries.

37. Moreover, although by no means all adoptions are commercial transactions that ride roughshod over children's rights, there is - as pointed out by the International Social Service in Geneva - a trend in that direction because many of the associations and well-meaning individuals that operate alongside the criminals, mafia elements and other middlemen are dangerously incompetent.

38. An effort is needed to change public opinion and combat the belief in a right to adopt. Adoption must - first and always - be a solution for the child. The idea that international adoption often disregards children's rights needs to gain acceptance, and work must be done to get it across to the public.

39. International adoption must follow the principles laid down in the Hague Convention and it is the duty of all the member states of the Council of Europe to ratify the convention and undertake to apply its principles in their dealings with countries of origin that have not yet ratified it. The convention must be better publicised so that the scope of the commitments it entails may be better understood and its implications more widely appreciated.

40. The countries of origin of adopted children must be helped to develop their own adoption laws and to train the government and agency staff and other professionals involved in adoption. In the receiving countries, prospective parents must be given preparation for international adoption, and the progress (especially the psychological wellbeing) of adopted foreign children must be monitored.

41. Part of the Council of Europe's task, as a guarantor of human rights, must be to take responsibility for the application of children's rights and it must support new member states in central and east Europe in developing social and family policies that put children first.

42. Finally, if all the efforts to "clean up" international adoption are to work, the first requirement is a clear signal of political will to enforce the observance of children's rights, develop international co-operation to combat trafficking in children for adoption, and ensure that, in the field of international adoption, no abuse, however minor, shall go unpunished.

Reporting committee: Social, Health and Family Affairs Committee

Budgetary implications: none

Reference to committee: Order No. 543 (1998)

Draft recommendation unanimously adopted by the committee on 23 November 1999

Members of the committee: *Mr Cox (Chairman), Mrs Ragnarsdóttir, Mr Gross (Vice-Chairs), Mrs Albrink, MM. Alís Font, Arnau, Mrs Belohorská, Mrs Biga-Friganovic, Mrs*

Björnemalm, Mrs Böhmer, Mrs Burdjanadze, MM. *Christodoulides*, Chyzh (alternate: *Mr Stetskiv*), Dees, Dhaille, Duivesteijn, *Evin*, Flynn (alternate: *Mr Vis*), Mrs Gatterer, MM. Gibula, *Glesener*, *Gregory*, *Ms Gülek*, Gusenbauer, *Haack*, *Hancock*, *Hegyi*, Mrs Høegh, Mr Hrebenciuc (alternate: *Mr Paslaru*), Mrs Jirousova, Mr Kalos, Mrs Kulbaka, Mrs Laternser, *Mr Liiv*, Mrs Lotz, Mrs Luhtanen, Mr Lupu, *Mrs Markovska*, MM. Marmazov, Martelli, Mattei, Monfils, Mozgan, Mularoni, *Mrs Näslund*, MM. Niza, *Ouzky*, Mrs Paegle, Mr Poças Santos, Mrs Poptodorova, *Mrs Pozza Tasca*, Mrs Pulgar (alternate: *Mr Herrera*), MM. Raskinis, Rizzi, *Santkin*, Sharapov, Skoularikis, Mrs Stefani, MM. *Surján*, Tahir, *Telek*, Vella, Mrs Vermot-Mangold, MM. Volodin, Voronin, *Wójcik*

NB: The names of those members present at the meeting are printed in italics.

Secretaries to the committee: Mr Perin, Mrs Meunier and Mrs Clamer

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