

Translation from Dutch

Letter from Against Child Trafficking

To Minister Dr. E.M.H. Hirsch Ballin

d.d. 5 June 2009

Dear Minister,

With interest we took note of your 'condition letter' of 20 April 2009 in which you put additional conditions for adoptions from the United States and also indicate that part mediation will be cancelled.

We are also aware that there is a difference in interpretation of the Central Authority of the US and that of the Netherlands concerning the subsidiarity principle, especially where it concerns the choice of the relinquishing parent(s) for specific adoptive parents, and the authority to decide that a child directly goes abroad, without prior testing of the possibility of in-country placement. We are pleased that the Permanent Bureau of the Hague Conference for International Private Law, by letter of 11 December 2008 has confirmed that the choice of a relinquishing mother needs to be limited by the subsidiarity principle, in other words that the direct relinquishment of a child in favor of intercountry adoption is in conflict with the Hague subsidiarity principle.

The UNICEF report Children in Eastern Europe – Perils and Risks (1997) describes that the UN Convention on the Rights of the Child (UNCRC) needs to lead to intercountry adoption becoming an exceptional measure, as was intended. Reference is made to the fact that in Western Europe and North America 10 to 20 percent of children are living below poverty level and that hundred thousands of children are living in foster or residential care. According to this report, nobody would seriously dare to suggest that the solution to this lies in intercountry adoption. Twelve years later it seems to go into that direction: The United States wishes to place children from foster care for intercountry adoption. At the same time there are voices that promote a European adoption system, as an option in between national and intercountry adoption.

According to this report, lawyers and judges have in the past used legal loopholes and intentionally misinterpreted international convention, with as result a booming trade in children. Not denying the understandable desire of children by childless couples/people, it is essential that the rights of the child, as laid down in the UNCRC, prevail.

According to article 20 of that convention, children who cannot be raised in their families, have a right to protection and support of the State. Such protection can, among others, be foster care, kafalah according to Islamic law, adoption, or if necessary, placement in residential care. In this the need for desirability of continuity in care, and ethnical, religious, language and cultural background of the child need to be considered.

As you indicate in your condition letter, the subsidiarity principle is based on article 21b of the UNCRC, which stipulates that intercountry adoption may only be considered as alternative care if the child cannot be placed in a foster family or adoptive family and the child cannot be brought up any suitable manner in-country. Therefore we propose to make clear in the condition letter that from the American side it needs to be proven why a certain child cannot be **caared** for, instead of why the child cannot be **adopted** in-country.

In light of the current decision about the strengthening of the rules in order to get to a correct implementation of the subsidiarity principle we consider this clarification essential.

Your sincerely,

Signed

Mrs. R. Post

ACT