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TITLE

FAMILY-BASED ADOPTION AND FOSTERING IN ARMENIAN LAW AND PRACTICE

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Abstract

This paper will try to focus on children's rights in case of adoption and fostering. Currently, children deals with lots of legal and social matters during adoption and fostering, which may touch their rights, protection and freedoms. These problems occur especially in case of intercountry adoptions, when the family adopt a child from a country other than their own through permanent legal means and bring that child to their country of residence to live with them permanently. Intercountry adoption is governed by both the laws of the country in which the child lives and the country in which the adoptive parents live. By analyzing intercountry adoption process deeply, we may face to many legal gaps that exist in legal system both in domestic jurisdiction and in foreign as well. This paper will examine challenges for intercountry adoption cases.

Keywords: children rights, family-based adoption, fostering, intercountry adoption, domestic and foreign jurisdictions, challenges and gaps.

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“Every child deserves a safe, loving permanent home. That’s a basic human need...”

– Secretary Clinton¹

INTRODUCTION

Human rights and development of our society are great merits nowadays and the respect to² this is the attitude of the society towards children. The society should have caring treatment, strive to secure their rights, freedoms and dignity by creating an appropriate conditions which enables them to become a full member of our society and have a productive life in adulthood. My paper is focused on the following issues: adoption and fostering, differences between them; Armenian practice of adoption and fostering; international and intercountry adoption analysis. The first chapter will be about adoption and fostering in general, what is adoption and fostering, why it is important for children, for childless couples, for government etc., and what is the difference between them. The second chapter will define the situation and practice in Armenian reality, will provide statistics about adoptions of several years, and will indicate which institutions are specialized in the care of children with disabilities. The third chapter will analyze intercountry and international adoption practice, will determine which treaties regulate adoption procedures etc.

Adoption and fostering are important aspects of the child protection system. Adoption is a procedure wherein someone undertakes the parenting of a baby, from that child’s biological or legal parent(s), and constantly transmits all rights and obligations from the biological parent(s)³. Comparing to guardianship, fostering or other systems related to the care of the children, adoption is a permanent alteration in status and as such calls for societal popularity, either via juridical or non secular sanction⁴. This is wonderful way for many orphaned children to find a permanent home. Orphans in both Armenia and in other countries across the globe deserve families who will love them and provide home for them. Millions of children across the world live without protection of a family. Currently, approximately 135,000 children are adopted in America yearly, for example, from the foster care system, private agencies, family members and other countries. One out of every 25 U.S. families with children have an adopted child. About 40% of adoptions are from the U.S. foster care system.

¹<https://www.pinterest.se/pin/114067803032715837>

² <http://mercyprojects.org/150-million-risk-children/?gclid=Clef4buh9NICFW0R0wodyMYDwA>

³ <https://en.wikipedia.org/wiki/Adoption>

⁴ http://www.pediatriconcall.com/fordocor/Diseases_a_z/article.aspx?artid=29

There are 107,918 foster children waiting to be adopted, and 81.5 million Americans have considered adoption.⁵

The whole adoption process is focused on finding the right homes for the children who need family care, so understanding the kinds of children is worthwhile. It is important to look at all aspects of a child's background, religion, language and culture in order to find proper family for each child. Adoption procedure includes many steps until an adoption is considered completed. Such steps are the following: moving from infertility to adoption; selecting the type of adoption; choosing an adoption professional; waiting for an adoption opportunity; communicating with the birth parents before the adoption; finalizing the adoption; participating in post-placement contact etc.⁶

The international and national human rights law considers that the best interests of the child should be a major observation in any decisions made about a child's future. In the case of adoption, international law qualifies the best interests of the child as supreme which is one of the most wide-ranging and definitive decision that could be made about the future of any child. This is mostly considerable in the context of the intercountry form of adoption, since it involves the transposition of a child to a new country and a new culture as well. The regulations and requirements for adopting may seem confusing and sometimes frustrating. Deciding where to adopt children from, is a difficult decision. Whether the choice is domestic or foreign adoption, so it is a deeply personal decision.

It is worth to mention that international treaties have huge impact on protection of children rights, especially concerning to the intercountry adoption cases. The Hague Adoption Convention is a treaty that many countries are members of it. The Hague Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption (Hague Adoption Convention) is an international treaty, providing regulations which are safeguarding intercountry adoptions and protecting the best interests of a child.⁷

One of such provisions is prescribed in the 1993 Hague Convention on Intercountry Adoption: “...*the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights*”. The United

⁵ <http://www.goodhousekeeping.com/life/parenting/a35860/adoption-statistics/>

⁶ http://www.americanadoptions.com/adopt/the_domestic_adoption_process_step_by_step

⁷ <https://travel.state.gov/content/adoptionsabroad/en/hague-convention.html>

States and Armenia are both signatories to this Convention. All adoptions between Armenia and the United States must meet the requirements of the Convention.⁸

There is also the Convention on the Rights of the Child of United Nations adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 and entered into force 2 September 1990, in accordance with article 49, designates children's civil, political, economic, social, health and cultural rights. The Convention defines "a child" as any human being under the age of eighteen, unless the age of majority is attained earlier under national legislation. Nations that ratify this convention are bound to it by international law. The Republic of Armenia joined the United Nations Child Rights Convention (UNCRC), which entered into force in the RA on 22 July 1993.⁹

Generally, international and national norms require that intercountry adoption can only be realized in two cases:

1. when the parents or family are not able to take care for the child, and
2. where there are not any appropriate in-country available care options.

For sure, in-country adoption is generally preferable, but if there is not any suitable national families or carers, who may adopt the child, it is not desirable to keep children in institutions when there is possibility of convenient permanent family placement abroad.

So what do we need to do to protect children? What are the essentials of an effective application of treaties?

- Respect what children and young people say
- Work together and share information
- Work entirely with international and national organizations
- Make society more aware of these issues
- Create a culture of respect of children

⁸ <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>

⁹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

Regarding to the national adoption regulations, domestic legislation, the Family Code of the Republic of Armenia adopted 09.11.2004, signed 08.12.2004 and entered into force 19.04.2005, deals with family matters, adoption and fostering, domestic relations and children's rights as well. Specifically the Chapters 17,18,19,20 of the Family Code of RA indicates the rearing methods of children deprived of parental care, such as revelation and placement of children deprived of parental care; children adoption; custody and guardianship towards a child and foster family. The chapters 18 and 20 of the Family Code of the RA provide thorough clarification of all procedures of an adoption and fostering. The chapter 18 provides an adequate information regarding to an adoption and an adoption procedures, such as which children are a subject to adoption, who has right to adopt and how is fulfilled the process of an adoption of persons wishing to adopt; the consent needed for an adoption both by parents, guardians and foster parents, an adopted child and of an adopter's spouse for adoption; legal consequences of child adoption etc. We should highlight the article 112 of the chapter 18 of the Family Code of the RA, which provides an explanation of an adoption in general and an adoption of children of the RA citizenship by foreign citizens and stateless persons, as well as RA citizens residing out of the RA territory. According to this article, adoption of a child by foreign citizens and persons not having nationality and also citizens of Armenia is allowed only in case of impossibility of adoption of the child by own relatives or by a family of citizens of RA who permanently lives in the territory of RA.

The chapter 20 includes all regulations about fostering. According to the article 137 of the Family Code of RA, a foster family is one of the ways of placement of a child (children) deprived of parental care for rearing purposes. The foster parents are those citizens who have expressed a will to take a child (children) for rearing deprived of parental care. In this case a child is considered to be a foster child (children), and the family which consists of foster parent(s) and foster child (children) is considered to be a foster family. The abovementioned chapter interprets who may be foster parents; which children might be given for rearing to the foster families; and how foster parents should take care of children given to them for rearing.

In order to have a complete image of what is discussed above, it should be illustrated that according to the law, custody is ordered for those children who have not yet attained 15 years of age, and guardianship is granted for minors between 15 and 18 years of age. Before a

custody or guardianship order is made, local representatives of the ministry of education or of the ministries of health and social security should analyze the situation.¹⁰

The National Assembly has adopted the Law on Social Protection of Children Deprived of Parental Care on 24 September 2002 to ensure the protection of the rights of children deprived of parental care. In order to realize the law, government decree N 983-N dated 23.07.2003 on Approving the Procedures for Provision of Housing to Children Deprived of Parental Care and decree N 983-N dated 23.07.2003 on Approving the Procedures for Registration of Children Deprived of Parental Care by Fostering and Guardianship Bodies were adopted.

Overall, in each adoption and fostering case, the child shall be given proper protection, opportunities and facilities by law and by other means, provide them an opportunity to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner. In one word, the best interests of the child shall be of the paramount importance.

CHAPTER 1

Adoption and fostering.

Differences

Adoption is a welfare and safety measure that allows an orphaned or definitively left child without parental care to benefit from an everlasting own family. The exercise of adoption may be subdivided into domestic (or incountry) adoption, intercountry adoption and international adoption.¹¹

A domestic adoption is an adoption that involves adoptive parents and a child of the same nationality and the same country of residence.

¹⁰ http://www.parliament.am/law_docs/081204HO123eng.pdf

¹¹ <https://www.unicef-irc.org/publications/pdf/digest4e.pdf>

An intercountry adoption includes a change in the child's habitual country of residence, irrespective to the nationality of the adopting parents.

An international adoption applies to an adoption that involves parents of a nationality other than that of the child.

If a child's family or extended family is unable or unwilling to ensure the child's development, a form of alternative care needs to be found, which may include:

1. Institutional placement: the simplest means of protection of a child in need of care, usually carried out because no other options have been found.
2. Fostering: an authorized placement with a 'foster' family, guided by the social services and usually including financial compensation in order to cover the additional expenses incurred.
3. Guardianship: process where a person, especially a relative, is responsible for the child and his or her property until the child reaches the age of majority.
4. Adoption: adoption can be 'simple', whereby the child maintains some financial and legal ties with his or her birth family (for example, inheritance rights) and may even maintain their name. Currently the vast majority of adoptions, however, are 'full', which means that they entirely expire the relationship between the child and his or her birthparents, and create in its place a relationship between the child and the adoptive parents.¹²

Currently there are lot of children who need especially adoption and fostering, which will provide them home and loving family. It may seem that an adoption is a simple process by which a child without parental care is offered a permanent home and family. Actually, it is one of the most complicated procedures because it touches to the well-being and protection of the child both in domestic and intercountry adoption forms. There arises a question why this process is complex, and the answer will be the following - because it is a basic change of their lifestyle, name, and even in intercountry adoption cases, nationality and religion as well. As child adoption is among the most important situations in our life, that is why it is important to study the rules and regulations regarding this issue. Once the child is identified for adoption, the parents must inform the Ministry of Social Security in order to complete all required steps.

¹² See reference 11

Then they files an application to the court in order to accomplish an adoption. After the entry into force of the court verdict related to adoption, all rights and obligations of an adopted child and adopter(s) arise.

Adoption is significant first of all for children. It is intended to provide the child with security by giving them a good childhood and a family, care and protection. Adoption is significant for childless couples as well. It is opportunity for creation of parent-child relationship. It is also essential for the government, the ministries and NGOs, which take care for children who are without parental care. The law requires the State child-care authorities to secure the care and upbringing of these children and children who do not have parents at all. This is done by placing the child in appropriate institutions or through adoption. Placing children in such institutions requires many expenses which involve medical care, education; so it is of government obligation to take care for as many children as possible.

Both adoption and fostering provide a permanent home for a child, involve bringing a child into home to care for and nurture, but there are some differences.

It is already mentioned above that adoption is a legal process which transfers the rights and responsibilities of the child's birth parent(s) to adoptive parent(s). In this case the child lose all rights of inheritance from their birth family and take the surname of their adoptive family. At the same time, he or she becomes part of that family too. It is important to highlight that age difference between the unmarried adopter and an adopted child should not be less than 18 years. Adopters receive support from the social services department which support the process of adoption, and/or the voluntary agency which approve them as adopters until an adoption is made. Generally in the past adoption was used when it is about placing very young children. Currently very few children under two years old are adopted, and most agencies are more willing in placing children from 2 to 12 years old for adoption. Actually adoption is considered a most favorable way of placement of children deprived of parental care.

Fostering, on the other hand, is not a legal process. It is a process which provides family life to the child born in a family different from foster family. It is important to know that in fostering, legal responsibility for the child lies with the birth parents, and not with the

fostering parents.¹³ This is an important difference between adoption and fostering. This opportunity is given to the child in the case of the disability of the parents to provide family life to the child. This is done of course with the expectation that the child will return home happy and contented later as usually a child is only placed under foster care until he or she turns 18. It does not provide the same legal security as adoption and would only continue until the children become 18. It means that the children may keep their ties with their birth family, who may remain involved in any important decisions made about their child and would usually be encouraged to have regular contact with their child. When a child is fostered, foster carers will be asked to work in cooperation with social workers as well as the child's birth family.¹⁴

Regarding to the international regulations of children rights, the UN Convention on the Rights of a Child plays an important role by setting out all possible rights of children, such as- civil, economic, political, social, health and cultural rights. It defines the fact that as children are vulnerable members of a society, they need special care and protection. The Convention places special responsibility on the families to take care and protect children. There is also need for the legal and other protection of the child, respect for the cultural values of the children, and the indispensable role of international cooperation in achieving the realisation of children's rights.¹⁵

The articles of the Convention may be gathered into four classes of rights. Supplementary provisions of the Convention provide measures for the Convention, interpreting how governments and international organizations such as UNICEF work to make sure children's rights are protected.

1. Guiding principles: These include non-discrimination; adherence to the best interests of the child; the right to life, survival and development; and the right to participate.
2. Survival and development rights: These involve rights related to the resources, skills and contributions needed for the survival and full growth of the child. Rights to adequate food, shelter, clean water, formal education, primary health care, leisure and

¹³ <https://sunbeamfostering.com/Fostering-PDF/difference-between-adoption-and-fostering.pdf>

¹⁴ <https://afth.org/difference-between-foster-care-adoption/>

¹⁵ <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

recreation, cultural activities and information about their rights are included as well.

These rights require both existence of the means and access to them.

3. Protection rights: These rights are related to the protection from all forms of child abuse, neglect, exploitation and cruelty, including special protection in times of war and protection from abuse in the criminal justice system.
4. Participation rights: Children have freedom to express opinions in matters which will affect on their life.¹⁶

CHAPTER 2

Practice of adoption and fostering in Armenia

During several years Armenia has have many changes and these reforms have promoted the growth of development of the institutions like adoption and fostering of children. The RA Ministry of Labor and Social Affairs provided the following information on adoptions of several years: in 2012 a total number of children subject to adoption was 745, from which 83 adoptions were approved, where 42 children are adopted by RA citizens, 41- by foreigners. In 2013, the registered number of children subject to adoption was 719, from which 78 was adopted – 34 by RA citizens, 44 by foreigners. In 2014, the number of registered children was 720, from which 62 adopted – 35 by RA citizens, 27 by foreigners. In 2015, the number of children subject to adoption was 684, from which 104 were adopted – 43 by RA citizens, 55 by foreigners. In 2016, the registered number of children without parental care was 633, from which 75 were adopted – 35 by RA citizens, 40 by foreigners. It is evident that in 2016 the number of children subject to adoption compared to 2012 has decreased.¹⁷

Research has indicated that about 2,000 children in Armenia live in residential care institutions. There are eight state orphanages, where 900 orphans live. Over 80% of these

¹⁶ https://www.unicef.org/crc/index_30177.html

¹⁷ Information was provided by the RA Ministry of Labor and Social Affairs

children have at least one living parent. Around 800–1,000 biological families in Armenia temporarily leave their children in institutions in order to take them back when they can. According to data provided by the Government of Armenia, 75% of children in state childcare institutions are orphans with disabilities. There are two childcare institutions in Armenia that are specialized in the care of children with disabilities – Gyumri Children’s Home and Nor Kharberd Special Orphanage. Currently Mari Izmiryan Orphanage is specialized in care only for children with disabilities and Yerevan’s Zatik orphanage is a daycare centre. Approximately 500 children are in foster families, under care of people other than their biological parent(s). Data about foster care in Armenia is provided by the research “Development perspectives of foster care in Armenia”. This involves identifying and understanding foster care, challenges to establishing foster care and what is needed to develop the practice in Armenia.¹⁸

In each fostering and adoption case the foster parents are interviewed in order to establish the needs of children under foster care and to find out what may affect these families to take under foster care children with disabilities. Data provided by the RA Ministry of Labor and Social Affairs has shown that from 2012 to 2016, 158 children with health problems and 58 children with disabilities were adopted by both RA citizens and aliens.

Armenian law includes the adoption, guardianship and foster care of children. Article 111.1 of the RA Armenian Family Code establishes that “*placing a child deprived from parental care in an institution should be a last resort*”. In practice it is often the first step – many children are placed in an institution before a court decision about their status. Foster Family Service is a program which develops fostering in Armenia. The goal of this program is to create a warm and safe environment for children who were living in childcare institutions:

1. creating an environment in order to provide a natural circumstances for children’s upbringing and development.
2. creating support services for biological parents and prepare them to be reunited with their children.

¹⁸ <http://www.crin.org/en/docs/Armenia%20Foster%20Care%20Study%20-%20FINAL.pdf>

Regarding to siblings, RA Family Code stipulates that siblings should be placed in the same foster family. In practice there is only one case when two out of four siblings from the same institution were placed in two different families.¹⁹

CHAPTER 3

International and intercountry adoption

Intercountry adoption is a practice which has developed since 1960s²⁰. Parallel to this practice, international efforts have been increasing in order to ensure that adoptions are taken place transparently and legally on behalf of the children and families.

The Convention on the Rights of the Child, leading UNICEF's work, precisely states that *“every child has the right to grow up in a family environment, to know and be cared for by her or his own family whenever possible”*²¹. Taking into consideration this and the meaning and importance of family in children's lives, families need support to take care for their children and have a right to receive it. When a child's family is unaccessible, unable or unwilling to take care for them, then appropriate and stable family-based solutions should be sought to enable the child to grow up in a devoting, caring and supportive environment.

Children who cannot be cared for in a family residing in their country of origin, intercountry adoption will be the best solution.

Intercountry adoptions which are assisted by UNICEF, are pursued in correspondence with the standards of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoptions. It is currently ratified by 95 countries. Being a member of this Convention is a guarantee for that country which aims to protect parents and children involved in intercountry adoption processes and to support the growing number of children being adopted from foreign countries. Advantages of the Hague Convention involve more united requirements for procedures between member countries, surety for parents adopting from member countries, parents for children who will meet their best interests and common

¹⁹ http://www.parliament.am/law_docs/081204HO123eng.pdf

²⁰ <http://pages.uoregon.edu/adoption/topics/internationaladoption.htm>

²¹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

recognition of adoptions among member states. It is definitely necessary tool which serves to protect and promote intercountry adoption by terminating corruption, child trafficking, child sales and abductions from birthparents. The principles of the Convention are following:

- securing that intercountry adoptions occur in the best interests of children
- preventing the abduction, exploitation, sale, or trafficking of children
- facilitating communication between Central Authorities in countries of origin and destination countries
- securing the recognition in Contracting States of adoptions made in accordance with the Convention²²

This principles are important guarantees for the development of children, birth families and prospective alien adopters and establish obligations for the authorities of countries from which children are going to be adopted and those that are adopting these children. The Convention aims to ensure ethical and transparent procedures. This international legislation gives paramount consideration to the best interests of the child and provides the framework for the practical application of the standards regarding intercountry adoption contained in the Convention on the Rights of the Child. These include ensuring adoptions are authorized only by competent authorities.

Intercountry adoption enjoys the same safeguards and standards which apply in national adoptions. These provisions are meant first and foremost to protect children, but also have the positive effect of preserving the rights of their birth parents and providing assurance to prospective adoptive parents that their child has not been the subject of illegal practices.²³

It is already analyzed above that decisions related to the adopted child are of paramount importance. It touches to the rights of the child. Why it is so, because the result is a complete change of name, family ties, nationality, physical displacement across borders etc.

The procedures of adopting a child seem complicated. The regulations and requirements for adopting are confusing and frustrating, because in this case not only adoption process should

²² <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>

²³ <https://dash.harvard.edu/bitstream/handle/1/3228398/1A-GIPol72409.pdf?sequence=2>

meet all the requirements of adoption, but also the children's welfare and protection should be taken into account. Generally, the process of adoption in each country differs, but there is a general process that most of countries follow. There are general steps which are following:

- selecting adoption service provider
- gaining approval to adopt
- being matched with a child
- adopting or obtaining legal custody of the child in the foreign country
- applying for a visa for the child to move to the United States
- traveling home with adopted child.²⁴

In law and practice it is stipulated that intercountry adoption may only be realized in two cases:

1. when the parents or family are not able to take care for the child, and
2. where there are not any appropriate in-country available care options.

Surely, domestic adoption is more preferable, but if there is not any suitable national families or carers, who may adopt the child, it is not desirable to keep children in institutions when there is possibility of convenient permanent family placement abroad.

The most significant part of the adoption process is choosing a qualified adoption service provider in a country where the adopter(s) lives which will support in a placement of adopted child/children. In order to be qualified adoption service provider, licence is needed. Two types of licences exist: foster care and adoption. Several requirements should meet to grant a licence to the agent , such as : the ability to provide services (counseling and education); to assist birth parents in making decisions regarding to their child for adoption; provide the necessary psychological and psychiatric services to children and families etc.²⁵

Once adopters choose an adoption service provider, they should sign an adoption contract with that agency. Then, another step is deciding where to adopt from, which is a personal

²⁴

<https://travel.state.gov/content/adoptionsabroad/en/adoption-process/how-to-adopt/hague-adoption-process.html>

²⁵

<http://www.mass.gov/edu/birth-grade-12/early-education-and-care/licensing/adoption-foster-care-and-residential-care-lic-/licensing-requirements-for-residential-and.html>

decision. In this case adopters should do a research in order to reveal foreign country adoption regulations and requirements. For example, there are countries which allow single-parent adoption, while others forbid it. The age or income requirements are also important for adoptive parents. The law of each country should be thoroughly explored.

To complete an intercountry adoption abroad and bring a child to adopters country, the requirements of three separate governmental authorities should be fulfilled:

- the foreign country in which the child resides;
- immigration law
- adopter's state of residence.

Several documents may also be needed in order to protect the child, the biological parents and the adoptive parents.²⁶

The intercountry adoption process may also meet challenges such as adoption of a child by same sex couples. Not all states allow such adoption. Lesbians, gays, bisexuals, transgenders and intersexes (hereinafter LGBTI) can also become legal parents of a child in a similar fashion through the use of a surrogate mother. Adoption laws vary from state to state, and there are some states that do allow LGBTIs to adopt children as legal, joint parents. Same-sex marriage became legal (nationwide or in some parts) in Argentina, Belgium, Brazil, Canada, Colombia, Denmark, Finland, France, Iceland, Ireland, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden, the United Kingdom, the United States and Uruguay. Adopting from these countries will not meet hardships compared to the countries which are not legalized same sex marriages. For example, Armenia is one of these countries, so LGBTIs do not have possibility to adopt a child from here. RA Constitution does not allow adoption of children by LGBTIs²⁷. In one hand such kind of restriction by law is appropriate to the Armenia and Armenian society, taking into account history, demography, culture etc. By analyzing what is said, it is obvious that risk exist, such as: children of homosexual parents will grow up and become one of them; they will not attain sufficient personal development; and they are more likely to be sexually abused by their parents or their parents' friends. On the other hand, it is against to the

²⁶ <http://www.theadoptionnews.com/2010/10/9-documents-needed-for-international-adoption/>

²⁷ http://research.omicsgroup.org/index.php/LGBT_rights_in_Armenia

international standards related to the rights of LGBTIs. For example France has legalized same-sex marriages in 2013, hence the adoption and parenting is also permitted there.²⁸ To conclude this dilemma, every country should analyze advantages and disadvantages of this phenomenon, and come to a definite conclusion whether legalize or not same-sex marriages and parenting children by these people.

It is already mentioned above that UNICEF supports intercountry adoptions. According to UNICEF all decisions concerning to children and adoptions, should be made in conformity to the best interests of the child as the primary consideration. The Hague Convention²⁹ on intercountry adoption is an important treaty for adoptions, because it promotes procedures be ethical and transparent, undertaken in the best interests of the child. UNICEF urges domestic authorities to ensure that during the transition of full implementation of the Hague Convention, the best interests of each child are protected and preserved. UNICEF hopes that families needing support to care for their children should receive it. Alternative means of caring for a child should only be considered when a child's family is unavailable, unable or unwilling to care for them. For children who cannot be raised by their birth families, an appropriate alternative family should be provided in preference to institutional care which should be used only as a last resort. Intercountry adoption is one of a range of care options which may be open to children, who cannot be placed in a permanent family setting in their countries of origin, it may indeed be the best solution. In each case, the best interests of the individual child must be the guiding principle in making a decision regarding adoption. At the same time, lack of regulation and oversight, particularly in the countries of origin, coupled with the potential for financial gain, has spurred the growth of an industry around adoption, where profit, rather than the best interests of children, takes centre stage. Abuses include the sale and abduction of children, coercion of parents, and bribery.³⁰ Many countries around the world have recognised these problems and have ratified the Hague Convention on Intercountry Adoption. UNICEF strongly assists to this international legislation, which is aimed to put into action the standards relating intercountry adoption which are contained in the Convention on the Rights of the Child. These include the following: adoption is

²⁸ <https://matadornetwork.com/life/france-always-seen-sexually-liberated-country-heres-lgbt-community-say/>

²⁹

<https://travel.state.gov/content/adoptionsabroad/en/hague-convention/understanding-the-hague-convention.html>

³⁰ <https://www.hcch.net/en/instruments/conventions/full-text/?cid=24>

authorised only by competent authorities; intercountry adoption enjoys the same safeguards and principles which apply in national adoptions; intercountry adoption does not result in improper financial gain for those involved in it. These provisions are supposed essentially to protect children, but additionally have the positive effect of providing assurance to prospective adoptive parents that their child has not been the subject of illegal practices. The case of children separated from their parents and communities during war or natural disasters merits special mention. It cannot be supposed that such children have parents. Despite the fact that both their parents are dead, the chances of finding living relatives and home to return to after the termination of a disaster exist. Thus, such children should not be considered for intercountry adoption, and family tracing should be the priority.

The Hague Convention on Intercountry Adoption³¹ provides that each Contracting State should³² establish a national Central Authority, with overall responsibility for protecting children potentially or actually involved in an intercountry adoption. The Central Authority may act through another public authority or an accredited body. In the case of accredited bodies, the State has an obligation to supervise their composition, operation and the financial conditions they apply. The Central Authority of the country of origin must ensure that competent authorities establish the child's 'adoptability' - legal eligibility and psychological, medical and social suitability for adoption. This report is completed before the prospective adoptive parents have contact with the child's birthparents or other legal representatives and before consideration is given to matching the child with any given prospective adoptive family. The report should certify that: birthparents have been clearly informed of the consequences of adoption (and, particularly, that in cases of intercountry adoption, the child will leave the country and all links with the birth family will be definitively terminated) and have been helped with necessary counselling; the birthparents, especially the birthmother, have given their consent to adoption only after the birth of the child (a 'blanket' consent not naming specific adoptive parents limits the risks of trafficking); the consent of persons, institutions and authorities responsible for the child has been freely given before adoption and has not been induced by payment or compensation of any kind; the child, according to age and degree of maturity, has received counselling and is informed of the consequences of adoption, and his or her opinions and wishes have been taken into consideration. The Central

³¹ <https://travel.state.gov/content/adoptionsabroad/en/hague-convention/hague-convention-text.html>

³² <https://www.uscis.gov/adoption/immigration-through-adoption/hague-process>

Authority of the receiving country must ensure, via homestudy, that the prospective adoptive parents are both qualified and eligible to adopt. Again, suitability is not just a legal or economic concept, but also has psychological, social and medical dimensions. Since the goal of adoption is to give an orphaned, abandoned or otherwise traumatized child the family best placed to respond to his or her needs, it is essential to determine that the prospective adoptive family is qualified and capable of ensuring permanent care and respect for a child. Often the prospective adoptive parents also come to adoption after a traumatizing past (infertility, unsuccessful medically assisted procreation, the death of a child) and may not have fully come to terms with their misfortune: they must be capable of not shifting this burden to an adopted child. Many countries have made it mandatory for potential adoptive parents to complete a specific training course until a home study³³ can be carried out. Preparation is aimed at helping prospective adoptive parents to understand the differences and similarities between being birthparents and adoptive parents, to face directly their own motivations for wishing to adopt a child and to explore their expectations about a potential adopted child. They also learn about the child's background in his or her resident country and their impact on the child's future development: what adoption means to the child; what the warning signals of unsuccessful bonding are; what discrimination foreign adoptees are likely to face and ways to deal with it (in other words, they are given information about the stages and rewards in the adoptive relationship and how to deal with them). This information helps them assess their own ability to assume responsibility for an adoptive child.

“Matching” must be the quest for an appropriate adoptive family for a given child, taking account of this child's history, characteristics and needs. Matching should take place after the adoptability of the child and suitability of the prospective adoptive family have been established. It should be decided on the basis of detailed reports on both the child and the prospective adoptive parents, periodically updated if the process is prolonged. Matching is the primary obligation of the country of origin, taking full account of a home study prepared and transmitted by the receiving State³⁴. Both the country of origin and the receiving country can ensure at this time that their public policies are respected regarding the personal circumstances of the adoptive parent(s) (for instance, by permitting a child to be placed with

³³ https://www.childwelfare.gov/pubPDFs/f_homstu.pdf

³⁴

<https://travel.state.gov/content/adoptionsabroad/en/adoption-process/who-can-adopt/home-study-requirements.html>

heterosexual married couples only, or by widening the categories of potential adopters to include, for example, single persons, or unmarried hetero- or homosexual couples). As good matching is the key to a successful adoption, the decision should be made only by child welfare professionals who have received specific training on adoption matters. It should involve, as far as possible, a professional who knows the child, a professional who knows the selected family and representatives of the competent bodies involved in the adoption procedures in both countries. The proposed matching should be presented to the selected prospective adoptive family for approval.

It is desirable for contact to be established after the matching is made before the adoption is finalized to enable the child and the prospective adoptive family to get to know each other. As far as possible, according to age and maturity, children should be associated with defining the life plan proposed for them, in particular adoption. Once adoption is contemplated, the child, even when very young, must be prepared for the upcoming changes: leaving known surroundings and familiar faces; travelling; changing eating habits; meeting physically different people who do not speak his or her language or who act differently from previously known adults. The family should also be prepared for the possibility that the child will seek out his or her origins on reaching adolescence or adulthood.

One of the greatest advantages of the Hague Convention is that it provides for the automatic recognition by all Contracting States of adoptions made under the Convention, whether in the receiving country or country of origin. This is an important guarantee for the child as it protects his or her adoptive status. When adoption proceedings are held in a country of origin which is not a Contracting State, instead, depending on the domestic law in force, a child may be legally adopted without having been an official exchange of reports concerning the adoptability of the child and the eligibility of the prospective adoptive parent(s). This situation may cause serious problems in some receiving countries.

National and international agencies which are engaged in the adoption procedure, have a paramount role in making adoption a means of protection for the child. Their accreditation in their country of residence and their authorization by the other countries where they operate should be conformed on the basis of strict criteria and subject to periodic renewal after checks. Ethical criteria should be taken into account, and accreditation should be given only if

the ethics and practice of the agency comply with international norms. It is also important to consider both agency concerned and its partners or representatives in the other countries with which it cooperates. Financial aspects of the agency itself and its partners or representatives in other countries should be carefully examined before awarding or renewing accreditation. Each country must set criteria to define what costs and fees are to be regarded as “reasonable”.

Central Authorities in both countries must ensure that directors, administrators and employees of bodies involved in an adoption do not receive unreasonably high remuneration in relation to services rendered, and that accredited bodies pursue nonprofit objectives only.

Where the adoption procedure is not finalized in the country of origin, the Central Authority of the receiving State is responsible for the protection of the child in cases where problems arise after the child’s transfer but before adoption is completed. The return of the child to his or her State of origin should only be considered as a last resort, and if the child’s best interests so require. Central Authorities in both the State of origin and receiving State should make every effort not to prolong the adoption procedure unduly. Information on the child’s origins, the identity of birthparents and medical data of the child and the family of origin must be kept and made available to the child and/or his or her legal representative under certain conditions.

The Hague Convention is created in order to set minimum standards for intercountry adoptions for hindering the abuses related to such adoptions and assisting to the well-being of homeless children. Recommendations related to the Hague Convention has been discussed by which Convention should aspire 1) to create “legally binding” minimum standards for governing intercountry adoptions; 2) to set policies to be sure in responsibility of member states that their actions had to be in accordance with these standards; 3) to intensify cooperation between states concerning to “sending” and “receiving” them.³⁵

Under the Hague Convention on Intercountry Adoption, its Secretary General is required to convene regular sessions of a Special Commission to review the practical operation of the treaty. This system is akin to a kind of “self-regulating” mechanism to monitor each State’s respect for the treaty in practice. Together with experts from other international organizations, the Permanent Bureau of the Conference also advises individual governments on bringing legislation and procedures into line with the Convention and maintains a list of contact details

³⁵<http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1149&context=ijgls>

of all Central Authorities and accredited bodies to facilitate cooperation. While responsibilities regarding the use of adoption only as a bona fide protection measure exist for a wide range of protagonists, under the Hague Convention there are five other actors with whom the ultimate responsibility unequivocally lies: the governments of the countries of origin; the central authorities; the judiciary; the governments of the receiving countries; the intercountry adoption agencies.³⁶

The governments of the countries of origin have the heaviest obligation. This is not only natural, given that the authorities are responsible for the welfare and protection of all children within their jurisdiction, but it is also clearly reinforced by the provisions of the Hague Convention. Only these authorities can work to ensure that legislation and policy treats adoption as one component within an effective overall social welfare program. Only they can take the necessary steps to set a consistent and coherent policy, and to create conditions for it to be respected. Under the Hague Convention, the Central Authority, as we have seen, has a key role to play. Governments are obliged to provide effective functioning, and thus to set aside the human and material resources that the role requires. This includes reliable and effective support at the local level, as well as adequate staff qualified in adoption questions (social welfare, legal and psychological). In this latter regard, major investments in training are often needed. There is no doubt that, to the extent that adequate resources fail to be put at the disposal of the Central Authority, to that same extent abuses of intercountry adoption are likely to occur. In many countries, adoption is a judicial decision. The judiciary are obviously also essential to law enforcement. A prerequisite for them to perform this role is that the child's case file be fully and properly prepared and that the recommendation on matching be well documented. Many judges are, however, apparently not fully informed about the requirements of adoption law. For several possible reasons, they do not always interpret national and international law in the spirit in which it was devised. Decisions may seem inconsistent. While fully respecting the independence of the judiciary, the authorities must be prepared to question lower-court decisions in the highest courts of the land if those decisions are deemed to be in contradiction with the spirit or letter of the law. Governments of receiving countries have the clear responsibility to ensure that their own services, consular in the country of origin, central authority on the domestic level, work optimally and that the

³⁶ <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>

relationship of mutual confidence that is basic to the kind of cooperation envisaged under the Hague Convention can exist. They must have high and strictly applied standards for the accreditation of agencies and for the home study³⁷ of prospective adoptive parents. In addition, they should make every effort to prevent abuses by disseminating appropriate information to their own citizens. They must also be prepared to take a firm measures when procedures have not been respected or when there is a clear risk of adoption abuse. Where consular services recognize that the trafficking of children is a serious problem, for example, they could require that birthmothers and children undergo DNA testing to confirm the parental relationship. This measure has recently been taken by some governments to restore public confidence in the adoption process in specific countries of origin. Intercountry adoption agencies are the final group of actors under the Hague Convention. In practice, these agencies differ enormously in size, structure, experience, qualification and motivation so much so that, in certain countries, the criteria for their accreditation might well be perceived as anything but clear. It is known that agencies in some countries have exerted considerable pressure to secure their accreditation or have had pressure exerted on their behalf.

Intercountry adoption agencies have obligations to live up to, and are bound to work within the framework of the principles laid down in the CRC and the Hague Convention when the country they are working in is a State party to either one. A prerequisite for intercountry adoption to respect the rights and interests of the children concerned is that all these actors agree on the common bases that the two Conventions provide. If just one fails to do so, there may already be a significant problem in preventing abuses. If more than one fail, major abuses will be unavoidable and children will become involved in the adoption procedure without regard to their best interests or human rights.

In some cases, intercountry adoption may be considered as a form of child trafficking, because it includes displacement of children from poor country to rich one in order to meet the requirements of preserving the best interests of children. There is not any precise legal concept of children trafficking, but generally it is about buying and selling of children. Why children trafficking seems similar to intercountry adoptions , because in two cases children are moved across borders, although in case of trafficking a child is sold and after that is moved from one location to another.

³⁷ <https://www.new-beginnings.org/adoption-process/>

The main international document which is directly referring intercountry adoption as a form of child trafficking is the Optional Protocol to the Convention on the Rights of the Child (hereinafter OP-CRC). Although, the OP-CRC is not considered as an international law, but it constitutes international law which is obligatory for the United States.

The Hague Convention involves the prevention of “the abduction, the sale or trafficking of children.” Even though the Hague Convention does not provide any definition of the sale or trafficking of children, the OP-CRC has effectively transformed the sections of Hague Convention concerning to adoption, into a decisive part of the definition of illegal child selling. So, where an intermediary assists to an adoption which violates the Hague principles, then the illegal sale of a child has happened.³⁸

The Committee on the Rights of the Child³⁹ is at present the only international body with responsibility for guiding standards relating to intercountry adoption. It has always paid close attention to adoption issues when reviewing States Parties reports on implementation of the CRC and has expressed deep concern on the question in relation to several country situations. The Committee also consistently urges all States involved in intercountry adoption to ratify the Hague Convention if they have not already done so. UNICEF provides advice and technical support on intercountry adoption issues to governments, NGOs and the Committee on the Rights of the Child. A small but growing number of its offices ensure that all children’s rights are respected in the adoption process. New procedures in cases of suspected unlawful procedures have been proposed, including an active role in finding out the facts, transmitting this information to appropriate regional and headquarters advisors, requesting government action/cooperation and making a public statement explaining concern and action.⁴⁰ In receiving countries, National Committees for UNICEF⁴¹ have an essential role to play in this area. Human rights and child-focused NGOs, both international and national, have two key tasks to carry out according to their respective mandates: promoting good practice in adoption and monitoring compliance with children’s rights, publicizing and denouncing violations when necessary. Lawyers can and should make a significant contribution by refusing to carry out tasks in the adoption procedure that go beyond their formal role as legal representatives

³⁸ <http://scholar.valpo.edu/cgi/viewcontent.cgi?article=1252&context=vulr>

³⁹ <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

⁴⁰ <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIntro.aspx>

⁴¹ https://www.unicef.org/about/structure/index_natcoms.html

and declining to take on adoption cases in which they believe required procedures have not been respected. Finally, the media have an important role to play in both countries of origin and, particularly, receiving countries. Media attention to the condition of children in conflictual situations and other dramatic circumstances such as sudden economic change, often induces a wide response from couples abroad who are seeking to adopt a child. This can lead to children's rights violations when attempts are made to meet this demand without reference to internationally accepted standards, procedures and guidelines. Some media descriptions of countries of origin are highly negative with no thought given to what effect such inobservance will have on older foreign adoptees who are struggling with issues of personal and national identity. At the same time, attention of media to the subject of intercountry adoption has helped to promote a fuller understanding of the various ways in which children's rights can either be violated or fulfilled in the adoption process.

In order to sum up, it should be taken into account that the theories without harsh sanctions and overseeing will be worthless. The measures and resources should be taken to prevent child abuse, protect children from risk of abuse and strengthen families. Such steps may be following: gathering as much information on supporting families as possible, intensifying protective factors, raising public awareness and community activities etc, or just establishing criminal sanctions.

CONCLUSION

By analyzing all information mentioned above, we come to a conclusion that the society, state, NGO's, international organizations and every human being should always initiate appropriate steps for the maintenance of children, especially for those who are without family and parental care. Adoption and fostering are institutions, which have developed and need further development in order to preserve children well-being and avoid the violation of their rights. Concerning in-country adoption and fostering, domestic legal acts should include regulations which will overcome all challenges and gaps which touches to the rights and protection of adopted children. In case of intercountry adoption, it should be taken into account all procedures and regulations of each state. Adopters should always cooperate with

adoption agencies in order to complete all requirements on behalf of adopted child. Only in case of deep analysis of each situation, the adoption and fostering will be without drawbacks. Several recommendations may be done in order to finalize whole issue:

- The adoption of children should always be completed in a right way – in this case not only full research should be carried out about child’s identity and background, but also all mandatory procedures should be strictly followed in order to be legally defined. Here is the protection of the rights of birth parents and a lack of support to those who give their child for adoption because of material poverty.
- The intercountry adoption should be considered and carried out for the right reasons – in case of being careless in intercountry adoption process, risks of child trafficking might arise. The priority should always be given to domestic adoptions. Only in case of impossibility of in-country adoption, intercountry adoption should be revealed.
- Each child should be adopted by the right person(s) - Professional matching of a child with prospective parents is necessary. In some cases many adopters create an “ideal image” of the child they wish to adopt and are not adequately prepared for the fact that children available for intercountry adoption in many countries have some degree or form of particularities(cultural, ethnical, religious etc).

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