

### Short questionnaire

Therefore, States are respectfully requested to provide responses to the following questions which relate to the recognition in one State of a domestic adoption granted in another State:

<b>Name of State:</b>	Ukraine
<b><u>Information for follow-up purposes</u></b>	
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#### A. RECOGNITION IN YOUR STATE OF DOMESTIC ADOPTIONS GRANTED PREVIOUSLY IN OTHER STATES

##### *The law and procedure in your State*

1. Please briefly outline the **law** (legislation or other rules) in your State concerning the recognition of a domestic adoption granted previously in another State.

In accordance with Article 282 of the Family Code of Ukraine an adoption of a child, who is a national of Ukraine but resides out of Ukraine, by a national of Ukraine is made in a consular institution or a diplomatic mission of Ukraine.

In case of such adoption there is no necessity to recognize it in Ukraine.

However, in practice, the abovementioned rule is used quite rarely.

The foreign court decision that is not subject of enforcement shall be recognized in Ukraine if its recognition is foreseen by international treaties, consent to be bound by which was given by the Verkhovna Rada of Ukraine, or according to a principle of reciprocity.

A motion on recognition of a foreign court decision that is not subject of enforcement, must be submitted to a court by an interested person in order, prescribed by Articles 392 - 394 of the Family Code of Ukraine for submitting a motion on giving a consent for enforced execution of a foreign court decision considering obstacles, established by Civil Procedural Code of Ukraine (Articles 399-400 of Civil Procedural Code of Ukraine).

At the same time if a Birth Certificate was issued due to a court decision in foreign State there is no necessity to recognize and to execute a foreign court decision and the Birth Certificate considers as foreign public document.

In particular, please specify whether your State applies different rules to the recognition of domestic adoptions made in certain States or regions and, if so, why.

Requirements for submitting documents and the procedure are the same regardless of which State a decision on adoption was delivered in.

2. Please briefly outline the **procedure** which must be followed in your State by persons seeking the recognition of a domestic adoption granted previously in another State.

An interested person (plaintiff or his/her representative) submits to a court, in the place where the debtor is domiciled or where a debtor's property is located, a motion on recognition and execution of a foreign court decision in Ukraine with required package of documents. If a debtor has no place of residence or living on the territory of Ukraine or his/her place of residence or living is unknown, a case on giving a consent for enforcement of a foreign court decision is considered by a court in place of location of a debtor's property in Ukraine (Article 392 of the Civil Procedural Code of Ukraine).

Documents, required to be attached to a motion on recognition and execution of a foreign court decision in Ukraine, are: 1) certified copy of a foreign court decision of which a motion on enforcement is submitted; 2) a public documents that a foreign court decision entered

into force (if this information is not mentioned in the decision); 3) certified in accordance with legislation translation of all abovementioned documents into the Ukrainian language or into a language, foreseen by international agreements of Ukraine.

Considering submitted documents and hearing parties' explanations a court delivers a ruling on giving a consent for enforcement of a foreign court decision or on refusal to satisfy a motion concerning this issue. A copy of a ruling is sent to parties by a court within three days from the date of a ruling's delivering.

In particular, please specify what legal or administrative steps are required for recognition.

A motion on giving a consent for enforcement of a foreign court decision shall be submitted to a court by a plaintiff personally (his/her representative) or, in accordance with an international agreement, consent to be bound by whis was given by the Verkhovna Rada of Ukraine, by other person through the State Power Authority of Ukraine (Article 393 of the Civil Procedural Code of Ukraine).

A motion shall be attached to with a required package of documents, a court considers them and in case of absence of grounds for refusal delivers a ruling on recognition and execution of a foreign court decision on adoption in Ukraine.

In case of necesaty civil status acts may be amended by such court decision and a new Birth Certificate of a child may be issued.

3. What is the competent authority in your State for such matters?

The competent authority for considering a motion on recognition and execution of foreign court decisions is a court of Ukraine.

***Cases which have arisen in your State***

4. Has your State been asked to recognise domestic adoptions granted previously in other States? If so:

- (a) How many such cases have arisen in the past year?

Motions on recognition and execution of foreign court decisions may be submitted under international agreements to a competent court of Ukraine directly or through the Ministry of Justice of Ukraine. However, Ukrainian courts do not keep separate statistics on such cases.

Past three years?

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- (b) In such cases, why was recognition of the domestic adoption sought?

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- (c) What type of document was presented for recognition?

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- (d) Was recognition permitted?

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- (e) In cases where recognition was refused, what were the reasons?

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In particular, have there been any cases in which recognition was refused by your State on the basis that jurisdiction had been inappropriately assumed by the foreign authority?

There is no data concerning such cases. However, the grounds for refusal to recognize and execute a foreign court decision are violation of jurisdiction rules. Thus, paragraphs 1 and 2 of part 1 of Article 77 of the Law of Ukraine "On Private International Law" foresees that the jurisdiction of courts of Ukraine is exclusive if in cases on relationships between children and parents both parties have their place of residence in Ukraine and if cases concerns adoption, which was made or is made on the territory of Ukraine.

(f) Where recognition was refused, what actions, if any, were taken with respect to the status of the child?

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(g) Has there been any cross-border co-operation / communication between your State and any State(s) which granted the adoption(s) in these cases?

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5. In your State's experience, do (some or many) families with an adopted child move to your State without having the child's adoption formally recognised in your State?

There is no information concerning such cases.

Does this create any problems for the family?

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## **B. RECOGNITION IN ANOTHER STATE OF DOMESTIC ADOPTIONS GRANTED PREVIOUSLY IN YOUR STATE**

### ***The law and procedure in your State***

6. In relation to the granting of domestic adoptions in your State:

(a) Are any special rules or procedures followed when a case involving a domestic adoption has an international element (e.g., it involves a foreign national child and / or foreign national prospective adoptive parents, despite the fact that they are all habitually resident in your State)?

Referring to Article 69 of the Law of Ukraine "On Private International LAW" adoption and its annulment are regulated by personal law of a child and personal law of an adoptive parents (parent). If adoptive parents are spouses, who have no common personal law, thus it must be applied a law, which determines the legal effects of a marriage.

Ability of a person to be an adoptive parent is determined in compliance with his/her personal law.

Legal effects of adoption or its annulment are determined by personal law of an adoptive parent.

Supervision and accounting of children adopted in accordance with this Article, are made referring to the personal law of a child.

In case of adoption of a child, who is a national of foreign State, in Ukraine the adoption procedure is exercised in compliance with legislation of both Contracting States, which an adoptive parent and a child are nationals of (according to international agreements (treaties) on legal assistance and cooperation in civil matters). It is necessary for adoption, if this is required by a legislation of the Contracting State which a child is a national of, to obtain a consent of an adopted child, his/her legal representative and a consent of the competent State Authority.

If an adoptive parent is not a national of Ukraine it is obligatory for adoption of a child, who is a national of Ukraine, to obtain a consent of the Central Authority of the

Executive Power of Ukraine, which realizes the state policy in the area of an adoption and a child's rights protection. Nowadays it is the Ministry of Social Policy of Ukraine.

An adoption of a child, who is a national of Ukraine, by a foreigner, made in a competent Authority of a State, where a child resides, is valid under condition of preliminary obtaining of a consent of the Central Authority of the Executive Power of Ukraine, which realizes the state policy in the area of an adoption and a child's rights protection, namely in the Ministry of Social Policy of Ukraine. An adoption of a child, who is a national of Ukraine, by a foreigner in Ukraine is made due to general grounds, established by Chapter 18 of the Family Code of Ukraine.

While prospective adoptive parents, who are foreigners permanently residing in Ukraine, what is confirmed with a permission for permanent residence in Ukraine, decided to adopt a child, they shall form documents on the territory of Ukraine (para 33 of the Procedure of the exercise of the adoption and supervision of observance of the rights of adopted children, approved by the Resolution of the Cabinet of Ministers of Ukraine of October 8, 2008 № 905).

(b) What type of document is issued for domestic adoptions granted in your State?

In accordance with Article 207 of the Family Code of Ukraine an adoption is made under a court decision. Simultaneously, referring to Article 229 of the Family Code of Ukraine adoptive parents have a right to be recorded as a mother, a father of a child, what will be mentioned in a court decision about. After the court decision on adoption enters into force, adoptive parents receive a new birth certificate of a child in consideration of changes, made by the court.

In compliance with Article 224 of the Family Code of Ukraine a court, delivering the decision on adoption, takes into account obstacles, which have essential meaning, in particular:

- 1) health conditions and financial status of a person, who wants to adopt a child, his/her family status and living conditions, attitude to a child's upbringing;
- 2) reasons for which a person wants to adopt a child;
- 3) reasons for which the other of spouses does not want to be an adoptive parent, if only one of spouses submitted an application on adoption;
- 4) correlation of a person, who wants to adopt a child, with a child, as well as how long this person cares of the child;
- 5) personality of a child and his/her health conditions;
- 6) attitude of a child to a person, who wants to adopt his/her.

It is obligatory to submit to a court:

- documents confirming legal grounds of a child to be adopted (death certificates of parents, a court decision on deprivation them of parental rights either on recognition them as incapable or declared missing, appropriate acts about a foundling or an abandoned child etc., a consent of parents or custodian for adoption as well as a consent of a child, if he/she attained such age and development level when he/she can express a consent);

- documents confirming an opportunity of nationals to adopt a child (income certificates, certificates of no criminal record, health certificates, information about presence of appropriate living conditions, a conclusion of a Service on Children Issues concerning an opportunity to stand for an adoptive parent).

7. Are there any special rules or procedures which are followed when your State is made aware that another State has been requested to recognise a domestic adoption originating from your State?

There is no data

### ***Cases which have arisen involving your State***

8. Are you aware of situations in which recognition has been sought in other States of domestic adoptions granted in your State?

There is no data

If so:

(a) How many such cases have arisen in the past year of which you are aware?

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Past three years?

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(b) Which competent authorities were addressed in your State? And in the other State(s)?

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(c) In such cases, why was recognition of the domestic adoption sought?

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(d) Was recognition permitted by the other State(s)?

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(e) In cases where recognition was refused, what were the reasons?

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Have you ever had a case where the grounds upon which your State assumed jurisdiction to grant the domestic adoption were challenged by the foreign State?

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(f) Where recognition was refused, what actions, if any, were taken with respect to the status of the child?

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(g) Has there been any cross-border co-operation / communication between your State and any State(s) being asked to recognise the adoption in these cases?

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### **C. PRACTICAL PROBLEMS REQUIRING ACTION**

9. In light of the information you have provided in both sections above, overall, are there, in your State's experience, practical problems in this area that need resolving at the international level?

Nowadays Ukraine is not the party of the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, thus there is no vision concerning the necessity for solving relevant issues at international scale, however after accession to the mentioned international agreement Ukraine intends to change internal adoption procedure as well as intends to accede to consideration of international mechanism, which will be under development within HCCH.