**RECOGNITION OF DOMESTIC ADOPTIONS IN OTHER STATES**

***Background***

While the recognition abroad of *intercountry* adoptions (*i.e.*, adoptions of children habitually resident in one State by parents habitually resident in a different State) is, among its Contracting States, ensured by the 1993 Hague Intercountry Adoption Convention,[[1]](#footnote-1) no global instrument deals generally with the recognition abroad of *domestic* adoptions (*i.e.,* adoptions of children habitually resident in one State by parents habitually resident in the same State).

As a result, when domestically adopted children and / or their parents move to another State some time after the adoption was granted, the adoption may not be recognised automatically in the new State. This can have a number of consequences:

* the adoptive parents may need to go to court in the new State of habitual residence to seek recognition of the adoption order or follow an exequatur procedure, with uncertainty as to whether recognition of the adoption will be granted;
* there may also be problems in obtaining authorisation for the child to enter and reside in the new State. This can result in long, costly and complicated procedures for the family;
* moreover, if the new State of habitual residence does not recognise the child as the adopted child of the adoptive parents, the whole family may be left in a situation of legal uncertainty and conflicts in family status may arise. This can result in problems regarding parental responsibility and very practical issues in terms of school registration, medical care, etc. The non-recognition of an adoption can also create disputes in relation to inheritance rights.

Moving to a new home across borders is one possible scenario in which difficulties might occur for a family. However, even without a move to a different country, there are other scenarios in which a family may seek recognition in another State of a domestic adoption. For example, if the adopted child and / or the adoptive parents have the nationality of a different State, they may wish (or need) to ensure that the domestic adoption is also recognised in the State of their nationality.

In an era of increasing globalisation, these issues have recently attracted the attention of Members of the Hague Conference and other international organisations.[[2]](#footnote-2)

***Mandate from Council 2016***

In March 2016, the Council on General Affairs and Policy of the Hague Conference agreed that the Permanent Bureau should undertake some preliminary work in the area of the recognition of domestic adoptions in other States (see C&R No 30), and, in particular, attempt to identify the depth and extent of the issue at the global level by seeking information from National and Contact Organs and Central Authorities.

***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:

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| **Name of State:** | Please insert text here |
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| **Information for follow-up purposes** |
| Name and title of contact person: | Please insert text here |
| Name of Authority / Office: | Please insert text here |
| Telephone number: | Please insert text here |
| E-mail address: | Please insert text here |

1. **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.

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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.

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1. 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.

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

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

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

1. Has your State been asked to recognise domestic adoptions granted previously in other States? If so:
2. How many such cases have arisen in the past year?

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| Please insert text here |

Past three years?

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1. In such cases, why was recognition of the domestic adoption sought?

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1. What type of document was presented for recognition?

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1. Was recognition permitted?

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1. 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?

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1. Where recognition was refused, what actions, if any, were taken with respect to the status of the child?

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1. 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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1. 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?

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Does this create any problems for the family?

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

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

1. In relation to the granting of domestic adoptions in your State:
2. 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)?

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| Please insert text here |

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

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| Please insert text here |

1. 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?

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

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

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If so:

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

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1. In such cases, why was recognition of the domestic adoption sought?

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1. Was recognition permitted by the other State(s)?

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1. 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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1. Where recognition was refused, what actions, if any, were taken with respect to the status of the child?

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1. 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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1. **PRACTICAL PROBLEMS REQUIRING ACTION**
2. 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?

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1. *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.* [↑](#footnote-ref-1)
2. “Work in the adoption area following the Special Commission meeting of June 2015”, Doc. Prel. No 4A of February 2016 for the attention of the Council of March 2016 on General Affairs and Policy of the Conference, paras. 14-16, see, for example, the work undertaken by the European Parliament and the International Commission on Civil Status. More recently, see the Draft Report with recommendations to the Commission on cross-border aspects of adoptions prepared by the Committee on Legal Affairs of the European Parliament (2015/2086 (INL)). [↑](#footnote-ref-2)