

NAME OF COUNTRY OR ORGANISATION: **POLAND**

A EXPLANATIONS AND QUESTIONS

1. Description

- (a)** Poland is a State of origin
- (b)** Poland was represented at the 2000 Special Commission and its conclusions was discussed and implemented where appropriate.

3. Questions concerning scope

- (a)** No, there were not any problems in determining whether a child was or was not habitually resident in the State of origin
- (b)** Yes, there have been some doubts about the situation of temporary residents wishing to adopt Polish children. The question concerns in particular Polish citizens temporary staying in Great Britain (two years with the possibility to extend this period for the next 5 years), who wish to adopt a child in Poland. The similar doubts have appeared while examined the case of legal situation of Danish citizens staying temporarily in Poland on the basis of the EU citizen's residency permit - valid without time limit – and wishing to adopt a child – a Polish citizen. In this case it was also difficult to define whether they should be treated as habitually residents of Poland or Denmark, as it was impossible to identify if they are going to leave the territory of Poland at all or when they are going to do so.
- (c)** Yes, there have been some problems in determining whether the removal of the child was or was not “for the purpose of adoption” in the receiving State. Sometimes child is leaving to another country for holidays – upon the agreement issued by Polish court – and afterwards family who had a contact with child during the stay abroad submits an adoption application (in the majority of cases the application clearly states that it concerns the intercountry adoption procedures in accordance with the Hague Convention, even though the preparatory procedure has not been kept)

4. General principles for protection of children

- (a)** In the case when the child's parents could not exercise their parental authority (because they have died or being deprived of the authority) district court competent for the child residency place (custodial court of justice) may undertake necessary measures ex officio or at request, in order to protect a minor. The protection may have a form of custody or indication of guardian for a minor as well as placement in the care and rearing institution, foster family or family care institution.

- (b) According to the Article 114² Paragraph 1 of the Family and Custodial Code, adoption that causes the change of place of residence of the child being adopted, from Poland to any other country, may be exercised only when in this way the child may be ensured of the appropriate foster home environment. However, this regulation is not applied if there is a kinship relation between the adopter and the adopted child or when the adopter has adopted her/his brother or sister.

That is why, in order to qualify a child to the intercountry adoption, during one month the regional (voivodship) data bank has to search a candidates for foster family or candidates for child adoption within the territory of the voivodship. After the without-result search, the information about the child is transmitted to other regional data banks and they have also one month for searching appropriate candidates for child adoption. If this attempt is not successful, the child is qualified for the intercountry adoption and his/her data is transmitted to the central data bank run by the Public Adoption and Custody Centre. This central data bank includes information on children waiting for adoption and for whom it was impossible to ensure care within the adoption family in Poland.

- (c) The process of qualifying children for adoption is within the scope of competence of the adoption and custody centres. However the final decision in this regard is taken by the court of justice. According to the Polish law, children are adoptable if they are between 6 weeks and 18 years old.
- (d) If child is under the parental authority, the parents' consent is needed for the adoption procedure. If parents are deprived of their parental authority or they have died, the child's legal guardian has to issues such an agreement. However, in any case, when the child is over 13 years old, additionally the child's agreement is also required. Nevertheless, the Court of Justice examines any single case, especially by checking if the consent described in Article 4c) and d) of the Convention has been given freely. Furthermore, adoption and custody centres apply the rules concerning data collection on adoptable children and they are checking if the above-mentioned consent has been given and if the appropriate procedure has been kept.
- (e) No, the model form is not applied (lack of such information in the court register)
- (f) The Ministry of Justice do not have any information whether the courts of justice apply the Recommendation on the application to refugees children of the Hague Convention, or how often the Courts do that.
- (g) -(i) Adoption and custody centres are obliged to conduct psychological and pedagogical research and environmental inquiry regarding candidates wishing to adopt a child. They have also obligation to make trainings, qualify the candidates for adoptive parents as well as prepare family members for receiving adopted children. Minister of Social Policy authorised three adoption and custody centres in Poland to cooperate with

authorised organisations or agencies abroad. Within the scope of that cooperation, the information on candidates for adoptive parents may be exchanged.

- (j) Adoption and custody centres are responsible for the post-adoption care and services.

5. Central Authorities

- (a) Polish Central Authority performs all the functions under Chapter IV of the Convention, in particular it issues certificates on the accordance of the adoption procedure with the Hague Convention.
- (b) **Two persons employed in the Department of Social Assistance and Integration of the Ministry of Social Policy (one of them in the position of Deputy Director), have been authorised to exercise the role of the Central Authority. Both of them have education background in psychology.**
- (c) There is not any special procedure concerning staff training.
- (d) There have been no difficulties experienced with regard to the operation of the Central Authority.
- (e) There have been no difficulties experienced while communicating with central authorities in other countries.

6. Accreditation

Accredited bodies

- (1) Accredited bodies for intercountry adoption are established on the basis of legal provisions of the Regulation of the Ministry of Social Policy. Those are accredited bodies with ample and long-term experience in intercountry adoptions. They are also in charge of the trainings for Polish adoptive families. Accredited bodies cooperate on every-day basis and are in contact with Central Authority. They are also obliged to present annual reports on their works to the Central Authority.
- (2) Foreign accredited bodies present to Polish Central Authority the authorisation issues by the institutions in their countries. There are some countries (e.g. Italy) that have authorised several organisations for intercountry adoptions activities within the territory of Poland. Polish Central Authority addressed the Italian Central Authority to stop issuing such agreements.

8. Private international law issues

- (1) No, any difficulties with the jurisdiction applying have not been reported. However, it should be stressed that Poland is a part of bilateral international agreements, that include collision norms, as well as norms concerning jurisdiction in child adoption cases.
- (2) not applicable

9. Recognition and effects

- (1) Certificates of conformity are issued by Courts of Justice pronouncing in specific cases, using the standard Model Form recommended by the Hague Conference
- (2) No, any difficulties in obtaining certificates have not been reported. In cases, where the adoption were pronounced, Courts of Justice have been issuing certificates of conformity automatically.
- (3) It is necessary to mention the cases of recognition refusal that appeared in the cooperation with France, where the recognition of Polish decision on full adoption has been refused. There are two kinds of full adoption in Polish law. If parents agree for the child's adoption in future, without indicating any person as the adopter, it is a case of co-called irrevocable adoption. Whereas the parents' agreement have place during the adoption procedure, the adoption is revocable. French law does not envisage the possibility to cancel the full adoption and therefore the French side does not recognise decisions of polish courts of justices on full revocable adoption, referring to the public order clause.
- (4) Only Court of Justice could make decision on validity of a foreign adoption, after examining the circumstances of the case. There is no information on any recognition refusal of a such adoption decision.

11. Improper financial gain

- (1) Article 253 Paragraph 2 of Penalty Code specifies that anyone who is organising adoption against the rules of law, is liable to tree months up to five years' imprisonment. This is treated as special form of human trafficking crime, described in Article 253 Paragraph 1 of Penal Code.
- (2) - (3) **In years 1998 – 2003 five persons have been sentenced for crime described in Article 253 Paragraph 2 of Penal Code. All of them were Polish citizens.**
- (4) - (5) Adoption and custody centre works free of charge.

- (6) No, there were no difficulties experienced in this field.

12. Relative adoptions

Regarding the procedures of inter-family adoptions, it would be worthy to consider the possibility of publishing on the website, statements of States of the Convention giving precise information when the adoption is treated as the inter-family adoption, according to the State own law and whether this fact excludes application of the Convention.

In case of countries as Germany, Czech Republic and Moldova the question was directed by the Polish Ministry of Justices, asking to define whether the situation when mother's father adopt her child may be treated as inter-family adoption and if it excludes application of Convention. Germany and Czech Republic have answered that it was inter-family adoption and as the consequence the Convention was not applied.

14. Other forms of cross-border child care

Poland has signed the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children. However the Convention has not been ratified yet.

16. Additional safeguards and bilateral arrangements

Poland has not made any agreements with other Contracting State with a view to improving the application of the Convention. However, according to what was already mentioned in answer to question 8, Poland is a part of bilateral international agreements, that include collision norms, as well as norms concerning jurisdiction in child adoption cases. Those agreement have been signed with Contracting States as well as Non-Contracting ones.

17. Limits on number of States with whom co-operation is possible

No, there have not been any situation demanding necessity to confine co-operation under the Convention to a limited number of other Contracting State.

B SUGGESTIONS FOR THE SEPTEMBER SPECIAL COMMISSION

20. The suggestions for priority issues for the Special Commission works are as follows:

- problems on the scope of the Convention application, in particular presenting the interpretation of terms: „habitual residence”, „gewöhnliche Aufenthalt” in Contracting States**
- inter-family adoption – interpretation of the term in the internal law of Contracting States and the question of Convention applicability exclusion**
- implementation of the rule of personal child contact with prospective adoptive parents – before the Court decision on adoption, within the territory of receiving country**
- question of Convention applicability in case of child already staying within the territory of receiving country, as a consequence of holidays arrangements or due to the course of medical treatment followed abroad**
- possibility of information exchange between Contracting States on binding mutual agreements including rules on intercountry adoptions (collision as well as jurisdiction norms)**

ANNEXES

ANNEX 1 - ORGANIGRAM

ORGANISATION AND RESPONSIBILITY UNDER THE 1993 HAGUE INTERCOUNTRY ADOPTION CONVENTION

Country: POLAND

Please check the box(es) that indicate which body performs the stated function. States which are solely States of origin should complete only section A; States which are solely receiving States should complete only section B; States which act as both States of origin and receiving States should complete sections A and B. All States are requested to ensure that the Permanent Bureau has the information requested in Section C and to provide updated information where changes are needed.

- (CAN) Central Authority National
 (CAR) Central Authority Regional
 (PA) Public Authority
 (CT) Court or Tribunal
 (ABN) Accredited Body National
 (ABF) Accredited Body Foreign
 (APN) Approved Person National
 (APF) Approved Person Foreign
 (IAE) Independent Accrediting Entity appointed by Central Authority

Section A: States of origin

<i>Article</i>	<i>Action</i>	<i>Responsible Party</i>
4 a)	Establishes that the child is adoptable	<input checked="" type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input checked="" type="checkbox"/> CT
4 b)	Determines that possibilities for placement of the child within the State of origin have been considered	<input checked="" type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT
4 b)	Determines that intercountry adoption is in the child's best interests	<input checked="" type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input checked="" type="checkbox"/> CT
4 c); 16(1) c)	Ensures that all involved parties have been counselled; consent has been obtained; consent was freely given; and was only given after birth of child	<input checked="" type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT
4 d)	Ensures that child has been counselled and consulted when appropriate	<input type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input checked="" type="checkbox"/> CT
8	Takes all appropriate steps to prevent improper financial gain	<input type="checkbox"/> CAN <input type="checkbox"/> CAR <input checked="" type="checkbox"/> PA <input type="checkbox"/> CT
9 a); 30	Preserves adoption records and information; Ensures availability of information to child when appropriate	<input type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT <input checked="" type="checkbox"/> ABN <input checked="" type="checkbox"/> ABF
9 b)	Facilitates, follows and expedites proceedings with a view to obtaining the adoption	<input checked="" type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT <input type="checkbox"/> ABN <input type="checkbox"/> ABF
9 c)	Promotes the development of adoption counselling and post adoption services	<input checked="" type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT <input checked="" type="checkbox"/> ABN <input type="checkbox"/> ABF
9 d)	Provides Central Authorities with general evaluation reports about experiences with intercountry adoption	<input checked="" type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT <input type="checkbox"/> ABN <input type="checkbox"/> ABF
9 e)	Replies, in so far as it is permitted by the law of their State, to justified requests from other Central Authorities or public authorities	<input checked="" type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT <input type="checkbox"/> ABN <input type="checkbox"/> ABF

	for information about a particular adoption situation	
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<i>Article</i>	<i>Action</i>	<i>Responsible Party</i>
10; 11	Accredits bodies and ensures that accredited bodies meet the requirements of the Convention and the State	<input checked="" type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT <input type="checkbox"/> IAE
12	Authorises foreign accredited bodies to act in the State	<input checked="" type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT
16(1) a)	Prepares report on the child	<input type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT <input type="checkbox"/> ABN <input checked="" type="checkbox"/> ABF <input type="checkbox"/> APN <input type="checkbox"/> APF
16(1) a); 22(5)	Supervises preparation of report by approved persons	<input type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT <input type="checkbox"/> ABN <input type="checkbox"/> ABF
16(1) b)-d)	Determines, after giving due consideration to the child's circumstances and ensuring that consents have been properly obtained, that the envisaged placement is in the best interests of the child	<input checked="" type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT <input checked="" type="checkbox"/> ABN <input type="checkbox"/> ABF <input type="checkbox"/> APN <input type="checkbox"/> APF
16(2)	Transmits reports and documentation to receiving State	<input type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT <input type="checkbox"/> ABN <input checked="" type="checkbox"/> ABF <input type="checkbox"/> APN <input type="checkbox"/> APF
17 a)	Ensures that the prospective adoptive parent(s) agree to the placement	<input type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT <input checked="" type="checkbox"/> ABN <input checked="" type="checkbox"/> ABF <input type="checkbox"/> APN <input type="checkbox"/> APF
17 c)	Agrees that the adoption may proceed	<input checked="" type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT <input type="checkbox"/> ABN <input type="checkbox"/> ABF <input type="checkbox"/> APN <input type="checkbox"/> APF
18	Takes all necessary steps to obtain permission for the child to leave the State of origin	<input checked="" type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT <input type="checkbox"/> ABN <input type="checkbox"/> ABF <input type="checkbox"/> APN <input type="checkbox"/> APF
19(2)	Ensures that the transfer of the child takes place in secure and appropriate circumstances	<input type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT <input checked="" type="checkbox"/> ABN <input checked="" type="checkbox"/> ABF <input type="checkbox"/> APN <input type="checkbox"/> APF
19(3)	Returns reports if transfer of the child does not take place	<input type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT <input checked="" type="checkbox"/> ABN <input checked="" type="checkbox"/> ABF <input type="checkbox"/> APN <input type="checkbox"/> APF
20	Provides information on the progress of the adoption to the Central Authority of the receiving State	<input type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT <input checked="" type="checkbox"/> ABN <input checked="" type="checkbox"/> ABF <input type="checkbox"/> APN <input type="checkbox"/> APF
21	Consults with Central Authority or other body in receiving State in the event the placement fails and a new placement is necessary	<input checked="" type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT <input type="checkbox"/> ABN <input type="checkbox"/> ABF <input type="checkbox"/> APN <input type="checkbox"/> APF
23	Certifies that the adoption has been made in accordance with the Convention (if the adoption is completed in State of origin)	<input checked="" type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT
24	Retains authority to refuse adoption if manifestly contrary to the public policy of the State	<input type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT

<i>Article</i>	<i>Action</i>	<i>Responsible Party</i>
29	Ensures that no contact takes place between the prospective adoptive parent(s) and the child's parents or any other person who has care of the child until the requirements of Articles 4 a) and 5 a) have been met in accordance with the law of the State	<input checked="" type="checkbox"/> CAN <input type="checkbox"/> CAR <input type="checkbox"/> PA <input type="checkbox"/> CT
32	Ensures that no one derives improper financial gain, and that service providers do not receive remuneration which is unreasonably high in relation to services rendered	<input checked="" type="checkbox"/> CAN <input type="checkbox"/> CAR <input checked="" type="checkbox"/> PA <input type="checkbox"/> CT

Section C: Identification of responsible parties

Central Authority:

Ministry of Social Policy, Department of Social Assistance and Integration,
1/3/5 Nowogrodzka Street, 00-513 Warsaw

contact details:

Mrs Victoria Biederman, Deputy Director, tel: +48 22 629 62 89, fax: +48 22 661 14 81

Accredited Bodies:

Public Adoption and Custody Centre, 75 Nowogrodzka Street, 02-018 Warsaw

National Adoption and Custody Centre, 26 Jasna Street, 00-950 Warsaw

Catholic Adoption and Custody Centre, 194/196 Grochowska Street, 04-357 Warsaw

**Please provide name and contact information of person / department
completing this form:**

Department of Social Assistance and Integration, Ministry of Social Policy

ANNEX 2 – STATISTICS FORMS

Introduction and explanation

The complete data on intercountry adoptions has not been collected according to standard forms yet. The Standard forms and methodology on data collection is going to be introduced from 2005 on. However, below you will find main statistic data information on intercountry adoptions in Poland in 2004.

Data on the intercountry adoptions carried out by the three Accredited Bodies in Poland in 2004:

1. 387 children have been placed in 254 families.
2. Receiving countries, where the adoptive families come from:

COUNTRY	NUMBER OF CHILDREN
Italy	187
USA	84
France	39
The Netherlands	23
Sweden	22
Germany	10
Switzerland	6
Norway	4
Canada	4
Spain	3
Austria	2
Finland	2
Denmark	1
Venezuela	1