

**Questionnaire on the Practical Operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of intercountry Adoption**

**Name of country: Czech Republic**

1.
  - a) The Czech Republic is both a receiving State and a State of origin.
  - b) Not relevant.
  - c) Yes, it was. Its Conclusions and Recommendations were implemented.
2.
  - a) No comments.
  - b) No comments.
  - c) No comments.
  - d) Not applicable.
3.
  - a) – c) We have not met any difficulties yet.
4.
  - a) In the Czech Republic are following types of care and protection: adoption, foster care, guardianship, institutional care.
  - b) See Act №. 94/1963 Coll., Family Code

1) Adoption establishes between the adoptive parent and the adopted child the same relationship as is the relationship between parents and children, and a close relationship between the adopted child and the adoptive parent's relatives. The adoptive parents have a parental responsibility in upbringing of children (§ 31 to 37b).

(2) The adoption is decided on by a court upon a petition of the adoptive parent. The petition for adoption of a child to a foreign country must include a final and conclusive decision on approval of the adoption issued by the Office for International Protection of Children (§ 67 para. 3).<sup>7b)</sup>

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7b) § 35 para. 2 letter i) of the Act No. 359/1999 Coll., on socio-legal protection of children.

§ 64

(1) A child may be adopted only by individuals whose way of life guarantees that the adoption shall be to the benefit of child and society.

(2) A child can not be adopted by a person who has not capacity to legal acts.

## § 65

- (1) There must be an adequate difference between the age of adoptive parent and the age of the adopted child.
- (2) Only a minor child may be adopted and only if it leads to his or her benefit.

## § 66

- (1) A child may be jointly adopted only by spouses.
- (2) If the adoptive person is a spouse, the adoption may happen only with the other spouse's consent; however, this consent is not necessary if the other spouse lost capacity to legal acts or if gaining of his or her consent is prevented by an impediment that can hardly be overridden.

## § 67

- (1) The adoption requires consent of the legal representative of the child. If the child is able to consider the consequences of the adoption, also his or her consent is necessary except for cases when it would frustrate the purpose of adoption.
- (2) An adoption of a child requires consent of a parent even if he or she is minor.
- (3) An adoption of a child to a foreign country requires consent of the Office for International Protection of Children.

## § 68

- (1) If the child's parents are legal representatives of the child, their consent is not necessary if
  - a) they have not manifested a proper interest in the child permanently for at least six months, in particular by not visiting the child, by not fulfilling their maintenance duty to the child regularly and voluntarily and by not trying to rectify their family and social condition within the limits of their possibilities so that they can personally care of the child; or
  - b) if they manifested no interest in the child for at least two months after the child's birth even if no impediment prevented them from manifesting the interest.
- (2) The provision of paragraph 1 shall analogously apply if the parent is minor.
- (3) Satisfaction of the conditions mentioned in paragraph 1 shall be decided on by the court upon a petition of an authority of socio-legal protection of children as a curator of the child or upon a petition of a child's parent.

## § 68a

Furthermore, consent of the adopted child's parents who are his or her legal representatives is not necessary if the parents agree to the adoption in advance without relation to certain adoptive parents. The consent in advance must be given in writing by the personally attending parent before a court or before the relevant authority of socio-legal protection of children.

The consent can be given no earlier than after six weeks after the child's birth. The consent may be recalled only before the child is put into custody of future adoptive parents

#### § 68b

In cases mentioned in § 68 para. 1 and § 68a, the adoption requires consent of a curator appointed to the adopted child in adoption proceedings.

#### § 69

(1) Before issuance of the court's decision on adoption, the child must be put into the future adoptive parent's custody for at least three months; the cost of the pre-adoption care shall be covered by the future adoptive parent.

(2) Putting of a child placed in an upbringing institution on the basis of a judicial decision or of his or her parent's will into the future adoptive parent's custody shall be decided on by an authority of socio-legal protection of children; the provisions of § 67 to 68b shall apply analogously.

(3) If a foster father decides to adopt a child put into his or her fostering, the at least three-month pre-adoption care before issuance of the court's decision on adoption whose costs are to be covered by the future adoptive parent is not necessary if the fostering was at least three months long.

(4) The provision of paragraph 3 shall apply analogously if another individual than the parent into whose custody the child is put according to § 45 decides to adopt the child and also if a guardian who personally cares of the child decides to adopt him or her.

#### § 69a

Before deciding on the adoption, the court shall instruct the adoptive parent(s) about the purpose, content and consequences of adoption.

#### § 70

On the basis of a medical examination and of other necessary examinations, the court must ascertain the adoptive parents' health condition, their personal qualities and motivation to the adoption and consider whether they are not at variance with the purpose of adoption; the court must let the adoptive parent and the adopted child's legal representative know about the results of the adoption. The court must also ascertain the health condition of the adopted child and let the adoptive parent and the adopted child's legal representative about results of the examination. The court must also ask the authority of socio-legal protection of children to express its opinion.

#### § 70a

A child can not be adopted if a court's decision in fatherhood proceedings instituted upon petition of a man claiming himself to be the adopted child's father has not yet become final and conclusive.

## § 71

The adopted child shall have the adoptive parent's surname. A child jointly adopted by spouses shall have the surname determined for their other children; the same rule shall apply if the adoptive parent is the spouse of the adopted child's mother.

## § 72

(1) Adoption leads to extinction of mutual rights and duties between the adopted child and his or her original family. The same rule shall apply to rights and duties of a curator or guardian appointed in order to exercise these rights and duties for the parents.

(2) If the adoptive parent is a spouse of one of the adopted child's parents, the adoption shall not affect relationships between the adopted child and this parent and his or her relatives.

## § 73

(1) Except for irrevocable adoption, the adoption can be cancelled only by the court upon petition of the adopted child or of the adoptive parent for important reasons.

(2) Cancellation of the adoption leads to rise of mutual rights and duties between the adopted child and his or her original family. The adopted child shall have his or her original surname.

## **Irrevocable adoption**

## § 74

(1) Adoption may be done also in the manner that upon the adoptive parent's petition, the court decides that the adopted parent shall be written in the register instead of the adopted child's parents.

(2) In this way, the child may be adopted only by spouses, by one spouse living with one of the adopted child's parents in marriage or by a survivor of an adopted child's parent or adoptive parent. In this way, the child may be exceptionally adopted also by a lonely person provided that this adoption shall fulfil its social task. In such case, the court shall also decide that the data about the child's other parent shall be deleted from the register.

(3) This adoption can not be cancelled.

## § 75

The adoption may concern only a minor older than one year.

## § 76

The adopted child can be repeatedly adopted only if he or she is adopted by the adoptive parent's spouse or of the adoptive parent died or if the previous adoption was cancelled.

## § 77

- c) The decision that the adoptive parent shall be written in register instead of the adopted child's spouses can be issued by the court even subsequently if the adopted child is still minor and even if the adoption was realised according to the hitherto regulations. Unless the adopted child was heard in adoption proceedings, this decision does not require his or her consent.

4.

- c) The Ministry of Labour and Social Affairs shall entertain (for the purposes of domestic adoptions) a list of the children living in the Czech Republic suitable to be adopted as well as the waiting list of adoption seekers living here, both with necessary documentation.

The documentation concerning the seekers for adoption of a child from abroad shall, after being examined by the Ministry, forwarded to the Office for the International Legal Protection of Children to be put into a special waiting list for the purposes of the intercountry adoptions.

If the Ministry shall not mediate for an adoption within 3 months after putting the child into the list of the children or within 6 months after putting the seeker (who had before expressed his or her consent with putting into the special list after expiration of the said time limit) into the list of the seekers for a domestic adoption it shall forward copies of the dates to the Office for the International Legal Protection of Children to be put into the special waiting list.

The Office for the International Legal Protection of Children shall entertain lists

- of the children in the Czech Republic suitable for an adoption abroad
- of the children living abroad suitable for an adoption in the Czech Republic
- of the seekers abroad suitable for adoption of a Czech child
- of the seekers in the Czech Republic suitable for an adoption of a child from abroad

- d) The provisions on procedures concerning consents of the biological parents and other persons are in various acts. For instance in the Family Code [Art. 67 para. 3), Art. 68 a) – see above], in the Act on socio-legal protection of children (pre-adoption counselling courses)

- e) Yes.

- f) Not yet.

- g) Both married couples and single persons can apply for adoption in the Czech Republic. The applicants must submit following documents:

- Questionnaire completed by the applicants in native language with certified translation into Czech
- Photographs of the applicants (not more than 6 months old)
- Social report (Home study)
- Criminal record check (not more than 3 months old)
- Confirmation of applicant's employer with regard to income
- Medical check-up
- Copy of the marriage certificate
- Copy of birth certificates
- Copy of passports

h) It depends. About the concrete way of the preparation decides the Regional Office for socio-legal protection of children.

i) The Authorities for the socio-legal protection of children are according to our legislation charged to provide for the counselling of prospective of prospective adopters. Attending such courses and co-operation with Social Authorities is a condition enabling the adoption seekers to be accepted as prospective adoptive parents.

j) All appropriate measures shall be provided by the local Authorities for the socio-legal protection of children.

5.

- a) The Central Authority performs all functions under Chapter IV of the Convention
- b) The Central Authority has two lawyers who are responsible for matters concerning intercountry adoption.
- c) There are no special procedures.
- d) No
- e) We have not met any difficulties yet.

6.

(1)  
There are no domestic accredited bodies in the Czech Republic.

(2) Yes

- a) Any foreign accredited body has first to present the accreditation issued by a competent authority in its own state and principles of its working. Then, taking into account whether or not accreditation to another body from the state concerned had been granted before, the Czech Central Authority either issues the accreditation (permission) or refuses to do so.

- b) The foreign authorised bodies are supervised by the Czech Central Authority.
- c) We have not met any difficulties.

(3) According to the Act on the socio-legal protection of children, exclusively the Public Authorities (Authorities for the socio-legal protection of children) are allowed to mediate in adoption.

(4) No specific suggestions.

(5) Yes

(6) No.

7. (1) (a). We mediate only in one case in our function of Central Authority of receiving state. We obtained accurate and sufficient health and social information on the child in this case. 7.

(1) (b). The Czech Central Authority published list of documents, which must be enclosed to each application and the Central Authorities of receiving state prepare the application according to this list. So we have not experienced any problems at this point.

7. (1) (c) The Czech Central Authority mediated one case of intercountry adoption in its function of the Central Authority of the receiving state and in this case we received accurate information. In function of Central Authority of State of Origin we inform the Central Authority of applicants about the fees and costs of adoption.

7. (1) (d) There are no problems in this point now. The only problems were in question of translations and authentication of documents. Some states required authentication of the originals of documents with Apostille. These problems were discussed directly with the particular state and in all the cases we found a solution acceptable for both parties.

7. (1) (e) No problems

7. (1) (f) No problems

7. (1) (g) No problems

7 (1) (h) Time taken to process Convention cases depends on the number of applications and the number of children, suitable and available for adoption.

7. (2) The applicants can contact the State of Origin through our Office only.

7. (3) No problems.

7. (4) No placement made by our Authority has been broken down yet.

7. (5) Czech Central Authority doesn't insist on the legalisation with the Apostille. Simple legalisation made by the competent authority or the original of document is enough.

7. (6) We are not aware of such cases.

8. (1) (a+b) Czech Central Authority has not had any difficulties with jurisdiction of the authorities to grant or amend/revoke an adoption or with law applicable to the conditions governing, or the effects of, an adoption in general. Some problems have arisen in co-operation with Germany. Some (not all of them) German courts don't recognise the decision of Czech courts, issued under the Czech law, in cases of child-parents relationships and substitution of parents consent with adoption by the court decision or deprivation of parental responsibility (following the consent of this parent is not necessary). This practice is used in some parts of Germany only, so we think it is duty of the competent authority in Germany to unify the decisions of German courts.

8. (2) No body accredited in other Contracting State works directly in Czech Republic.

9. (1) French and Swedish Central Authorities use this form, no court sends us this form. Czech Central Authority issues the Certificate of Conformity of Intercountry Adoption immediately after the placement the child in the pre-adoption care of prospective adoptive parents.

9. (2) No.

9. (3) We have no information to this point.

9. (4) If the adoption is within the scope of Convention and is made between two contracting states, the rules of Convention must be followed otherwise the adoption wouldn't be recognised. But Czech law allows the private adoptions also between the Member states, so private adoptions are recognised in Czech Republic. It is not clear if the private adoptions are within the scope of Convention or not.

10. (1) The applicants pay no fees for mediation in adoption neither to the Czech Central Authority nor to the baby/children homes. The applicants pay for translations of documents and costs linked to the travelling and stay in Czech Republic. We give this information to the Central Authority of receiving state in the first contact. We will publish this information in our website.

10. (2) No, we haven't had such experiences.

10 (3) No comments.

10 (4) No comments, no experiences.

10 (5) No experiences.

10 (6) See 10 (1) and 10 (5)

10 (7) See 10 (1) and 10 (5)

10 (8) From our point of view is very important to distinguish between the costs and fees paid by applicants in receiving country, e.g. costs and fees paid to accredited bodies for preparation of the application, and the fees and costs of adoption in the country of origin. E.g. there are no fees in Czech Republic and applicants must pay costs for translations (this money receives the



interpreter not Czech Central Authority or baby home) and costs for travelling and stay in the Czech Republic (again this money is not for the Czech Central Authority or baby homes) only, nevertheless the costs of adoption from Czech Republic differ from state to state and also from mediator to mediator within the same state.

10 (9) We have no specific problems in this point.

11 (1) a) There is a criminal sanction for trafficking in children. This sanction is part of Criminal Code and the criminal courts are deciding in criminal procedure.

b) Only Czech Central Authority can decide about the placement of child in intercountry adoption under the Convention. Czech Central Authority is a state body public body and employees are public servants. Any illegal money profit for the public servants can be subject to the criminal law as when the bribe receiving.

11 (2) We have no problems with improper financial gain from activities within the scope of Convention.

11 (3) There has not been any criminal prosecution of activities within the scope of Convention in Czech Republic yet.

11 (4) Ministry of Labour and Social Affairs checks all the activities in field of adoptions, incl. intercountry adoptions and has capacity to punish any activities contrary to the Act on the socio-legal protection of children or to give information to Police to start the criminal prosecution.

11 (5) See 11 (1) and 11 (4)

11 (6) The co-operation is very good.

12 (1) Czech Central Authority hasn't mediated in relative adoption under the Convention yet.

13 (1) If the child with special needs is free for intercountry adoption, we try to find a suitable family for this child, as in cases of children without special needs. We have no special programs for children with special needs.

14 (1) Our country mediates in international adoptions only. No other forms of placement abroad are possible under the Czech law.

14 (2) No

14 (3) We are already the party of the 1996 Convention.

15 The most common ways to circumvent Convention in Czech Republic are private adoptions and the cases where a man recognises paternity to new-born child and this child is then adopted by the wife of the "father".

16 Czech Central Authority co-operates with Member States of Convention only and applies the Convention as far as possible. Czech Central Authority doesn't co-operate with non-contracting countries at all.

We don't have any agreements under Art.32(2) of the Convention or any specific adoptions agreement with non-Contracting states.

17 Possibility to mediate in adoptions is linked to the number of children not to number to co-operating states. Number of applications is limited by number of children, available for adoption. It is not necessary to confine the cooperation under the Convention to a limited number of other Contracting state, it is necessary to confine the number of applications. If necessary, the Czech Central Authority agrees with other Contracting state the maximal number of applications that can be filed a year.

18 Czech Central Authority participates in training sessions and seminars of staff and directors of baby and children homes to inform them about the possibilities of intercountry adoption. The participants from other countries can help in training sessions and seminars for the prospective adoptive parents.

19 We would not. There is a difference between the preparatory work on a new convention and monitoring an existing one.

20 What adoptions are within the scope of the Convention and what are not. For instance, adoptions of children by relatives living abroad without mediation by the Central Authorities and without respecting "principle of subsidiarity".