



Hague Conference on Private International Law Permanent Bureau  
Scheveningsweg 6  
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Holland

File no 05-602-00022      Caseworker: Hanne Kristiansen      Date

**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**

The Danish Central Authority, The Ministry of Family and Consumer Affairs, Department of Family Affairs, hereby answers the abovementioned questionnaire:

**Question 1**

- (a) Denmark is merely a receiving State.
- (b) Not relevant
- (c) Both the Department of Family Affairs (in 2000 called "Department of Private Law") and The Danish National Board of Adoption was represented at the 2000 Special Commission.

On the basis of the discussions at the 2000 Special Commission, Denmark has especially worked to extend the use of medical reports on children and also - together with other European contracting states - taken the initiative for making similar reports on children's psychological and social conditions as a supplement to the existing medical reports. Denmark presented a draft at the 11<sup>th</sup> informal working confer-

ence of European central authorities for intercountry adoption Berlin, 16 – 20 March 2005, and the European countries in general supported the idea.

The supplementary report will be forwarded to you as soon as possible.

### **Question 2**

In regard to “good practice” our department has no comments.

### **Question 3**

Our department still experience difficulties in regard to applications from mixed couples resident in Denmark, who wish to adopt a niece or nephew resident in another country. Furthermore we receive applications concerning adoption of stepchildren, where the child at the time of the application is resident in another country.

We still find that the convention is not adjusted to relative adoption.

### **Question 4**

*Section (a)-(f)* is, as far as we see it, only relevant to States of Origin.

*Section (g)-(h)*:

The basic principle in regard to adoption in Denmark is that the adoption must be in the best interest of the child. This consideration for the child and its future is the superior principle in all adoption activities.

In order to ensure and promote the welfare of the child to be adopted all prospective adoptive parents must be subject to an examination, and for almost all prospective adoptive parents an adoption course is mandatory before adopting a child from abroad.

The secretariat of the joint council in the county of the applicant carries out a thorough investigation of the applicant, before the approval can be granted. The results of the investigation are presented to the joint council, which is the authority competent to decide whether or not the applicant can be approved as a prospective adoptive parent.

The investigation is divided into three phases:

**The first phase** concerns the question whether the applicant fulfils the following general conditions for approval as a prospective parent:

- the age difference between the applicant and the child should - as a main rule - not be more than 40 years.
- applicants, who want to adopt a child together must have lived together for at least 2,5 years and must be married.
- the physical and psychical health conditions of the applicant must not imply a risk that the adoption does not turn out to be in the child's best interest.
- the applicants home must be fit to house a child.
- the applicant must have proper economical conditions.
- the applicant must not have a criminal record, which implies that the applicant is not fit to be a adoptive parent.

The applicant can only go on to the second phase of the investigation, if the joint council has decided that the applicant fulfils the general conditions or if - under specific circumstances - the applicant is granted an exemption from the rules.

**The second phase** consists of a pre-adoption counselling course, which is mandatory to all applicants, who have not previously adopted a child from abroad. The purpose of the course is to supply the applicants with information concerning different aspects of adoption, and to provide a basis for the applicants themselves to assess, whether or not they possess the necessary resources to adopt a foreign child.

The course consists of two weekend sessions and one evening session on a workday.

**The third phase** consists of one or more interviews with the secretariat of the joint council. The purpose of this phase is to investigate if the applicant possesses the individual resources to adopt a child. At the end of the third phase, a home study report about the applicant is put before the joint council and the final decision on approval is made.

#### *Section (i):*

The above mentioned pre-adoption counselling course is important to the counselling of prospective parents, and the prospective adoptive parents also receive counselling from the secretariat of the joint council.

Furthermore 7 paediatricians under the Adoption Board have the task to ensure prospective adoptive parents independent counselling when they have to decide whether they want to accept a child in proposal or not.

*Section (j):*

The adoption counselling is handled by the secretariat of the joint council and by the staff of the pre-adoption counselling courses. The post-adoption service is handled by the social authorities who are obliged to make sure that the child is taking care of.

Furthermore all adoptive parents and adoptive children have the right of access to documents concerning the adoption, and if they wish, the Department of Family Affairs offers help finding the child's birth-parents.

**Question 5**

(a) The Department of Family Affairs has declared to the depositary of the Convention that the functions of the central authority under Article 15-21 are being performed by competent accredited bodies.

Before any intercountry adoption are carried out, the Department of Family Affairs look through the adoption case and checks if the procedure in the convention have been followed.

(b) The personnel dealing with intercountry adoption correspond to 2,5 layers and 0,5 office workers.

(c) New personnel will be trained by personnel with experience and information will be passed on in written material as well.

(d) We have no such experiences.

(e) We have no such experiences.

**Question 6**

(1) Denmark uses accredited bodies in intercountry adoption. According to Danish law, intercountry adoption should preferably be performed through the accredited bodies (adoptions placement agencies). However, when somebody wants to adopt a child, to whom the applicant is closely related, or if there are other special reasons, the Danish Ministry of Family and Consumer Affairs, Department of Family Affairs, can allow the adoption to be performed without assistance, from an adoption agency.

The Danish authorities find it important though to minimize the number of independent adoptions.

(a) Accreditations are granted by the Ministry of Family and Consumer Affairs.

(b) Two bodies have been accredited by the Ministry of Family and Consumer Affairs:

**AC Børnehjælp (AC International Child Support)**

Eckersberggade 17, 1

8000 Århus C

Denmark

Telephone: + 45 86126522

Fax: + 4586197853

E-mail: [adoption@a-c.dk](mailto:adoption@a-c.dk)

and

**DanAdopt (Danish Society for International Child Care)**

Hovedgaden 24

3460 Birkerød

Denmark

Telephone: + 4545816333

Fax: + 4545817482

E-mail: [mail@danadopt.dk](mailto:mail@danadopt.dk)

*Section (c)-(e):*

The task of the accredited bodies (adoption placement agency) is to create a contract between a Danish prospective parent and a foreign child, who according to the rules in the child's state of origin have been given up for intercountry adoption, and to secure that the adoption is carried out in a proper way legally and morally.

The Minister of Family and Consumer Affairs has the authority to give one or several private organisation permission to create such contracts between Danish prospective parents and foreign children. When a private organisation applies for permission to be approved as a placement agency, the Minister of Family and Consumer Affairs makes a joint estimation of the applicant, where there among other things attach importance to the applicants' motive and qualification to run a adoption place-

ment agency. Furthermore the Minister of Family and Consumer Affairs makes an investigation of the applicant's financial solidity.

The Minister of Family and Consumer Affairs authorize the private organisations to create a contract between a Danish prospective parent and a foreign child in preparation for adoption, and to give permission to carry through the adoption. The Minister of Family and Consumer Affairs issues an authorization to the organisations containing the specific rules and conditions for the organisation. The authorization is valid for 5 years.

We enclose a translation of the authorization and terms of authorization for an accredited body.

Please note that the authorization was given in 2001 by the Minister of Justice. Since then the adoption area has been transferred to the Minister of Family and Consumer Affairs but the authorization from 2001 is still valid.

Please also note that the authorization and terms of authorization for AC Børnehjælp is similar to the one for DanAdopt.

*Section (f)-(m):*

The Ministry of Family and Consumer Affairs, Department of Family Affairs is responsible for the general supervision of the accredited bodies concerning their economical and organisational conditions. The Department has the authority to withdraw the accreditation in consequence of serious problems. The Danish National Board of Adoption supervises the accredited bodies in relation to their activities abroad. The accredited bodies and the joint councils have to inform the Board, if they have experienced problems with specific authorities, countries or specific cases. Besides that, the Board has the opportunity to call in cases from the accredited bodies or the joint councils regarding specific matters. Finally the Board can criticize the actions of the accredited bodies.

Denmark has not experienced serious difficulties in regard to the accredited bodies or behaviour that contravened the accreditation criterias.

Every year The Danish National Board of Adoption publishes an annual report, which among other things contains evaluations of the performances of the accredited bodies.

(2) No such foreign accredited bodies has been authorised to act in Denmark.

(3) Not relevant.

(4) We have no specific wishes

(5) No comments

(6) As mentioned in the respond to question 5 (a) the Department of Family Affairs has declared to the depositary of the Convention that the functions of the central authority under Article 15-21 are being performed by competent accredited bodies.

Under Danish adoption law the joint council for adoption - or the secretariat of the joint council - in the county in which the applicants reside shall perform the tasks described in Article 5, sub-paragraph a, Article 15 and Article 21 of the Convention. There are 15 counties in Denmark. If a joint council for adoption decides to withhold its consent, the decision may be reversed by the Danish Central Adoption Board, which is central autonomous board of appeal under the Danish Ministry of Family and Consumer Affairs as well as the authority to supervise the work of the joint council.

If the case concerns adoption of a child closely related to the applicants, the above-mentioned tasks shall be performed by the Governor's office in the county where the applicants are residing. There are also 15 Governor's Offices in Denmark.

The tasks described in Article 17, sub-paragraphs b and c, are performed by the accredited body, if the child suggested by the authorities in the child's State of origin is without any doubt covered by the consent given by the joint council or the Adoption Board in regard to health, age, etc. If that is not the case, the tasks described in Article 17, sub-paragraphs b and c, are performed by the joint council or the secretariat of the joint council.

The certificate referred to in Article 23, paragraph 1, of the Convention is issued by the Governor's office in the county in which the applicants reside in connection with the adoption order also issued by the said office.

Denmark has not made a declaration under Article 22 (4).

**Question 7**

(1)

*Section (a)-(d):*

We have not experienced major problems of such kind.

We have experienced an improvement of the accuracy and sufficiency of the information on children regarding health and social conditions. We are essentially satisfied with the use of the medical reports and we hope to be able to encourage the states of origin to fill out similar reports regarding children's psychological and social conditions.

(e) We still observe some uncertainties in relation to Article 17 c, "Consent to that the adoption may proceed". In relation to a few countries we find it difficult to settle which authority that has been empowered to issue the agreement after Article 17 c, and in which form the agreement shall be available in. We therefore in practice have to accept that there is no declaration according to Article 17 c.

The Department of Family Affairs finds it difficult, that the countries under the Convention use different methods to give the agreement according to Article 17 c, and therefore recommends that the all countries uses the same form.

(f) We know that in very few cases it has proved to be difficult to make the adoptive parents cooperate in regard to the post-placement report. However, the Danish authorities as well as the adoption placement agencies are very much aware of the importance of the reports, and the importance is also being emphasized to the adoptive parents.

*Section (g)-(h):*

We have experiences no such difficulties.

(2)-(3):

According to Danish law, intercountry adoption should preferably be performed through the adoption placement agencies. However, under special circumstances the Department of Family Affairs can allow the adoption to be performed without assistance from an adoption agency, but such allowances are very much exceptions.



(4)

In a very few cases it happens that the prospective parents – having received the child – decide not to go on with the adoption case in Denmark.

The Danish Central Authority are very much aware that such cases are unfortunate to the child involved – and to intercountry adoption in general, and in the counselling of the prospective adoptive parents we do our best to avoid such situations.

However, when the situation has occurred, we have followed the procedure described in Article 21, including the information of the child's country of origin. In that context we would like to emphasize that –also realising our responsibility for a child being brought to Denmark to be adopted – it is our opinion that the child should only be returned to the country of origin if it is in fact the only solution and if it is considered to be in the best interest of the child.

(5)

We have no comments.

(6)

The question is, as far as we see it, only relevant to States of Origin.

### **Question 8**

We have not experiences such difficulties.

### **Question 9**

(1) As mentioned before the certificate referred to in Article 23, paragraph 1, of the Convention is issued by the Governor's office in the county in which the applicants reside. In other words the certificate is not issued by a court.

The standard form used by the Governor's office is similar to the Recommended Model Form "Certificate of Intercountry Adoption".

However, in practise the certificate is not always issued because of the declaration according to Article 17 c, which is not always in the case. In these cases the adoption can in our opinion not be seen as made in accordance with the convention.

(2)-(3)

No

(4)

Since October 1, 2004, foreign adoption decisions are recognised in Denmark if the adoption is effected with a view to adoption of the child by an adoptive parent or parents in Denmark in accordance with the provisions of the Convention.

The Minister of Family and Consumer Affairs may decide that other foreign adoption decisions also shall be recognised in Denmark.

At this point adoption decisions from the following countries are recognised in Denmark: Bolivia, Brazil, Bulgaria, Burkina Faso, Colombia, Guatemala, Peru, Sri Lanka and South Africa.

As it appears in some of these countries the Convention is not in force. However, when investigation this matter the question - no matter if the Convention was in force or not – we investigated the question whether the principles of the Convention were used in the countries and we investigated whether or not the foreign decisions had effects corresponding to a Danish decision.

## **Question 10**

(1)

There are no costs charged in connection with approving applicants as a prospective parent. However the applicant has to pay 1.500 D.Kr. to attend the mandatory adoption course.

The placement agency charge between 72.000-110.000 D.Kr. in connection with the adoption, but the applicant receives 40.000 D.Kr. in grant from the State.

This information is freely available.

(2)-(9)

No

### **Question 11**

The Danish adoption law prescribes the following:

#### “PART V *Adoption services*

§ 30. (1) The Minister of Family and Consumer Affairs may authorise one or more private organisations to act as adoption placement agencies for children who are not Danish nationals.

(2) The Minister of Family and Consumer Affairs sets out the specific rules and conditions to be followed by adoption placement agencies pursuant to subsection (1) above, and acts as supervisory authority over such agencies.

(3) The Minister of Family and Consumer Affairs may authorise the Adoption Board to supervise the organisations that have been authorised pursuant to subsection (1) above.

(4) The Minister of Family and Consumer Affairs may direct that prospective adopters shall be under an obligation to seek assistance from adoption placement agencies that have been authorised by virtue of subsection (1) above.

§ 31.(1) Only the authorities and organisations mentioned in sections 25, 25 a, 25 b and 30 of this Act may provide assistance in establishing contact between prospective adopters and a child with a view to adopting, and implementing the adoption (adoption assistance).

(2) The provision of subsection (1) above does not, however, include legal advice etc. in connection with contact to the above mentioned authorities, or in relation to procuring the information required by the said authorities.

#### *Mediation in connection with surrogate mothers*

§ 33.(1) No assistance may be granted or received for the purpose of establishing contact between a woman and a person wishing that woman to bear a child for them.

(2) No advertising is to be undertaken for the purpose of establishing contact of the nature described in subsection (1) above.

*Penalties*

§ 34. (1) Any person who

(i) disregards the provisions set out by virtue of section 30(2) of this Act, or  
(ii) contravenes sections 31 to 33 of this Act shall be liable to a sentence of a fine or of simple detention.

(2) Where regulations set out pursuant to section 30(2) of this Act are contravened, a sentence of a fine or of simple detention may be determined.

(3) Companies etc. (i.e. juristic persons) may be held criminally liable by virtue of the provisions in Part V of the (Danish) Penal Code.”

(2)-(6)

No

**Question 12**

See the respond to question 3

**Question 13-15**

The question is, as far as we see it, only relevant to States of Origin.

**Question 16**

Denmark has a bilateral agreement with Vietnam based on the principles on the principles of the Convention

**Question 17**

No

**Question 18**

We do not hold seminars etc. on the Convention but of course it would be interesting to know about seminars held in other countries and about the outcome of the seminars.

**Question 19**

No comments

**Question 20**

We find the question about independent adoptions very important and we would like it to be a topic on the Special Commission in September 2005. In that connection we will send you a paper concerning independent adoptions, which were discussed in at the Informal meeting in Berlin 2005. We will send you the paper as soon as possible.

With Regards

***Department of Family Affairs***

Hanne Kristiansen