



REGERINGSKANSLIET

Memorandum

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8 August 2005

Ministry of Health and Social
Affairs
Sweden

Permanent Bureau
Hague Conference on Private Law

**Answer from Sweden to the questionnaire on the
practical operation of the Hague Convention of May 29
1993 on Protection of Children and Co-operation in
respect of Intercountry Adoption**

1. Descriptions

Sweden is a receiving State.

Sweden was represented at the last meeting. A Governmental Committee used the conclusions and recommendations in its work during the years 2001-2003 and the suggestions from this Committee laid the ground in preparations for a Government bill to the Swedish Parliament in April 2004 (Govt bill 2003/04:131). The new legislation entered into force in January 1, 2005.

Especially questions and conclusions from the Special Commission, that aid to countries of origin must be separated from the adoption work and must not compromise the integrity of the adoption work, were of great importance for the committee and has influenced the Swedish legislation. Other important questions for the Committee brought up by the Special Commission were the view on high ethical standards, transparency of costs for the adoption work as well as the child's rights perspective.

2. Good Practices

We have experienced different problems in different States of origin, often associated with a lack of implementing legislation.

3. Questions concerning scope

We have not experienced any particular problems in interpreting the scope of the Convention.

4. General principles for protection of children

Different kinds of care for a child in need of care and protection

The responsibility is clarified in the Children and Parents Code

The Social Services are by the Social Services Act responsible for the wellbeing of children living in the municipality and shall provide for services needed for the children. The social services are the ultimately responsible for ensuring that the local authority inhabitants get the help they need. This may be provided in the form of financial assistance, care of

children and adolescents, care of substance abusers or other measures to help the most disadvantaged. Apart from providing services they have sole authority to act in certain situations, for example to intervene to protect children at risk.

On the general level all children are entitled for day care centres from the age of 12 months until they start school.
All children are entitled to child health care through the primary health care.

National adoptions

For adoption of a child living in Sweden it is necessary to get the permission from the biological parents, according to the Children and Parents Code. The social services shall always try to help the biological parents to keep the custody of their child in the first place. If that is not possible because one or both parents are dead, there are risks for the child's safety or the parents are drug addicts it might be considered that it is in the best interest for the child to be adopted by another family. The social services might otherwise consider the placement in a foster family for some time. Adoptions of Swedish children are very rare and about 20 newborn children are adopted each year in Sweden through the local social services.

Special provisions for reception of children

Persons under the age of 25 years are in principle ineligible to adopt. Spouses and registered partners may not adopt a child otherwise than jointly. See the Swedish Children and Parents Code, Sections 1 and 4 in Chapter 4, Adoption.

According to the Social Services Act, Chapter 6, no child may, without consent of the social welfare board or a care decision, be admitted for purposes of permanent care and upbringing, into a private home not belonging to either of his or her parents. The social welfare board may not grant consent before the conditions in the individual home and the feasibility of the care of the home have been investigated.

According to a change in Chapter 6 in the Social Services Act from January 1, 2005, the conditions for the consent of the social welfare board have been elaborated. The consent may only be granted if the applicant is suited for adoption. When making this assessment, particular regard should be taken to the applicant's knowledge and understanding of adoptive children and their needs and the implication of the planned adoption, the applicant's age, state of health, personal qualities and social network. It is the duty of the social worker making the home study to check that all this is fulfilled. To get consent the prospective parents must pass a home study process. The applicant should also have participated in a parental course assigned by the municipality prior to adoption.

The Government has commissioned the Swedish Intercountry Adoptions Authority (MIA) to produce uniform study material, to be used in the parental education all over Sweden, in consultation with the National Board of Health and Welfare, the Swedish Association of Local Authorities and

the Swedish Federation of County Councils. Adoptions organisations and organisations of adoptees have also been invited to take part in the process.

The parental education is compulsory from January 1, 2005. The parental education might be organised by the municipality or by a study organisation. The parents will also get some consultation in the home study process. In some municipalities the parents can see a psychologist.

The National Board of Social Health and Welfare will together with MIA work out the information needed for the social welfare boards for the guidance of the social workers making the investigations of prospective adoptive parents in the home study.

Post adoption services:

According to the Social Services Act, Chapter 5, the social welfare committee shall ...”make provision, in its care of children and young persons, for the special needs of support and help which may exist following the conclusion of judicial or other proceedings concerning custody, residence, contact or *adoption*”.

The amendment of “adoption” in this paragraph was made in 1998 to bring focus on the special needs that might occur among of adopted children in the municipality. In some municipalities and county councils there are groups of psychologists for children and young people and their families, and a few are specialised on children adopted from abroad. However, these provisions are not always fully developed in all municipalities to give good care and support when there are problems connected to children adopted from abroad.

The social services are, as mentioned earlier, responsible by law for all children living in the municipality. They are recommended to perform the first report about the development of an adopted child within 6 months.

The county councils are responsible for the preventive health care for all newborn and small children, as well as adopted children, and there are facilities available on the local and regional level.

Refugee children

The Recommendation concerning the Application to Refugee Children of the Convention has been given effect through Section 6 of the Act consequent upon Sweden’s accession to the Convention, which among other relevant legislation referred to is contained in the attached “Legal provisions concerning adoption”. However, there have as far as we know not been any cases where refugee children have been adopted to or from Sweden with application of the Convention.

5. Central Authorities

See the Act consequent upon Sweden’s accession to the Convention.

There are situations where certain functions of the Central Authority according to Chapter IV are performed directly by the Central Authority, i.e. in cases concerning related children or where there are otherwise special reasons. (Section 4 in the Intercountry Adoption Intermediation Act compared with Sections 2 and 4 in the Act consequent upon Sweden's accession to the Convention).

The number of personnel employed by the Swedish Intercountry Adoption Authority – Central Authority in Sweden – is 12, among others lawyers, social workers and economists.

6. Accreditation

See the Intercountry Adoption Intermediation Act. New extended rules on accreditation and supervision entered into force on 1 January 2005.

There are at the moment six accredited bodies in Sweden.

MIA twice yearly convenes conferences with participation of all the accredited bodies. Members of MIA's staff regularly visit the different associations' offices. Complaints against associations expressed by adopters or applicants are investigated. The associations shall every year send to MIA annual reports and financial statements, with income and expenses relating to the intermediation activities shown. Once every year a special report on each association's the MIA draws up compliance with legal criteria and other conditions. Representatives of MIA from time to time visit countries of origin and meet with organisations with which the associations cooperate and with responsible authorities.

In due time before the accreditation expires the associations wishing to continue their work must apply for a new accreditation. There are no special rules for renewal.

No foreign accredited bodies have been authorised to undertake intercountry adoptions in Sweden.

Sweden does not use or intend to use approved bodies or persons in intercountry adoption.

Sweden has made a declaration under Article 22 (4).

Particular issues to discuss concerning accreditation

Special Chapter on Accreditation

We would like to see a chapter on accreditation developed in the Guide to Good Practice for Intercountry Adoption. As important issues we suggest analysis and standpoints according to how to handle demands for financial support besides the costs for the

adoption and ethical aspects according to costs and fees, levels of payment, to avoid the impression of trafficking in children and dependency of income of adoptions.

7. Procedural Aspects

Our accredited bodies handle the vast majority of intercountry adoptions to Sweden. As has been reported from them there have been difficulties in obtaining sufficient information on the child from some countries. MIA has the same experience from cases where the Central Authority handles the procedure directly.

When a Swedish authorised adoption association has been engaged for adoption assistance there is no space for any arrangements from the prospective adopters for contacting directly placement agencies in the country of origin.

On the other hand, if permission has been given in a certain case that the adoption under the Convention may take place without the assistance of an authorised adoption association (Section 4 in the Intercountry Intermediation Act) MIA as central authority is playing a role in the intermediation process (Sections 2 and 4 in the Act consequent upon Sweden's accession to the Convention). From Swedish point of view there is in such a case no prohibition for the applicants to make different contacts in the country of origin, provided such contacts are allowed in that country. This has not given rise to particular problems.

No breakdowns of placements under Article 21 have been reported.

8. Private International Law issues

We have not experienced any difficulties in cases under the Convention concerning the jurisdiction of our courts to grant adoptions or concerning applicable law.

No foreign accredited bodies are acting in Sweden.

9. Recognition and effects

Although the task of granting adoptions in Sweden is a responsibility for the courts, MIA – and not the Court having made the adoption order - has been appointed as Competent Authority under Article 23 to issue Certificates of Conformity. The Recommended Model Form is always used.

There have been difficulties in obtaining certificates from different countries. The problems have been solved, however, except in relation to one country, which now has been a party to the Convention for more than two years.

No cases in which recognition of a Convention adoption has been refused under Article 24 are known.

In cases where the Convention has been followed but no certificates issued, the adoptions as a rule have been recognized

through a decision of approval by MIA in accordance with Section 3 in the Act on International Legal Relations Concerning Adoption. In that way the question of validity is once for all settled.

10. Payments of reasonable charges and fees

The six Swedish adoption organisations intermediate adoptions from 25 countries. The fees charged the Swedish adoptive parents range between 4,800 and 16,300 Euro. The average fee is 9,400 Euro.

46% of the fee is used to cover the organisations' costs for their intermediation work in Sweden and in the countries of origin. 40% of the fee is allocated for costs related to general care of the child while administration, expenses for the legal procedures, translations, etc count for 10% of the fee.

The information concerning the costs and the fees is available to prospective adoptive parents and intermediation organisations also enter into formal agreements stating terms of payment and cost specification.

MIA monitors the annual accounts and may, if necessary, require additional information.

11. Improper financial gains

The Intercountry Adoption Intermediation Act (1997:192) have statutes in sections 6, 6a, 7, 8a, and 9 that stresses measures and procedures to derive improper financial gain.

The Swedish Governmental Committee on Intercountry Adoptions discussed these questions thoroughly in 2001-2003 and the Governmental bill on Intercountry Adoptions (April 2004) includes clear standpoints.

The authorised organisations must keep focus on this in the countries they cooperate with and should report if there are problems.

All states do not have the same standpoints on what is improper financial gain.

12. Relative adoptions

In our opinion it is remarkable that some countries interpret the Convention as if it was not applicable to relative adoptions and therefore expressly refuse to apply its procedures to such adoptions. Some other countries seem to have been unaware of the scope of the Convention in this respect when acceding to it, therefore not being able to handle the applications for relative adoption under the Convention's rules.

14. Other forms of cross-border child care

An inquiry is dealing with how to find out what amendments to the legislation that are needed.

15. Avoiding the Convention

Some countries of origin allow their own citizens resident abroad to adopt domestically, although the Convention procedure should be applied.

16. Additional safeguards and bilateral arrangements

No arrangements are set out with other Contracting States.

The Governments of Sweden and Vietnam have agreed on a bilateral agreement in which some parts of the convention safeguards are applied.

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

It has not been necessary to confine cooperation under the Convention to a limited number of States.

B Suggestions for the September Special Commission

18. Seminars, training sessions or workshops on the Convention are not regularly held. On the other hand, when Sweden ratified the Convention and new legislation was introduced a quite extensive information campaign was carried out, in which mainly social workers gathered for seminars throughout the country.

19. It could be valuable with a group established - preferably for states, who have entered the Convention - to examine and report on practical problems and issues of administrative co-operation between countries. Meeting intervals as well as the financing of such a group need to be discussed.

20. For the Special Commission in September 2005 family adoptions would be an interesting topic. See our answer under question 12.

The questions of costs and finances are very important as well as the questions planned for the first day according to accreditation rules. Perhaps one day is not enough for discussions about accreditations.

ANNEXES

Comments on Annex 1 – Organigram:

Section B: Receiving countries

There is no question on where the decision on adoption is made. In Sweden local City or District Courts grant adoptions.

Article 12

No foreign accredited bodies are authorized to act in Sweden.

Article 15

The preparation of the report and the transmission thereof do not necessarily have to be performed by the same body. In Sweden the local social welfare authorities prepare the reports, while either the Central Authority or the accredited bodies transmit them to the State of Origin.

There are no approved persons preparing reports in Sweden.

Article 24

The function of refusing recognition of an adoption has not been entrusted to any particular authority. Non-recognition of an adoption may be considered in any court or other authority - e.g. the tax authorities responsible for the Population Register or the National Migration Board - where the adoption is referred.

Section C: Identification of responsible parties

Central Authority and Accredited Bodies:

See the information given on the Hague Conference's website.

Public Authorities / Courts and Tribunals:

There is a social welfare committee in every municipality in Sweden. The number of municipalities is 290. In addition to that many municipalities are divided into districts, all of them with its own decision-making committee. The number of City or District Courts is 63.

There are no Regional Central Authorities or Approved Persons.

Comment on Annex 2 - Statistics Forms

The statistics on internationally adopted children in Sweden is based on the children's registration in the Population Register after arrival and not on the finalization of the adoption.