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NORWAY

# International adoption of children

Reply to
Questionnaire for
the HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW
by Henning Jakhelln, University of Oslo, Norway

*(1) Do you agree that it is desirable to broaden the scope of the Convention's mandate so as to include not just recognition for foreign adoption orders, but also questions of jurisdiction, applicable law and, generally, rules and procedures relating to international adoption and, possibly, also international foster placements?*

(a) In my opinion it is desirable to broaden the scope of the mandate as indicated above. The reasons for a more broad scope are well described in the report [especially on pages 14 - 19], to which I concur.

(b) Probably, the mandate should also be extended to international foster placements, but this is a more difficult question than the previous one [(a) above]. Foster placements that are a preparatory stage to adoption should be considered as a part of the adoption process and thus be included in the mandate - i.e. where the purpose is that the child is later to be adopted by the foster parents. In this way it may be avoided that foster placement is being used as a way of getting round the rules regarding adoption.

But the purpose of adoption will not always be the reason for the foster relationship - e.g. where a child is placed with relatives or friends in another country for different reasons, but where the purpose is that the child shall sooner or later return to the original family. It is not obvious that such foster placements should be covered by rules and regulations concerning adoption. On the other hand, again, the status of

the child in a long-lasting foster relationship may de facto be very much the same as an adopted child.

In certain connections, Norwegian legislation has taken the consequence of this fact, and given the foster child the same legal position as an adopted child - e.g. the legislation on social security - and the foster child may also be given the name of the foster family.

*(2) Please describe the procedures which must be observed in your country where a child from abroad is placed with a family in your country,*
*A for adoption*
*1. if the child was previously adopted by that family in its country of origin*
*2. if the child was not previously adopted by that family*
*B in foster care.*

*In general,* it should be observed that in Norway, adoption orders are granted by administrative authorities and not by the courts, cf. sec. 1 of the Norwegian act on adoption dated February 28th, l986 (No. 8) [later on referred to as the Adoption Act].

As in the report, the expression "family" is used as synonymous to the term "adopting person". Usually, it is a question of a married couple which wish to adopt a child, but it does happen that a single person has this wish, and adopts a child from a foreign country. The Norwegian adoption act does not prevent a single person to adopt a child [Norwegian or foreign], but married persons may usually only adopt jointly, cf. sec. 5 of the Adoption Act.

*(2) 1 A.* Where a child from abroad is placed with a family in Norway for adoption, and the child previously has been adopted by the family in its country of origin, it should first be observed that such a foreign adoption order is recognized in Norway only where the family has obtained prior approval from the competent administrative authority in Norway to adopt a child in the foreign country in question, cf. the Adoption Act sec. 22 and (5) below.

Thus, Norwegian legislation is based on a procedure where the family obtains prior permission to adopt a child in the foreign country in question, and then adopts the child there.

*(2) A 2.* In order to obtain prior approval from the competent administrative authority in Norway, a family which is resident in Norway will have to follow the following procedure:

*(a)* As a first step, the family must apply to the Health and Social Welfare Committee of the municipality [under the Children's Protection Act] to have their home approved of as fosterhome with regard to adoption. Their application will be dealt with by a public social worker, who will prepare the case. As a part of this preparation, the social worker shall visit the home of the family, discuss the questions with the family and work out a social report. The social report shall thorougly evaluate the situation of the family, and contain the social worker's recommendation to the Committee mentioned.

Detailed guidelines as regards the social report, and the investigations and evaluation of the family, are worked out by the Ministry of Social Affairs.

*(b)* The Health and Social Welfare Committee does not decide upon the case, but recommends to the Government Adoption Office [which is the central authority for the whole country] whether prior approval should be granted or not. The Government Adoption Office will decide the case. If approved of, the Office will issue the approval to the family. If not approved of, the family may appeal the case to the Ministry of Social Affairs.

*(c)* After having adopted the child in the foreign country in question, the foreign adoption order will be examined by the Government Adoption Office, which shall approve of the foreign adoption order before the adoption is registered in the Norwegian adoption register.

*(2) B.* Where a child from abroad is to be placed with a family in Norway in foster care, for the purpose of later adoption, the family will have to follow the same procedure as described above [under (2) A 2 (a) and (b)], only with the difference that the family applies for permission to adopt a child from the country in question. If granted permission, the child will - after decision of the authorities of the foreign

country - come to Norway, and be adopted in Norway by order of Norwegian authorities. As long as the child stays in Norway, before an adoption order has been granted, the child's status will be that of a foster child. The competent authority in Norway to grant such adoption orders is the Government Adoption Office.

> The reason why there are two different ways of procedures is, that certain countries require that the adoption takes place in the country itself, while other countries accept that the adoption is formally completed in another country, as far as foreigners are concerned. India and Korea are exemples of the latter category, while Columbia [and at least previously Vietnam] are exemples of the first category. Families adopting children from Columbia will follow the procedure described above under (2) A 2, while families adopting children from India or Korea will follow the procedure described above under (2) B.

The Adoption Act does not establish any "trial period" [cf. the report No. 32], before an adoption order may be granted. If the child is adopted in a foreign country, and prior approval from Norwegian authorities is obtained, the foreign adoption is valid also in Norway as soon as the adoption order is granted by the foreign authority. In such cases, there will be not trial period.

> If a trial period is stipulated in the foreign adoption order, arises the question whether such a trial period is valid also in Norway. To my knowledge, this question has not been decided upon in Norwegian court or administrative practice. It could be argued, that Norwegian legislation recognizes foreign adoptions [below under (5)], and that it is the foreign adoption order as such, with conditions stipulated, that is recognized, provided only that the conditions are not against the principle of l'ordre public. It is also possible, that the principle of l'ordre public will have as result, that a shortlasting trial period may be accepted - e.g. a trial period of six months - while a longlasting period will not be accepted, e.g. a trial period of three years. It could also be argued, that a trial period de facto is established for all those children who come to Norway for the purpose of later adoption here, cf. below.

If the child has come to Norway as foster child, with the purpose of later adoption, it is a consequence of the procedure system that it will take some time before an adoption order can be granted in Norway. De facto, this period will in practice have the same effect as a formally stipulated trial period.

If the purpose of placing the child in foster care is not to adopt the child, the family will certainly have to follow the procedure described above [under (2) A 2 (a)],

but further procedures are not established. In practice, Norwegian immigration legislation may be a problem for the family - e.g. where a family which is now Norwegian citizens, but originally from a foreign country [e.g. Pakistan], wishes to take in foster care a child of their brothers or sisters living in the foreign country. The practice of the Norwegian immigration authorities is a restrictive one in such cases.

*(3) Please describe the procedures which must be observed in your country where a child from your country is placed with a family abroad*

*A for adoption*

*1. if the child was previously adopted by that family in your country*

*2. if the child was not previously adopted by that family*

*B. in foster care.*

In general, it should be observed, that while Norwegian families to quite an extent adopt children from foreign countries [in l987 446 children were adopted from foreign countries by Norwegian families], and it has thus become necessary to establish a spesific procedure for such cases, adoption of children from Norway are very rare and no spesific procedure has been established.

If the child was previously in Norway adopted by the family, the child is considered as a child of the family, and may thus follow the family to a foreign country, e.g. if the family should wish to emigrate to the foreign country.

To obtain a Norwegian adoption order, the family will usually have to be residents of Norway, or the Ministry may have agreed that the case should be dealt with in Norway, cf. sec. 17 of the Adoption Act. The purpose of the last alternative of this rule is to establish competence [jurisdiction] for Norwegian authorities in order to give assistance to Norwegian citizens domiciled abroad, e.g. where their country of residence refuses to deal with their adoption case because of their Norwegian citizenship. The Ministry may, however, also in other cases agree that the case shall be dealt with here, but it is assumed that this opportunity will be made use of to a limited degree only.

It may happen that a foreign citizen, who has been married to a Norwegian citizen, wishes to adopt the children of a previous marriage of the Norwegian citizen, e.g. where the Norwegian citizen has died. It may further be the case, that the foreign citizen wishes to return to the country of citizenship, or another country. If the foreign citizen is domiciled in Norway, Norwegian authorities will

have competence, and the application will be dealt with according to Norwegian law. It is also assumed that it is sufficient that the citizen is domiciled in Norway when the application for adoption is brought before the Norwegian authorities. However, even if the foreign citizen should not be domiciled in Norway, the Ministry may agree that the case be dealt with here. This will probably be done if the facts connects the case to Norway to such a degree that it is natural to deal with the case here.

Another exemple may also be mentioned, where a foreign family had a Norwegian child in foster care, and moved to a foreign country with the child. After some time, the family wished to adopt the child. In this case, Norwegian authorities dealt with the case, based on the view that they were competent. As the child was Norwegian, the case was dealt with by the County Officer, and appealed to the Government Adoption Office.

Provided that Norwegian authorities are competent, the competent authority will be the County Officer, as it is a question of adoption of a Norwegian child. In that case, a child study report will have to be worked out, and a social report regarding the adopting family will have to be presented by the family.

As regards the evaluation of the application, sec. 18 second subsection gives a spesific rule regarding children under the age of 18. According to this rule, "due importance shall be attached to the question whether the adoption will also be valid in any foreing state to which the applicant or the child is so strongly connected by way of residence, nationality, or in any other way, that it would entail considerable disadvantage to the child if the adoptin were not valid there".

It will be most unusual to place a Norwegian child in foster care with a family abroad. In principle, however, such decision may be made by the Health and Social Welfare Committee of the municipality in which the child is a resident. Such a decision will be based on the child study report and the social report regarding the foreign family.

*(4) Under what circumstances do the courts (authorities) in your country accept jurisdiction in matters of international adoption?*

As mentioned above [under (3)], the basic principle of jurisdiction is the domicile, and reference is made to the discussion there. This principle is expressed in sec. 17 of the Adoption Act, as regards the situation where a family applies for an

adoption order. The principle of domicile is, however, a general principle which will apply also in other situations regarding international adoption, e.g. where the question is whether an adoption order is valid or not.

*(5) Under what conditions does your country recognize foreign adoptions?*

The general principle of the Norwegian legislation is that foreign adoptions are recognized, provided that the foreign authorities had jurisdiction based on the principle of domicile or citizenship, or the adoption order was recognized in the country where the adopting family were domiciled at the time of the adoption. This principle is now expressed in sec. 19 first subsection of the Adoption Act.

Furthermore, the Ministry has a general competence to recognize foreign adoptions that are not covered by the above mentioned principle, sec. 19 third subsection last sentence of the Adoption Act. The reason for this rule is to avoid unreasonable results, especially where a long time has passed since the foreign adoption took place, e.g. the adopting family and the adopted child have lived for many years in another country before they moved to Norway.

In order to avoid doubts whether a foreign adoption is recognized by Norwegian law, the Ministry may decide this question in the individual case, sec. 19 third subsection first sentence.

A foreign adoption of a child under 18 years of age, resident in Norway at the time of the adoption will not be valid in Norway unless the Ministry has agreed to the adoption, sec. 19, second subsection of the Adoption Act.

Foreign decisions revoking an adoption, where either the adoptive family or the child is resident in Norway at the time of the revocation, will not take effect in Norway unless the Ministry agrees to the revocation, sec. 19, fourth subsection of the Adoption Act. - Other decisions revoking an adoption are not mentioned in the Adoption Act, but it must be assumed that such decisions are recognized in Norway if the general principles of jurisdiction expressed in sec. 19 first subsection are fulfilled.

It should finally be observed that a foreign adoption will not be recognized if it would obviously offend Norwegian legal principles [l'ordre public], sec. 20 of the Adoption Act.

The full text of sec. 19 of the Adoption Act is the following:

> "An adoption that has been granted and is valid in a foreign state (foreign adoption) is valid in this realm in so far as the adopter(s), at the time when the adoption was granted, resided in or was a citizen(s) of the foreign state in which the adoption was granted. Similar validity is also accorded to an adoptin that has been granted in a state other than that mentioned in the preceding sentence, in so far as the adoption is recognized in the state in which the adopter(s) resided at the time of the adoption.
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> Nevertheless, an adoption of a child who was under 18 years of age and resident in Norway at the time of the adoption will not be valid in this realm unless the Ministry has agreed to the adoption.
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> The Ministry may in the individual case decide whether a foreign adoption is valid in this realm according to the provisions of the first subsection. The Ministry may recognize a foreign adoption that is not covered by the first subsection.
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> A foreign decision concerning the revocation of an adoption in a case in which one of the adoptive parents or the adopted child is resident in Norway at the time of the repeal will not take effect in this realm unless the Ministry agrees to the revocation."

*(6) What system, if any, does there exist in your country to supervise the activities of private agencies active in searching for and placing children for adoption?*

The Children's Protection Act sec. 29 b) prohibits private persons to act as intermediaries in order to place children with other persons, with or without the purpose of adoption. Nor may associations act as such intermediaries [adoption agencies] without permission granted by the Ministry of Social Affairs. If permission is granted, the Ministry shall supervise the activities of the association. It follows from general principles of administrative law that the Ministry may attach conditions to such permissions within the frame of the purpose of the prohibition.

At the present time, such permissions are granted to two Norwegian associations, and the authority to supervise the activities of the associations are placed with the Government Adoption Office.

The permissions granted contain the following main conditions:

The name of the association must not be of such a kind that it may be mistaken for a public authority.

The association must be open for all adoption applicants throughout the country.

The association must keep a record of all members who are currently adoption applicants, and this record must be available to the public authorities of Norway.

All information sent out by the association shall also be sent to the public authorities of Norway.

The association must keep accounts, yearly audited by a public certified accountant.

The association shall co-operate with the public authorities of Norway, and all adoptions shall be channelled through the Government Adoption Office.

The association must not assist in bringing children to Norway before the formal approval by the different authorities concerned have been obtained.

The by-laws of the association are subject to approval by the Ministry of Social Affairs.

Furthermore, the system is established, that the contacts in foreign countries [with individuals, institutions etc.] must be approved of by the Government Adoption Office, before the association can place from the contact a child in adoption to a family. The purpose of such prior approval is to ensure that the contact abroad is bona fide.

The Government Adoption Office will, to quite an extent, try to have some direct connection with the different foreign contacts. In practice, persons from the foreign contact may from time to time visit Norway, and in that connection also visit the Government Adoption Office. Also, the Government Adoption Office [as well as the previous public body, the Council for International Adoptions] may arrange journeys to the different foreign contacts, in order to become more familiar with the local activities of the contact. Over the last 10 years quite a number of such journeys have taken place.

*(7) Please comment on the suggestion for a new international instrument on international co-operation in respect of intercountry adoption.*

It is probably a good idea to bring the question of a new international instrument on international co-operation in respect of intercountry adoption on the international agenda. The report [No.s 44-55] gives a number of arguments in favour of such an instrument. The only argument against such an instrument is, as far as I can see, that it will be an open question whether a possible new instrument will be accepted by the different countries to such an extent, that the instrument can in fact become effective. That is, however, the open question in all international work of this kind.

In the report are mentioned a number of questions that should possibly be discussed and regulated by such a new international instrument. At this stage it is probably not necessary to go into all those questions, but a few of the questions should probably be commented on.

*(a)* It should probably be established a supervision system to prevent intercountry adoptions to occur which are not in the interest of the child [No. 48 of the report], and this general principle is also in accordance with the basic rule of the Norwegian Adoption Act sec. 2. Such a supervision system should probably also include those adoptions which fail after some time. The basic principle as regards those adopted children should probably be, that it is the responsibility for the country in which those children are residents, at the time when the adoptions fail, to take proper steps to ensure that those children are taken properly care of. In practice, it may be the procedure that those children are either placed in foster care with another family, or adopted by a second family. To place the children in institutions should be the last alternative, but may - unfortunately - sometimes be the only possibility, e.g. where the child turns out to be mentally retarded. A guarantee that no adopted child should end up in an institution [the report No. 42 third paragraph] would go beyond what is possible in practical life.

*(b)* In this connection may also be mentioned the suggestion of the report [No. 51, second paragraph] that it may be a possible task to establish a system which can assist in the returning of the child where, after a period of trial, the emotional or mental state of the child requires its being returned to its country of origin. - Although the purpose of such a system is the very best, it may, in my opinion, open for an undesired possibility to make use of the trial period to "skim the merchandise" - i.e. that the physically and mentally healthy children are adopted after the trial period, while the unhealthy and difficult children are returned after this period. Such a system would be

contrary to the main principle, that it is the responsibility of the "receiving" country [and first of all a responsibility for the adopting family] to take proper steps to ensure that those children are taken properly care of. Under any circumstances, it can be in the interest of the child to return to its country of origin only where that country has a social system that can take proper care of the child. That may be the case in the developed countries - but for the many developing countries this may not be the case.

*(c)* It should probably be established a system, whereby prospective adopting families may adopt a child only through the intervention of specially licensed adoption agencies [cf. the report No. 49 i.f.]. To quite an extent, this is already the established system in Norway. However, it should be carefully considered to what extent such a system should apply.

Probably, certain exceptions should be made, e.g. for persons who are citizens of one country, but domiciled in the country where they wish to adopt a child. If such an exception should be made, the term "domiciled" should probably be clearified.

In this connection should probably also be established a system of co-operation between central authorities of the countries involved, which could also supervise the professional quality and - especially - the ethical conduct of the adoption agencies' activities [cf. the report No. 51 first paragraph].

*(d)* It should probably also be considered whether the adopting family - after the adoption order has been granted - should have an obligation to report about the development of the adopted child. As pointed out in the report [No. 50 second paragraph] there is an obvious demand for such information. If such an obligation should be introduced, it should also be considered for how long a period such reports should be submitted, and at which intervals. It is also a question whether such reports should be worked out by the adopting family itself, by the adoption agency, or by a public social worker. Further, it is also a question whether such reports should be sent directly from and to the local persons, authorities or institutions involved, or whether the reports should be channelled through central authorities.

> In Norway, the Adoption Act does not stipulate any such obligation on the adoptive family, but in practice such reports are to a certain extent worked out by the families and sent directly to the local institution abroad - sometimes through the adoption agency. Should this system be made compulsory, it would be necessary to amend the Adoption Act.

*(e)* It should probably also be considered whether the adopted child should have a right to be informed about its biological family [this question is mentioned in the report No. 27 i.f.]. In favour of such a right are the interests of the child, but these interests may be contrary to the interests of the biological father and - especially - the mother. In some countries illegitimate childbirth is considered a social disaster for the unwed mother. She may therefore have felt forced to give the child away in adoption, and may later have married a husband, who was - and is - unaware of her previous misfortune. If, after a number of years, the adopted child should have the right to be informed about its mother, and perhaps visit her, that could cause considerable trouble - to say the least - for the mother. In other words, this question touches on different cultural views as regards the social status of the unwed mother, and this difference in cultural background should be given special consideration as regards the possible right for the adopted child in this regard.

> Adoption of children in Norway [national adoptions] are in practice to a large degree "anonymous" adoptions. As regards international adoptions, adoption orders, appointments of guardianships etc. and other foreign court documents will in practice often mention the name(s) of the biological parents - unless, of course, where one or both of the parents are unknown, i.e. where it is a question of adoption of an abandonned child.

In Norway, this question was intensively discussed during the preparation of the Adoption Act of l986, and the Norwegian solution as well as the interpretation of the act on this point may perhaps be of interest also for an international audience.

> Sec. 12, second subsection of the Adoption Act now stipulates: "As soon as the child has attained the age of 18 years, he or she is entitled to be informed by the Ministry or by the County Officer who granted the adoption order who his or her natural parents are." This new rule also applies to adoptions granted under the previous act of l9l7, but with certain modifications.
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> The child is entitled only to the information available at the authorities mentioned. It is not supposed that these authorities shall have a duty to obtain information about the biological parents, if such information were not available at the time of the adoption. It is further supposed that the biological parents should be notified in advance that the adopted child wanted such information, provided that the parents could be found by reasonable efforts.

The act deals only with the adopted child's right to be given information from the public authorities mentioned. If information is available at the adoption agencies, these will probably have an obligation - on request - to pass the information over to the public authorities. Probably, the adoption agencies may also have an obligation to obtain information from their contacts abroad, provided that such information could be obtained without special difficulties. The act does not give the adopted child a right to receive the information directly from the adoption agencies, but, on the other hand, the rule of the act does not prevent the agency from giving the child this information.