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The ISS/IRC wishes a Happy Birthday to the 1993 Hague Convention, which, on 29 May 2018, celebrated its 25 years of existence, and renews its daily commitment to ensuring its implementation, with all involved actors.

EDITORIAL

Agreement that the adoption may proceed: A simple formality or a true safeguard of ethical adoptions?

Each of the procedural steps of the 1993 Hague Convention, including the agreement that the adoption may proceed as established in Article 17 c), has its importance in the implementation of adoptions, which respect the unique needs of children, and their rights, which, like those of the prospective adoptive parents, are recognised.

The procedural steps, which lead to the agreement that the adoption may proceed (AAP), as established in Article 17 (c) of the 1993 Hague Convention (see attached box), is a major opportunity to ensure that the prospective adoption is in the best interests of the child¹, that there has been no procedural irregularity, and that everything has been undertaken to ensure that the family project succeeds. Since the act is of prime importance, should we not pay close attention to its true meaning and its implementation?

A key act in the best interests of the child and in the fight to prevent procedural irregularities?

The AAP intervenes at a crucial moment in the adoption procedure, where a specific child is proposed to prospective adoptive parents (matching), who have been selected because of their capacity to respond to the emotional, psychic, physical and social needs of this child. This step therefore allows, at a fairly advanced but still sufficiently early stage in the procedure, to examine, in depth, the conditions, in which the adoptability of the child in all its facets has been pronounced, and the suitability of the prospective adoptive parents has been evaluated.

When the AAP is issued, the Central Authorities must be able to confirm that all domestic family

solutions have been exhausted (see p. 8), that the procedures for obtaining consent comply with the requirements of the Convention, and that the proposal of a child is in accordance with the project as defined with the prospective adoptive parents and with its limits. Are these verifications carried out meticulously? In the absence of sufficient information to reach an enlightened decision, are additional requests made in a systematic and fruitful manner? As AAPs are rarely refused, the question arises as to whether the opportunities for checks and preventive measures offered by this act are truly taken into consideration.

A key act in the hands of a key player?

The responsibility carried by the person, who issues the AAP, is heavy since they are going to decide to validate (or not) the matching, and confirm that the procedure established by the 1993 Hague Convention has been scrupulously complied with to this point. This responsibility extends to the potential suspension of the proceedings, if an irregularity has been observed, thus preventing the human tragedies caused by certain illegal adoptions (see pp. 5 and 6). The decision of this person is therefore crucial. The large majority of Central Authorities, which have recently been consulted on this issue, wish Article

17 (c) to be exclusively in the hands of the Central Authorities. The latter are, indeed, responsible for handling all the adoption procedures, and are independent as they have no interest – in particular financial interest – linked to the finalisation or not of the adoption. However, what happens when the Central Authority in question lacks the expertise and resources necessary for the successful implementation of the procedures?

In accordance with Article 22 (2) of the 1993 Hague Convention, this function is sometimes

What is the agreement that the adoption may proceed?

It is an act delivered, in principle, by the Central Authorities in the receiving country and the country of origin, once the proposed matching has been undertaken. Through this agreement, both Central Authorities will recognise the appropriateness of the matching, and will ascertain that all the preliminary steps have been respected.

Article 17 of the 1993 Hague Convention

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if:

- a) the Central Authority of that State has ensured that the prospective adoptive parents agree;
- b) the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;
- c) the Central Authorities of both States have agreed that the adoption may proceed;** and
- d) if it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorised to enter and reside permanently in the receiving State.

delegated to accredited adoption bodies, due to their greater knowledge of the case at stake, or

because they have the ability to access additional information. Although the delegation to an accredited adoption body is rare in practice, it raises the question of the control and support of these bodies by the Central Authorities. Should entrusting this responsibility to the accredited adoption bodies not be conditional on effective support from the Central Authority, as well as strict supervision by the latter of the accredited body, including resorting to sanctions if necessary?

A key act in spirit and in reality?

Although this procedure is of capital importance with regards to the aspects covered above, it is not always perceived as such by all the actors. In some countries, the AAP duplicates other national legislation, and becomes a mere administrative formality, in terms of meaning and impact. Furthermore, obstacles exist for its application at various levels: identification of the authority responsible for initiating the AAP, problems in obtaining additional information, the fixing of deadlines, which are too short for some and too long for others, etc.

Given these difficulties, it is important to ensure that the agreement fully fulfils its role, and guarantees that the adoption respects scrupulously the interests of the child concerned. This should lead to a greater harmonisation in practice, for example through the elaboration of a standard model of AAP, which the Permanent Bureau of the Hague Conference on Private International Law is currently working on, or a template for a report on the child, as proposed by the ISS². The impact of the AAP also depends on the cooperation between the countries and all the actors involved: the closer this cooperation, the easier it will be for the AAP to prevent illicit practices as well as potential adoption breakdowns.

Article 17 (c) ‘provides one of the most important procedural safeguards in the Convention’, according to the Guide to Good Practice No. 1. All actors must be made aware, and cooperate to ensure its successful implementation. Let us strive together to render this tool to prevent illegal adoption and adoption breakdown truly efficient, in the interests of all, and primarily of the children.

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