

# **EUROPEAN CONVENTION ON THE ADOPTION OF CHILDREN**

**Strasbourg, 24.IV.1967**

**Preamble**

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose, among others, of facilitating their social progress;

Considering that, although the institution of the adoption of children exists in all member countries of the Council of Europe, there are in those countries differing views as to the principles which should govern adoption and differences in the procedure for effecting, and the legal consequences of, adoption; and

Considering that the acceptance of common principles and practices with respect to the adoption of children would help to reduce the difficulties caused by those differences and at the same time promote the welfare of children who are adopted,

Have agreed as follows:

**Part I – Undertakings and field of application****Article 1**

Each Contracting Party undertakes to ensure the conformity of its law with the provisions of Part II of this Convention and to notify the Secretary General of the Council of Europe of the measures taken for that purpose.

**Article 2**

Each Contracting Party undertakes to give consideration to the provisions set out in Part III of this Convention, and if it gives effect, or if, having given effect, it ceases to give effect to any of these provisions, it shall notify the Secretary General of the Council of Europe.

**Article 3**

This Convention applies only to legal adoption of a child who, at the time when the adopter applies to adopt him, has not attained the age of 18, is not and has not been married, and is not deemed in law to have come of age.

**Part II – Essential provisions****Article 4**

An adoption shall be valid only if it is granted by a judicial or administrative authority (hereinafter referred to as the “competent authority”).

**Article 5**

- 1 Subject to paragraphs 2 to 4 of this article, an adoption shall not be granted unless at least the following consents to the adoption have been given and not withdrawn:
  - a the consent of the mother and, where the child is legitimate, the father; or if there is neither father nor mother to consent, the consent of any person or body who may be entitled in their place to exercise their parental rights in that respect;
  - b the consent of the spouse of the adopter.
- 2 The competent authority shall not:
  - a dispense with the consent of any person mentioned in paragraph 1 of this article, or
  - b overrule the refusal to consent of any person or body mentioned in the said paragraph 1, save on exceptional grounds determined by law.
- 3 If the father or mother is deprived of his or her parental rights in respect of the child, or at least of the right to consent to an adoption, the law may provide that it shall not be necessary to obtain his or her consent.
- 4 A mother's consent to the adoption of her child shall not be accepted unless it is given at such time after the birth of the child, not being less than six weeks, as may be prescribed by law, or, if no such time has been prescribed, at such time as, in the opinion of the competent authority, will have enabled her to recover sufficiently from the effects of giving birth to the child.
- 5 For the purposes of this article “father” and “mother” mean the persons who are according to law the parents of the child.

**Article 6**

- 1 The law shall not permit a child to be adopted except by either two persons married to each other, whether they adopt simultaneously or successively, or by one person.
- 2 The law shall not permit a child to be again adopted save in one or more of the following circumstances:
  - a where the child is adopted by the spouse of the adopter;
  - b where the former adopter has died;

- c where the former adoption has been annulled;
- d where the former adoption has come to an end.

#### **Article 7**

- 1 A child may be adopted only if the adopter has attained the minimum age prescribed for the purpose, this age being neither less than 21 nor more than 35 years.
- 2 The law may, however, permit the requirement as to the minimum age to be waived:
  - a when the adopter is the child's father or mother, or
  - b by reason of exceptional circumstances.

#### **Article 8**

- 1 The competent authority shall not grant an adoption unless it is satisfied that the adoption will be in the interest of the child.
- 2 In each case the competent authority shall pay particular attention to the importance of the adoption providing the child with a stable and harmonious home.
- 3 As a general rule, the competent authority shall not be satisfied as aforesaid if the difference in age between the adopter and the child is less than the normal difference in age between parents and their children.

#### **Article 9**

- 1 The competent authority shall not grant an adoption until appropriate enquiries have been made concerning the adopter, the child and his family.
- 2 The enquiries, to the extent appropriate in each case, shall concern, *inter alia*, the following matters:
  - a the personality, health and means of the adopter, particulars of his home and household and his ability to bring up the child;
  - b why the adopter wishes to adopt the child;
  - c where only one of two spouses of the same marriage applies to adopt a child, why the other spouse does not join in the application;
  - d the mutual suitability of the child and the adopter, and the length of time that the child has been in his care and possession;
  - e the personality and health of the child, and subject to any limitations imposed by law, his antecedents;
  - f the views of the child with respect to the proposed adoption;
  - g the religious persuasion, if any, of the adopter and of the child.

- 3 These enquiries shall be entrusted to a person or body recognised for that purpose by law or by a judicial or administrative body. They shall, as far as practicable, be made by social workers who are qualified in this field as a result of either their training or their experience.
- 4 The provisions of this article shall not affect the power or duty of the competent authority to obtain any information or evidence, whether or not within the scope of these enquiries, which it considers likely to be of assistance.

#### **Article 10**

- 1 Adoption confers on the adopter in respect of the adopted person the rights and obligations of every kind that a father or mother has in respect of a child born in lawful wedlock.

Adoption confers on the adopted person in respect of the adopter the rights and obligations of every kind that a child born in lawful wedlock has in respect of his father or mother.

- 2 When the rights and obligations referred to in paragraph 1 of this article are created, any rights and obligations of the same kind existing between the adopted person and his father or mother or any other person or body shall cease to exist. Nevertheless, the law may provide that the spouse of the adopter retains his rights and obligations in respect of the adopted person if the latter is his legitimate, illegitimate or adopted child.

In addition the law may preserve the obligation of the parents to maintain (in the sense of *l'obligation d'entretenir* and *l'obligation alimentaire*) or set up in life or provide a dowry for the adopted person if the adopter does not discharge any such obligation.

- 3 As a general rule, means shall be provided to enable the adopted person to acquire the surname of the adopter either in substitution for, or in addition to, his own.
- 4 If the parent of a child born in lawful wedlock has a right to the enjoyment of that child's property, the adopter's right to the enjoyment of the adopted person's property may, notwithstanding paragraph 1 of this article, be restricted by law.
- 5 In matters of succession, in so far as the law of succession gives a child born in lawful wedlock a right to share in the estate of his father or mother, an adopted child shall, for the like purposes, be treated as if he were a child of the adopter born in lawful wedlock.

#### **Article 11**

- 1 Where the adopted child does not have, in the case of an adoption by one person, the same nationality as the adopter, or in the case of an adoption by a married couple, their common nationality, the Contracting Party of which the adopter or adopters are nationals shall facilitate acquisition of its nationality by the child.
- 2 A loss of nationality which could result from an adoption shall be conditional upon possession or acquisition of another nationality.

#### **Article 12**

- 1 The number of children who may be adopted by an adopter shall not be restricted by law.

- 2 A person who has, or is able to have, a child born in lawful wedlock, shall not on that account be prohibited by law from adopting a child.
- 3 If adoption improves the legal position of a child, a person shall not be prohibited by law from adopting his own child not born in lawful wedlock.

#### **Article 13**

- 1 Before an adopted person comes of age the adoption may be revoked only by a decision of a judicial or administrative authority on serious grounds, and only if revocation on that ground is permitted by law.
- 2 The preceding paragraph shall not affect the case of:
  - a an adoption which is null and void;
  - b an adoption coming to an end where the adopted person becomes the legitimated child of the adopter.

#### **Article 14**

When the enquiries made pursuant to Articles 8 and 9 of this Convention relate to a person who lives or has lived in the territory of another Contracting Party, that Contracting Party shall, if a request for information is made, promptly endeavour to secure that the information requested is provided. The authorities may communicate directly with each other for this purpose.

#### **Article 15**

Provision shall be made to prohibit any improper financial advantage arising from a child being given up for adoption.

#### **Article 16**

Each Contracting Party shall retain the option of adopting provisions more favourable to the adopted child.

### **Part III – Supplementary provisions**

#### **Article 17**

An adoption shall not be granted until the child has been in the care of the adopters for a period long enough to enable a reasonable estimate to be made by the competent authority as to their future relations if the adoption were granted.

#### **Article 18**

The public authorities shall ensure the promotion and proper functioning of public or private agencies to which those who wish to adopt a child or to cause a child to be adopted may go for help and advice.

**Article 19**

The social and legal aspects of adoption shall be included in the curriculum for the training of social workers.

**Article 20**

- 1 Provision shall be made to enable an adoption to be completed without disclosing to the child's family the identity of the adopter.
- 2 Provision shall be made to require or permit adoption proceedings to take place *in camera*.
- 3 The adopter and the adopted person shall be able to obtain a document which contains extracts from the public records attesting the fact, date and place of birth of the adopted person, but not expressly revealing the fact of adoption or the identity of his former parents.
- 4 Public records shall be kept and, in any event, their contents reproduced in such a way as to prevent persons who do not have a legitimate interest from learning the fact that a person has been adopted or, if that is disclosed, the identity of his former parents.

**Part IV – Final clauses****Article 21**

- 1 This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.
- 2 This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification or acceptance.
- 3 In respect of a signatory State ratifying or accepting subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification or acceptance.

**Article 22**

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State to accede thereto.
- 2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

**Article 23**

- 1 Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which this Convention shall apply.

- 2 Any Contracting Party may, when depositing its instrument of ratification, acceptance or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
- 3 Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 27 of this Convention.

#### **Article 24**

- 1 Any Contracting Party whose law provides more than one form of adoption shall have the right to apply the provisions of Article 10, paragraphs 1, 2, 3 and 4, and Article 12, paragraphs 2 and 3, of this Convention to one only of such forms.
- 2 The Contracting Party exercising this right, shall, at the time of signature or when depositing its instrument of ratification, acceptance or accession, or when making a declaration in accordance with paragraph 2 of Article 23 of this Convention, notify the Secretary General of the Council of Europe thereof and indicate the way in which it has been exercised.
- 3 Such Contracting Party may terminate the exercise of this right and shall give notice thereof to the Secretary General of the Council of Europe.

#### **Article 25**

- 1 Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, or when making a declaration in accordance with paragraph 2 of Article 23 of this Convention, make not more than two reservations in respect of the provisions of Part II of the Convention.

Reservations of a general nature shall not be permitted; each reservation may not affect more than one provision.

A reservation shall be valid for five years from the entry into force of this Convention for the Contracting Party concerned. It may be renewed for successive periods of five years by means of a declaration addressed to the Secretary General of the Council of Europe before the expiration of each period.

- 2 Any Contracting Party may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe, which shall become effective as from the date of its receipt.

#### **Article 26**

Each Contracting Party shall notify the Secretary General of the Council of Europe of the names and addresses of the authorities to which requests under Article 14 may be addressed.

#### **Article 27**

- 1 This Convention shall remain in force indefinitely.
- 2 Any Contracting Party may, in so far as it is concerned, denounce this Convention by means of



a notification addressed to the Secretary General of the Council of Europe.

- 3 Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

#### **Article 28**

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention of:

- a any signature;
- b any deposit of an instrument of ratification, acceptance or accession;
- c any date of entry into force of this Convention in accordance with Article 21 thereof;
- d any notification received in pursuance of the provisions of Article 1;
- e any notification received in pursuance of the provisions of Article 2;
- f any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 23;
- g any information received in pursuance of the provisions of paragraphs 2 and 3 of Article 24;
- h any reservation made in pursuance of the provisions of paragraph 1 of Article 25;
- i the renewal of any reservation carried out in pursuance of the provisions of paragraph 1 of Article 25;
- j the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 2 of Article 25;
- k any notification received in pursuance of the provisions of Article 26;
- l any notification received in pursuance of the provisions of Article 27 and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 24th day of April 1967, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

### **Explanatory Report**

I. The European Convention on the Adoption of Children was prepared, within the framework of the Council of Europe, by a sub-committee of social and legal experts, and by the Social Committee and the European Committee on Legal Co-operation (CCJ). After examination by the Committee of Ministers, the Convention was opened to signature by member states of the Council of Europe on 24 April 1967.

II. The text of the explanatory report of the sub-committee, as amended and approved by the Committee of Ministers does not constitute an instrument providing an authoritative interpretation of the text of the Convention, although it might be of such a nature as to facilitate the application of the provisions therein contained.

#### **I. Background notes**

1. At the request of its Social Committee and taking into consideration Recommendation 292 (1961) of the Consultative Assembly, the Committee of Ministers of the Council of Europe called in April 1961 an ad hoc meeting of social and legal experts whose mandate was to consider the problems of international adoption of children.

2. The sub-committee was also required to take account of the intention of the Hague Conference on Private International Law to, draft a convention on adoption of children by persons not possessing the same nationality as the children or residing in another country.

3. It emerged that the transfer of children among member states of the Council of Europe for adoption purposes accounted, at least at that time, for only a minority of the cases of international adoption in which these states were concerned. For this reason, and, also, because international adoption is only a special case of adoption in general, the sub-committee came to the conclusion that the best way open to the Council of Europe of ensuring that proper safeguards were introduced for international adoptions was to deal with adoption in general.

4. The sub-committee therefore recommended the drafting of an international convention. There were two possible alternatives: either a convention introducing standard regulations or one containing a minimum of essential principles to which each Contracting Party would give effect. The subcommittee opted for the second alternative and drew up a list indicative of such principles. It also drew up a further list of principles which could be added to the convention but which the Contracting Parties would be free to accept or not.

5. The Committee of Ministers, then instructed the sub-committee to prepare a convention containing :

(a) a minimum of essential principles of adoption practice which each Contracting Party would undertake to incorporate in its international law, and

(b) a supplementary set of principles to which the Contracting Parties would be free to give effect or not as they saw fit.

It also asked the sub-committee to bear in mind the special problems which international adoption may present.

6. On these premises, the sub-committee drew up a draft convention which was submitted to the Social Committee and the European Committee on Legal Co-operation of the Council of Europe. The Committee of Ministers then adopted the text reproduced in the present

publication and opened the convention to the signature of member states of the Council of Europe on 24 April 1967.

## **II. General considerations**

7. In a sense, there is only one principle essential to good adoption practice, namely that adoption should be in the interest of the child as stated in Article 8, paragraph 1, of the Convention. This principle is indispensable but if taken by itself it might not be totally effective. For this reason the Convention elaborates this principle so as to give it precision and define the scope of its application.

8. The sub-committee found that there was a fairly wide field of agreement among social experts in matters of doctrine and sought to select as many of the more important features as were both suitable for inclusion in a legal instrument and likely to gain wide enough acceptance by governments of member states.

9. There are certain features of good adoption practice which are not suitable for inclusion in a legal instrument. For example, it is commonly considered right that an adopted child should be told by his adopters, at an early age, that he has been adopted ; but this is not a practice which could be enforced and the sub-committee has not dealt with it in the Convention.

10. Furthermore, since adoption is linked with other branches of the law such as guardianship, parental authority and inheritance, it was necessary to consider carefully the scope of the principles selected as obligatory and their definition, in order to obviate substantial alterations in other branches of law.

11. In accordance with its terms of reference, the sub- committee paid particular regard to the problems of international adoption. While international adoption is covered completely only by Articles 11 and 14, clearly the Convention as a whole will exert an important influence on international adoptions.

## **III. Commentary on the Articles of the Convention**

### **Article 1**

12. The measures referred to in this Article will usually take the form of legal or administrative texts. A Contracting Party will, however, be considered to have brought its law into line with the provisions of the Convention if a firm and constant practice implementing those provisions exists. Thus the term " legislation " used in the French text is to be taken, throughout the Convention, to mean legal rules of general application, including a firm and constant practice.

### **Article 2**

13. The term " to give consideration to " applies to Part III of the Convention which sets out principles it seems desirable to introduce into national law, without the Contracting Parties formally undertaking to do so.

### **Article 3**

14. As the Convention only concerns legal adoption, this Article therefore confines the application of the Convention exclusively to *de jure* adoption as opposed to *de facto*. Indeed, in many countries the law provides for cases of transfer of parental responsibility which do not constitute actual adoptions and these are not covered by the Convention.

15. Being designed for the protection of children at the time of their adoption, the Convention of course excludes persons who have come of age, but among those under age, it also excludes persons who have been emancipated by marriage or in some other manner and those who have attained the age of 18. Some of the Convention's provisions would be scarcely applicable in the case of adoption of children over 18 and, furthermore, this is the age limit retained in the Convention drawn up by the Hague Conference on Private International Law.

#### **Article 4**

16. The object of this Article is to prevent a child from being adopted by private contract without any intervention by the state and to ensure that the adoption is in the interest of the child. The competent authority is responsible for verifying that all the necessary conditions have been fulfilled. In order to make it clear that the competent authority has the power to permit or refuse adoption, the term " granted has been used.

17. Article 4 does not prevent there being two competent authorities, one of which would examine conditions of substance, and the other, conditions of form, of adoption.

#### **Article 5**

18. Paragraph 1 of this Article specifies the persons whose consent must be obtained. The words " at least " in this provision are intended to indicate that any Contracting Party may insist on the consent of other persons as well. This paragraph also states that the consents must be valid at the time adoption is granted by the competent authority and that they must relate to, a specific adoption, but the identity of the adopters may be concealed from the natural parents. It was understood that this provision would not prevent adoption on the basis of a consent according to which the child may be adopted by persons to be selected by an official body or by an officially authorised institution. This method is employed in some countries, in order that the identity of the adopter should not be disclosed to the natural parents.

19. Paragraph 2 covers two different hypotheses:

- (a) one in which persons whose consent is required cannot be traced or are incapable of giving their consent;
- (b) one in which the persons concerned refuse their consent for reasons which may be regarded as a misuse of their right to do so.

In every case, paragraph 2 stipulates that national law should provide for grounds on which the competent authority could, in exceptional cases, dispense with a consent or over rule a refusal of consent. Clearly this provision leaves the way open for the exclusion of any exception.

20. Paragraph 3 enables the Contracting Parties to specify that the consents of fathers and mothers who have been deprived of their parental rights shall not be required.

The wording of this paragraph allows for the case where the law makes it possible to deprive the natural parents of certain parental rights while leaving them the right to consent to adoption.

21. The object of paragraph 4 is to avoid premature adoptions to which mothers give their consent as a result of pressure exerted before the birth of the child or before their physical health and psychological balance have been restored. 22. Paragraph 5 contains a definition of the terms " father " and " mother ". Given this definition, the consent provided for in this

Article does not apply to the natural parents, when they are not considered by law as being the " father " and " mother ", for example because their child has been adopted.

#### Article 6

23. This article relates, in the generally accepted order of preference, first to adoption by a couple, and then to adoption by one person. In a country where the law only permits adoption by a couple, paragraph 1 would not make it obligatory to, introduce adoption by one person.

24. In most countries, when a child is adopted by a married couple, adoption may only be undertaken jointly ; but in certain countries it may be undertaken successively.

Paragraph 1 does not permit of a second adopter who is not the spouse of the first.

25. The object of paragraph 2 is to prevent an adopted child from belonging to more than one family. Two sets of adopters cannot therefore have parental rights simultaneously over the same child.

26. An adoption may be terminated in different ways, e.g. by revocation, by re-adoption, or *ipso jure*.

#### Article 7

27. This article does not prevent national law from prescribing a higher minimum age for the adopter than 21. However, the minimum age must be in keeping with the principle of adoption as conceived by the Convention, and this age may not therefore exceed 35.

28. The minimum age requirement may, however, be waived when the adopter is the child's father or mother or by reason of exceptional circumstances. An example of such circumstances is one where the law permits adoption by a married couple, even when the wife is under 21, if she is proved incapable of conceiving a child.

#### Article 8

29. In the English text the word " interest " (*intérêt*) has been used rather than " welfare " (*bien*) to avoid any misunderstanding. The same meaning should be attributed to the word " interest " in the English and the word " bien " in the French text of the Convention.

#### Article 9

30. Under paragraph 1, the competent authority must carry out enquiries before granting an adoption. It is however stipulated that such enquiries should be " appropriate ", which means that they should be adapted to suit each particular case. For example, when adoption takes place within a family. If an uncle adopts his orphaned nephews, there is not necessarily need for such extensive enquiries as in the case of adoption by persons who have never had any link with the children.

31. Paragraph 2 contains a list of factors which the competent authority must take into consideration before concluding that the proposed adoption will be in the interest of the child, as laid down in Article 8, paragraph 1. The words "*inter alia* " are inserted to show that the list in paragraph 2 is not exhaustive. The first factors listed are the personality, health and means of the adopter, particulars of his home and household and his ability to bring up the child, since the most important consideration is the family life which will be offered to the adopted child. However, all the factors listed in sub-paragraphs (a) to (g) are equally vital, for this

paragraph sets out to cover the gamut of concrete hypotheses, and an error or serious omission in respect of any one of these matters may jeopardise the success of an adoption.

32. Sub-paragraph (d) may be related to Article 17 which provides for a trial period. Since the latter provision is included in Part III of the Convention, it is not obligatory, but the majority of social experts attach great importance to it.

33. Sub-paragraph (e) imposes a limitation on enquiries into the child's family antecedents, that is, his former background and civil status. In at least one member country of the Council of Europe, the law forbids the disclosure of certain information in this respect.

34. If the child is old enough to have his own views about the proposed adoption, it is only natural that these should be taken into account as sub-paragraph (1) provides.

35. With regard to the religion of the child and that of the adopter, the insertion of the words "if any" in sub-paragraph (g) allows for the case of adopters or children who are of no religious persuasion.

36. Paragraph 3 emphasises the fact that the enquiries must be conducted by persons or bodies really competent in matters of adoption.

37. Paragraph 4 further authorises the competent authority to make enquiries, at least on certain points, if it thinks fit, either on its own or through channels other than the standard social enquiry.

#### **Article 10**

38. The main object of this Article is to ensure that an adopted child should be treated from, every standpoint like a legitimate child of the adopter and that all ties with his natural parents should be broken.

39. In paragraph 1, the words "of every kind" have been inserted to indicate that the paragraph is not confined to a single category of rights and obligations such as personal, as opposed to economic, rights and obligations.

40. In one member country, the rights and obligations of the father of a legitimate child are not analogous with those of the mother. A single person adopting a child exercises the rights and obligations of a father or of a mother, according to his/her sex. In another country, the rights and obligations of the mother of a legitimate child vary according to whether she is a wife or a widow. An unmarried woman adopting a child acquires the rights and obligations of a mother who is a widow. The Article has been so drafted that nothing in it is incompatible with these provisions.

41. The second half of paragraph 2 sets out certain financial obligations of the natural parents which may be preserved despite the general rule that the ties with the natural parents are to be broken. Some of these obligations are not recognised by law in all member countries.

42. Paragraph 3 is not contrary to any provisions under national law for the adoptive child automatically to assume the surname of the adopter, but lays down no absolute rule on the subject. In some countries, the competent authority may, on special grounds, permit the child to take a name other than that of the adopter; in others, the adopter is allowed to choose the child's surname. In some countries, a child adopted by a woman does not necessarily acquire her name.

43. Paragraph 4 takes account of the fact that in some countries, in order that the adopters should not expect full control over the adopted child's property, like the parents of a child born in lawful wedlock, it is recognised that the adopter's right to the employment of the adopted child's property will be restricted and less extensive.

44. Paragraph 5 contains a special provision concerning succession, a matter which is covered neither by paragraphs 1 to 4 of Article 10, nor by any other provision in the Convention. The object of paragraph 5 is to avoid discrimination between children born in lawful wedlock and adopted under the general rules of inheritance. In some countries, an adopted child inherits from its natural parents. In a number of countries an adopted child may inherit not only from his adopter but also from members of his adopter's family. In others, the child inherits only from the adopter himself. Paragraph 5 deals only with the right of the adopted child to share in the estate of his adopter, but it does not prevent a Contracting Party from allowing a child to inherit from members of the adopter's family, nor to conserve his rights of succession in his natural family. In some countries, inheritance of land is the subject of special legislation under which children born in lawful wedlock are themselves not on an equal footing. Paragraph 5 does not preclude legislation of this kind for, although it may have the effect of placing an adopted child at a disadvantage vis-à-vis a child born in lawful wedlock, this might equally well be the case if he himself was a child born in lawful wedlock.

#### **Article 11**

45. The provisions of paragraph 1 are not contrary to any national laws which provide for automatic acquisition of nationality but do not oblige every Contracting Party to recognise this principle. The scope of this paragraph is not limited to adoption taking place in the country of which the adopter is a national. It does not apply to the situation in which a child is adopted by two persons of differing nationality.

46. Paragraph 2 takes account of the general rule that statelessness is to be avoided wherever possible and also of the fact that it is clearly in the interests of the child that he should not become a stateless person.

#### **Article 12**

47. The aim of this Article is to remove the three most frequently encountered obstacles to adoption :

- restrictions on the number of children who may be adopted by the same adopter;
- prohibition of a person from adopting a child on the grounds that he/she has, or is able to have, other children in lawful wedlock;
- prohibition of a person from adopting his/her own illegitimate child.

48. The wording of paragraph 3 takes account of the fact that in some countries, an illegitimate child already enjoys the same position as a child born in lawful wedlock, so that adoption is not considered likely to improve his legal position.

49. In some countries, legislation prohibits a person who is in Holy Orders from adopting a child, especially his own child. Such a prohibition is not contrary to Article 12, paragraph 3, since it is not concerned with the legitimacy or otherwise of the child, but specifies an incapacity for certain individuals to adopt any child.

**Article 13**

50. Paragraph 1 emphasises that revocation is a grave step and that it must therefore be surrounded by very explicit guarantees in law and in its application. Moreover, it goes without saying that this paragraph in no way obliges a Contracting Party to make provision for revocation in its domestic law.

51. Paragraph 2 excludes from the application of the Article certain proceedings that resemble revocation but are not in fact the same.

**Article 14**

52. This provision, which is drafted in general terms, marks the need for genuine co-operation between the competent authorities of different countries whenever it is necessary to obtain information in connection with an adoption.

**Article 15**

53. This Article stresses that any improper reward arising out of an adoption must be prohibited by law.

**Article 16**

54. This article gives an obligatory interpretation of Part II of the Convention : the latter does not present a complete code of the best regulations and there is nothing to prevent a Contracting Party from going beyond the minimum set out in Articles 4 to 15.

**Article 17**

55. As mentioned in point 32 of the present report, Contracting Parties are recommended to stipulate that an adoption may not be granted until the child has been in the care of the adopters for a period which is not specified except that it should be long enough to enable the competent authority to arrive at a reasonable assessment of their future relations if the adoption were granted.

**Article 18**

56. This article takes account of the fact that in most countries adoptions can generally only be effected through agencies, various public or private institutions, social services etc. It is essential that such persons or bodies should be both well-informed, encouraged and supervised.

**Article 19**

57. This article should be read in conjunction with Article 9, paragraph 3.

**Article 20**

58. The purpose of this article is to avoid difficulties which may arise from :

- the natural parents' knowledge of the adopter's identity ;
- publicity of adoption proceedings or public records relating to adoption.



**Articles 21, 22 and 23**

59. These articles are in accordance with the final model clauses adopted by the Committee of Ministers of the Council of Europe.

60. The provision in Article 22, paragraph 1, for an open Convention was inserted with member states of the Hague Conference on Private International Law which are non-Members of the Council of Europe especially in mind.

**Article 24**

61. This article concerns those states whose law recognises several forms of adoption. It follows from the Article that at least one of these forms must be governed by the totality of the rules of the Convention, account being taken of the reservations which may be made under Article 25. As regards the other forms of adoption, it will be possible to create exceptions by excluding the application of the first four paragraphs of Article 10 and of paragraphs 2 and 3 of Article 12 ; as the exceptions permitted are limited to these provisions, the application of other rules of the Convention may not be excluded except by virtue of reservations made under Article 25 of the Convention.

**Article 25**

62. Under this article, Contracting Parties may make reservations but such reservations are limited to two in number. It also states that reservations of a general nature are prohibited. A further quantitative limitation is brought in by the fact that each reservation may not effect more than one provision. Paragraphs and provisions do not in fact always coincide, for some provisions are a combination of several paragraphs while some paragraphs actually contain two or more provisions. Taking Article 5, paragraph 1 – which contains at least three provisions – as an example, a Contracting Party would have to make three reservations if it desired to set all these aside, whereas a single reservation would have sufficed if it had not been stipulated that each reservation could not affect more than one paragraph. It follows that a reservation of a general nature for the purposes of the Convention would be constituted by a single reservation covering an Article, or where applicable one paragraph, if the text subject to the reservation contains more than one provision. In order to make it clear that the aims of the Convention will only be fully achieved when all its principles are recognised in the member countries of the Council of Europe as a whole, a time limit is placed on reservations : each reservation being valid for only 5 years. However, since a Contracting Party may not be able to undertake to withdraw a reservation within a given period of time, provision is made for the renewal of reservations for successive periods of five years.

**Articles 26, 27 and 28**

63. These articles are in accordance with the final model clauses approved by the Committee of Ministers of the Council of Europe.