CO-OPERATION BETWEEN STATES ON INTERCOUNTRY ADOPTION AND PROTECTION OF CHILDREN IN THE PRIVATE INTERNATIONAL LAW

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ABSTRACT

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For years child protection has been a very complex issue. Child protection is the protection of children from abuse, violence, trafficking, marriage, and labour and being separated from their families. Child protection is an important part of safeguarding and safeguarding children against abuse and violence is one part of a company's responsibility and it may help to reduce all measures that come in contact with children's safety.

A very good opportunity for unwanted and abandoned children by their family, regardless of the circumstances, is their adoption. Every State should enable children to have a better and happier life and if it is not possible in that State due to poverty then intercountry adoption is the best option for them.

The 1993 Hague Adoption Convention was developed to respond to the serious and complex human and legal problems in intercountry adoption. It recognizes that intercountry adoption may offer the advantage of a permanent family to children from whom a suitable family cannot be found in their State of origin. 1993 Hague Adoption Convention mentions that the best interests of the child shall be the paramount consideration in adoption. The 1993 Hague Convention establishes a system of co-operation between authorities in States of origin and receiving States, designed to ensure that intercountry adoption takes place under conditions that help to guarantee the best adoption practices and elimination of abuses.

Keywords: Inter-country Child Adoption, Protection of the Children, Co-operation, Hague Convention, International Private Law.

ÖZET

CO-OPERATION BETWEEN STATES ON INTERCOUNTRY ADOPTION AND PROTECTION OF CHILDREN IN THE PRIVATE INTERNATIONAL LAW

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Yıllardır çocuk koruma çok karmaşık bir konudur. Çocukların korunması, çocukların istismar, şiddet, insan ticareti, evlilik ve işçilikten korunması ve ailelerinden ayrılmasıdır. Çocukların korunması, çocukları istismar ve şiddete karşı korumanın ve korumanın önemli bir parçasıdır ve şirketin sorumluluğunun bir parçasıdır ve çocukların güvenliği ile temas eden tüm önlemlerin azaltılmasına yardımcı olabilir.

Koşullara bakılmaksızın, aileleri tarafından istenmeyen ve terk edilmiş çocuklar için çok iyi bir fırsat onların evlat edinilmesidir. Her Devlet, çocukların daha iyi ve daha mutlu bir yaşama sahip olmalarını sağlamalıdır ve bu Devlette yoksulluk nedeniyle mümkün değilse, ülkeler arası kabullenme onlar için en iyi seçenektir.

1993 Lahey Evlat Edinme Sözleşmesi, ülkeler arası kabulün ciddi ve karmaşık insani ve hukuki sorunlarına yanıt vermek için geliştirilmiştir. Ülkeler arası evlat edinmenin, kendi ülkelerinde uygun bir ailenin bulunamayacağı çocuklara kalıcı bir aile avantajı sağlayabileceğini kabul eder. 1993 Lahey Evlat Edinme Konvansiyonu, çocuğun yüksek yararının evlat edinmedeki en önemli husus olacağını belirtmektedir. 1993 Lahey Konvansiyonu, menşe Devletlerin ve kabul eden Devletlerin yetkilileri arasında, ülkeler arası kabulün en iyi evlat edinme uygulamalarını ve istismarların ortadan kaldırılmasını garanti altına alan koşullar altında gerçekleşmesini sağlamak üzere tasarlanmış bir işbirliği sistemi kurar.

Anahtar Sözcükler: Ülkelerarası Çocukların Evlat Edinilmesi, Çocukların Korunması, İşbirliği, Lahey Sözleşmesi, Uluslararası Özel Hukuk.

STATEMENT OF COMPLIANCE WITH ETHICAL PRINCIPLES AND RULES

I hereby truthfully declare that this thesis is an original work prepared by me; that I have behaved in accordance with the scientific ethical principles and rules throughout the stages of preparation, data collection, analysis and presentation of my work; that I have cited the sources of all the data and information that could be obtained within the scope of this study, and included these sources in the references section; and that this study has been scanned for plagiarism with "scientific plagiarism detection program" used by Anadolu University, and that "it does not have any plagiarism" whatsoever. I also declare that, if a case contrary to my declaration is detected in my work at any time, I hereby express my consent to all the ethical and legal consequences that are involved.

Velsa VELIU

INTRODUCTION

Generally speaking, there are millions of children in the world who are unwanted or abandoned by their families. The best opportunity for them to have a better life is to adopt them, whether it be domestic or intercountry adoption. In cases where the country of origin is poor, intercountry adoption is preferred, but only when adoption is for the best interests of the child. One of the conventions that is mainly dealing with child protection and intercountry adoption is the Hague Adoption Convention.

The 1993 Hague Adoption Convention was adopted on May 19 and is one of the most important conventions according to the adoption. It has 102 (one hundred and two) Contracting Parties, which covers cases in which the Convention has, and cases in which the Convention has not yet entered into force. The latest that deposited its instrument of accession to the 1993 Hague Convention and that will enter into force it is the Republic of the Congo (Congo-Brazzaville). Besides States Parties, there are also three States that did not yet ratified the Convention but are signatories (Nepal, Russian Federation and Republic of Korea). State parties that approved the 1993 Hague Convention may be divided as state of origin and receiving State. Since the best interests of the children are in the first place, the main goal of the 1993 Hague Adoption Convention is to protect foreign country children from abuse of adoption. The Convention makes clear that States must keep children within their state of origin but when it comes to the safety of the child international adoption should be used.

The first chapter of the thesis has to do with child protection in general. In this chapter, it is explained the parental responsibility and its regulation, the definition of the child, and the issues with which child protection has to do. One of the main issues described, it is child abuse, which is elaborated further by mentioning its types. In addition, trafficking, violence, and neglect of the child are noted too. Furthermore, child labour, child marriage, children's rights as well as child safeguarding is cited. And finally, we have shown for international conventions and organizations that deal with child protection.

In the second chapter, we discuss the intercountry adoption of children, the historical context, purposes, and issues of it. Besides intercountry adoption, the domestic adoption including its types is also mentioned. Another point that we have talked about is intercountry adoption as part of the Hague Convention, including its types, such as convention adoption and non-convention adoption. Also, the increase and decrease of intercountry adoption, as well as the arguments of it (the pros and cons) that are known as the issue of intercountry adoption have been mentioned. Besides these issues, other issues as who can adopt, who can be adopted, and the best interests of the child are explained. In this chapter, we have talked about an important point such as LGBT adoption and surrogacy. Finally, we have taken some decisions on how the courts of States like Serbia and Albania have judged the intercountry adoption.

The third and final chapter deals with the co-operation between States on intercountry adoption, reservations, denunciations, and responsibilities of the receiving country and sending country, according to the 1993 Hague Adoption Convention. In addition, we have mentioned structural institutions of intercountry adoption, such as Central Authorities and Accredited bodies. Furthermore, in this chapter it is also explained the procedure of the convention, how to apply to adopt a child in another contracting state, the matching stage, and the transfer of the child to the adoptive State. In the following, the recognition and effects of the adoption convention, as well as post-adoption issues are mentioned. And finally, it is also explained the adoption procedures of the two countries, such as Serbia, as a Hague Convention country, and Kosovo, as a non-Hague Convention country.

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ACRONYMS AND ABBREVIATIONS

ILO	International Labor Organization
UNCRC	The United Nations Conventions on the Rights of the Child
FRA	Fundamental Rights Agency
EU	European Union
CRC	Convention on the Right of the Child
UNFPA	United Nation Found for Population Activities
UN	United Nation
ICA	Inter-country Adoption
AFE	Adoption with a Foreign Element
LGBT	Lesbian, gay, bisexual, transgender
HCCH	Hague Conference on Private International Law
PAPs	Prospective Adoptive Parents

1. CHILD PROTECTION

Child protection is a very crucial concern and a forwarding work in every country. According to the Declaration of the Rights of the Child of the Convention on the Rights of the Child (CRC) (1989), children have to be prone to special safeguards and care and are lawfully subjected to these advantages before as well as after birth. Child protection can be defined as the protection of children in environments that are vulnerable i.e. protection from abuse (sexual, psychological and physical), trafficking, organ trade, violence, child labor, HIV/AIDS and recruitment into organized crimes and forced arms[1]. Therefore, there should be an environment where children, especially those most in need, receive proper care, take part in decision making if their lives are impacted by the outcomes and be safeguarded from any kind of violence. The Inter-parliamentary Union and UNICEF's (2004) Report of Child protection sets out that:

> *Protection and adequate care can only be provided in an environment which promotes all rights, especially the right not to be separated from parents, the right to privacy, the right to be protected from violence, the right to special protection and assistance by the State, the rights of children with disabilities, the right to health, the right to social security, including social insurance, the right to education and leisure, the right to be protected from economic exploitation, from illicit use of narcotic drugs and from sexual exploitation, the right to be protected from abduction, sale and trafficking as well as torture or other cruel, inhuman or degrading treatment or punishment, and the right to physical and psychological recovery and social reintegration*[2].

In article 3(2) the CRC notes that children ought to be cared for and protected as their well-being is, considering the duties and rights of their legal guardians or parents who

[1] Swedish International Development Cooperation Agency (Sida). (2010). *Report on Child Protection, Conducting a Dialogue (part 3).* Stockholm, Sweden.

[2] See also Article 19 of the Convention on the Rights of the Child, where it is mentioned that States Parties should take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

should take all necessary legislative and administrative measures[3]. Meanwhile in article 16 it is mentioned that the child is by law, entitled to protection against any form of attack: this may include unlawful attacks on the child's reputation and honor or invasion of the child's privacy, home, family or correspondence[4]. According to UNICEF, creating a safe environment for the child can help put an end to child exploitation, abuse and violence. This protective environment should involve eight components namely *: 1) strengthening government commitment and capacity to fulfill children's right to protection; 2) promoting the establishment and enforcement of adequate legislation; 3) addressing harmful attitudes, customs and practices; 4) encouraging open discussion of child protection issues that include media and civil society partners; 5) developing children's life skills, knowledge and participation; 6) building capacity of families and communities; 7) providing essential services for prevention, recovery and reintegration, including basic health, education and protection; and 8) establishing and implementing ongoing and effective monitoring, reporting and oversight*[5].

1.1. Parental Responsibility in General

When a child's parents are married to at the moment the child is born, then, they both share parental responsibility for their child. With the increasing sensitivity toward the idea of the *best interests of the child*, changes in the parental responsibility law have now taken place[6], because often, the child's best interest can only be accomplished by incorporating his or her parents' best interest. Courts in many countries speak of the duties and rights of parents, and, of the access to and custody of the children[7]. The former usage, which spoke of "parental rights and duties", was replaced as part of a

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[3] United Nations Human Rights; Office of the High Commissioner. (1989). *Convention on the Rights of the Child.*
[4] Ibid. art. 16.
[5] The United Nations Children's Fund (UNICEF). (2006). *Child Protection Information Sheets*. The Child Protection Section Programme Division UNICEF NY. p. 1.
[6] SCHWENZER, Ingeborg. DIMSEY, Mariel. (2006). *Model Family Code, from a global perspective.* Intersentia Publisher, p.136.
[7] MCCLEAN, David. RUIZ ABOU-NIGM, Verónica. (2012). *The Conflict of Laws.* 8th. Edition. Sweet & Maxwell, London. p.287.

major reform of English child law effected by the Children Act 1989[8]. According to this Act, the term parental responsibility[9] refers to the authority, power, duties, rights and responsibilities which parents have, by law, with regards to their child and his or her property. This term should, therefore, include the rights of access[10] and custody[11]. Section 1 of the 1989 Children Act mentions about child upbringing; or handling of the children's property since the child's well-being is the court's prime concern. Parental responsibility authorizes parents to decide where the child shall live[12]. The child's habitual residence reserves the right to protect the child or their property[13]. It is therefore, not only related with the child's life, but also his/her property. Besides child property, it also includes childcare and education till the child is of a mature age. Parental responsibility doesn't refer only to the real parents of the child. It also includes any responsible person, or third parties under parental authorities[14].

1.1.1. Regulation of Parental Responsibility

Parental responsibility as a term has not been known prior the Council Regulation No 1347/2000 of 29 May 2000, which consists rules about recognition, enforcement and jurisdiction of judgment in matters of matrimony and parental responsibility for the children[15]. The Council Regulation of 29 May 2000 was quickly revised and replaced by the Brussels IIA (Brussels II *BIS*) commonly known as the Council Regulation No 2201/ 2003. Since the 1st of March 2005, the Brussels IIA (*BIS*)

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[8] COLLINS, Lawrence. *The Conflict of Laws.* (2006). 14th Edition. Sweet & Maxwell, London. p.969.

[9] Art. 1(7) of Brussels Ia Regulation defines the term 'parental responsibility' as, all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. The term shall include rights of custody and rights of access.

[10] On Brussels II Regulation art. 2(10), rights of access are defined as: "in particular the rights take a child to a place other than his or her habitual residence for a limited period of time".

[11] On Brussels II Regulation art. 2(9), rights of custody are defined as: "shall include rights and duties relating to the care of the person of a child, and in particular the right to determine the child's place of residence".

[12] COLLINS, Lawrence. p.970.

[13] Art.5(1) of the 34th Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.

[14] NYGH, Peter. (1997). *The New Hague Child Protection Convention*, 11 Int'l J.L. Pol'y & Fam. p.345

[15] HILL, David. (2014). *Private International Law.* Edinburgh University Press. p. 99.

ruled a jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility. It covers judgments on parental responsibility regarding the child, irrespective of his parents' marital status, thereby ensuring equal treatment of all children in the matters to which the Regulation pertains[16]: It includes civil matters related to exercising, attribution, delegation, termination or restriction of parental responsibility, in incorporation with taking children into care[17]. The Regulation has a direct effect, which means that no implementing legislation has to import its terms into domestic law[18]. If a Member State has jurisdiction under its terms, another Member State cannot exercise jurisdiction under its own national rules, even if the respondent is neither a citizen nor resident in any Member State.

1.1.2. Definition of Child according to the Convention on the Right of the Child

The term child refers to any person, under eighteen years of age, unless under national legislation the age of maturity is reached earlier[19]. Contrarily however, the national laws of the States Parties of Convention have no proper and explicit denotation of a child as is stipulated in the CRC: with the exception of certain countries, like Romania, the UK and the Republic of Uzbekistan[20]. Rather, the term "child" is indirectly defined by the age of maturity and attaining full legal capacity, which, leads to a deduction that the person is no longer a 'child' from that moment onwards[21]. All minor children are subject to parental responsibility or guardianship.

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[16] CRAWFORD, Elizabeth & CARRUTHERS, Janeen. (2010). *International Private Law: A Scots Perspective.* 3rd Edition. Thomson Reuters, p.384.
[17] LOWE, Nigel; NICHOLLS, Michael. (2016). *International Movement of Children; Law, Practice and Procedure.* 2nd Edition. LexisNexis Pub. p.40.
[18] Ibid. p. 40.
[19] Art. 1. of the United Nations Convention on the right of the child. (1990).
[20] In the Republic of Uzbekistan, the Law on Guarantees of the Rights of the Child (2008) sets the legal definition of the child as a person below 18 years; in Romania, the Law no. 272/2004 regarding the protection of the child defines 'child 'as being any person who is below the age of 18 and does not have full civil capacity; in the UK, the Children Act 1989 Section 105 defines the child as 'a person under the age of eighteen', while the Family Law Reform Act 1969 s1(1) states that 'a person shall attain full age on attaining the age of eighteen '(England and Wales)
[21] JANČIĆ, Olga. (2016*). The Rights of the Child in a Changing World; 25 Years after The UN Convention on the Rights of the Child.* Springer International Publishing, Switzerland. p.5.

1.2. Issues in which Child Protection Intervention May be Required

Child protection should be considered in almost every situation that children might face nowadays. Article 19 of the UNCRC makes it clear that*:*

"1) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child; 2) Such protective measures should, as appropriate, include effective procedures for the establishment

of social programmes to provide the necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."

According to this article, all children under the care of a guardian or family, have the right and, should be protected from violence, neglect and abuse. But, if exploitation, abuse and violence continue on the side of children, the world will then not meet its obligations towards the child; it will also be impossible to meet its development targets like the Millennium Development Goals stipulated in the Millennium Agenda[22].

1.2.1. Child Abuse

Normally, children are capable to live and develop in a family where they are supported and loved by all family members. However, some children do not have the care of the family, so when such thing happens, they often experience abuse. Even though we have become knowledgeable and open as a society about child abuse issue throughout the years, it is evident that still cases of child abuse remain unreported to

[22] O'DONNELL, Dan. SEYMOUR, Dan. (2004). *Child Protection, a handbook from parliamentarians*, no7. p9.

investigators[23]. Child abuse occurs in all societies in both developed and developing nations[24]. Talking about child abuse is very crucial due to the direct implications it has on children and the resulting long-term repercussions which may affect their adult lives and parental roles[25]. The definitions of 'abuse'[26], 'child in need of care', and similar statutory prerequisites for legal intervention play a central role, at least in theory, in either narrowing or enlarging possibilities for legal involvement in child welfare cases[27]. Report of the Consultation on Child Abuse Prevention WHO(1999), defined child abuse as: "*Child abuse or maltreatment constitutes all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power".* Child abuse refers to the ill-treatment or assault of the child. Because children are vulnerable, the impact of the abuse is so massive that it exposes the child to psychological torture with or without the child's consent[28]. As it emphasized on article 2 of declaration on the elimination of violence against women abuse[29], abuse can be physical, sexual and psychological.

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[23] HOYANO, Laura & KEENAN, Caroline. (2010). *Child Abuse; Law and policy across boundaries.* Oxford University Press. p. 442.

[24] AL-HOSAYNI, ANNE. (2016*). Legislation, Policy and Procedure; a critical study of the child protection law in Kuwait.* Lund University, bachelor thesis. p.2.

[25] DEB, Sibnath. (2016). *Child Safety, Welfare and Well-being; issues and challenges*. Springer, India. p. 15.

[26] Child abuse is typically understood as occurring when some form of harm is actively perpetrated against a child.

[27] STEPHENSON, Annie. (1986). *Issues in Child Protection Law*, 11 Legal Service Bull. p.219.

[28] ELIZABETH AE II REGIN, Art. 4 of Community Welfare Act, 1982, No. 76; Part II. p.5.

[29] Art.2. of the Declaration on the Elimination of Violence against woman abuse states that, violence against women shall be understood to encompass, but not be limited to, the following: (a)physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; (b)physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;(c)physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

1.2.1.1. Physical Abuse

Physical abuse against a child refers to a situation when the child is physically harmed or at risk of such injury[30]. Physical abuse involves physical torture like throwing, hitting, drowning, poisoning, shaking, scalding, burning, suffocating or any other form of torture that causes physical harm to a child[31]. Such damage is considered a physical abuse regardless if or not the child's guardian has intentions of harming the child. Physical abuse against children can be an isolated incident or a repeated occurrence[32]. Children who grow up in domestically violent places are about five (5) times more likely to experience physical abuse by a caregiver[33]. Although specific statutory definitions of physical abuse vary by jurisdiction, the following elements need to be proved: identification of a specific injury or set of injuries sustained by the child; validation that the injury or injuries were intentionally caused; confirmation that the care-taker caused the injury or allowed the injury to occur while the child was under his or her control[34].

1.2.1.2. Sexual Abuse

According to international standards, sexual[35]abuse is a form of violence. While the term 'sexual abuse' is commonly used to describe abuse within families and/or homes there aren't any clear differences drawn between the terms sexual exploitation and sexual abuse [36]. Sexual abuse does not essentially need to include physical contact; sexual assault is when a child gets involved in sexual activities of any form with an adult including physical touching, verbal harassment, or using children in naked photography or films[37]. Child sexual abuse is engaging children in sexual activities

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[30] Empowering Children Foundation. (2016). *Child Protection Policy*. p.6.
[31] BĀLAN, Lacramioara. (2017). *Physical Child Abuse,* 4 Eur. J. L. & Pub. Admin. p.105.

[32] Empowering Children Foundation. (2016). p.6.
[33] TETI, Douglas. (2017). *Parenting and Family Processes in Child Maltreatment and Intervention.* Springer, p.6.
[34] PLUM, Henry. (1995). *Proving Physical Abuse of Children*, 17 Fam. Advoc. p. 46.
[35] Sexual abuse of the child means involving the use of a child for the gratification of an older or more powerful person.
[36] O'DONNELL, Dan. SEYMOUR, Dan. (2004). p.63.
[37] AL-HOSAYNI, ANNE. (2016). p.13.

without them being aware of the activity itself. They are unable to fully comprehend, give informed consent to the abusers because the children are developmentally immature and are unable to legally consent for it violates the legal and social norms of a given society[38].

Despite the fact that information about child sexual abuse is not easily accessible, the estimation made by the World Health Organization (WHO) is that approximately 5-10% of men and 20% of women experienced sexual abuse as children[39]. Often, violence is obscured from the child because they are unable to report and speak up about the violence due to the fear of being disbelieved, ignored or accused of weakness and the fear that they may be punished by the abusers. In some cases, children who have not received sexual education lessons are more likely to remain silent than those who are sexually educated. If we compare women and men in terms of abuse, men tend to keep everything to themselves. They may decide to not speak up because they are afraid to show weaknesses and admit that someone has abused them.

1.2.1.3. Psychological Abuse

The law and medicine became aware of psychological and emotional child abuse long after the 'discovery' of physical child abuse and neglect[40]. Psychological abuse, or as is known differently, emotional abuse refers to any indecorous adult behavior or act towards a child which dreadfully impacts his/her development. Some examples of child abuse include corruption, terrorization, ignoration, forced isolation, humiliation and child rejection [41]. Research shows that, compared to physical violence, emotional and psychological abuse greatly affect the victims[42]. Take for instance, a form of emotional and psychological abuse in several societies where children with disabilities are deprived of their right to normal contact with other people.

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[38] Empowering Children Foundation. (2016). p.6.
[39] O'DONNELL, Dan. SEYMOUR, Dan. (2004). p.108.
[40] NEELEY, G. Steven. (2000). *The Psychological and Emotional al Abuse of Children: Suing Parents in Tort for the Infliction of Emotional Distress,* 27 N. Ky. L. Rev. p.719.
[41] RUS, Mihaela; BUZARNA, Alina; GALBEAZA, Tihenea. (2013). *Psychological Aspects of Child Sexual Abuse,* 5 Contemp. Readings L. & Soc. Just. p.500.
[42] O'DONNELL, Dan. SEYMOUR, Dan. (2004). p.109.

1.2.2. Child Trafficking

Over the past decade, the 'trafficked' child has become increasingly visible in public and policy discourse on the suffering of children who are transported from one place to another[43]. Child trafficking has remained one of the most worrying phenomena, causing great physical and psychological damage to the lives and future of child victims and future generations in general. It is believed that over 1.2 million children are involved child trafficking annually: the most common activities child traffickers are involved in include sex trafficking, hard labor and domestic labor (International Labour Organization, 2002)[44]. Trafficking does not only involve smuggling children from one country to another, it also involves in-country smuggling of children from rural to urban areas[45]. Child trafficking seemingly stands on clear and certain moral and political terrain, especially when prostitution is encouraged[46]. This is why organizations i.e. UNICEF, Their World, NSPCC, and Save the Children are making initiatives and taking measures to ensure child safety and protection all over the world. In addition, they are also helping children attain better education, and ensure that children are properly taken care of and receive decent medical attention. They are also setting camps for survivors of child trafficking where the individuals receive proper care and counselling.

The term ‘child trafficking’ is synonymous to, and correspondent with sexual exploitation and child prostitution: it is, in certain instances, it is linked with sex tourism despite the insubstantial relationship between the 2 terms[47] [48]. Child trafficking is mainly concerned with the ignorant and/or innocent minors who are abducted and sold

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[43] *DAVIDSON, O. Julia. (2011). Moving Children: Child Trafficking, Child Migration, and Child Rights.* p.454.
[44] *WEST, E. Amanda. (2016). Child Trafficking: A Concept Analysis*, 4 Int'l J. Soc. Sci. Stud. p.50.
[45] *O ʼDONNELL, Dan. p. 76.*
[46] DAVIDSON, O. Julia. (2011). p. 458.
[47] MONTGOMERY, Heather. (2011). *Defining Child Trafficking & Child Prostitution: The Case of Thailand.* Vol.9. Issue 2. p.775.
[48] WEST, E. Amanda. (2016). p. 51

by irresponsible and greedy caretakers or enslaved by exploiters[49]. The concept of trafficking children generally refers, therefore, to the buying and selling of children[50]. Children have been stolen and mothers 'persuaded' to give up their babies for a better life or for financial incentives[51].

1.2.2.1. Defining Trafficking

In a protocol aimed at Preventing, Suppressing and Punishing Traffickers and protecting targeted persons more so children and Women, trafficking was defined as: the process in which children are subject to force in terms of recruitment and transportation from one place to another. Children suffer from such evil forms of abduction, fraud, and deceitfulness, both mental and physical abuse. The last straw in children's life is them being exploited in many indecent and inhumane ways. Such ways include prostitution, removal of organs, sexual exploitation, and coerced labor. Other forms take the shape of slavery practices and servitude.

1.2.3. Violence and Neglect on Children

Violence targeted towards children is prevalent in every country and goes beyond one's ethnicity, age, income, culture, education and class[52]. It is a phenomenon that has happened for years and will continue to last in the future. Global Initiative to End All Corporal Punishment of Children cites that, globally just 9% of children reside in nations where corporal punishments are completely prohibited. It also highlighted the obligation of the heads of states to prevent and stop all forms of corporal punishments children are subjected to. Additionally, the World Report on violence against children (2006) stated that, violence can happen anywhere including homesteads, places of work, educational centers, care and justice institutions. Violence towards children can be

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[49] HOWARD, Neil. (2017). *Child Trafficking, Youth Labour Mobility and the Politics of Protection.* Institute of Development Policy and Management European University Institute in Florence, Italy. p.4.
[50] SMOLIN, M. David. (2004). *Inter-country Adoption as Child Trafficking*, 39. Val. U. L. Rev. p.287.
[51] KISCH, Beevers. (1997*). Inter-country Adoption of Unaccompanied Refugee Children*, 9 Child & Fam. L. Q. p.133.
[52] PINHEIRO, P. Sérgio. (2006). *World Report on violence against children*. p.5.

perpetrated by relatives, teachers, parents, visitors, and fellow children[53], so in most of the cases it happens in the home and at school. It may happen due to the norms and beliefs of a given cultural, traditional practices or within the context of conflict situations[54]. research also showed that if a child's parent(s) are in an abusive relationship, the chances of that child to succumb to violence are very high when compared to those children whose parents are in healthy relationships with their partners[55].

The 25th anniversary resolution of the UN Convention on the Rights of the Child put forth that, approximately 1 billion children (2-14 years of age) were apt to suffer from physical punishment in the year 2012: it therefore called upon the EU member states to fulfill their responsibilities and prevent all kinds of violence targeted towards children by sanctioning and prohibiting any corporal punishment[56]. It is also important to note that, regardless of the social, cultural or economic background every society has a duty to put an end to violence against children[57].

Meanwhile, compared to abuse, neglect, the most frequent type of ill-treatment towards children is insufficiently explored in terms of research and is not catered for financially, and in terms of policy and public awareness as it should be[58] [59]. In fact, it is only recent that researchers have begun to consider neglect as a phenomenon that may be conceptually and practically different from abuse and warranting separate attention[60]. From a child's point of view, neglect or 'disregard' of children means that the children do not necessarily have to be subjugated to maltreatment or debased. For example, there are articles that discuss the issue of children's rights for example, the United Nations

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[53] MATTHEWS, C. Peter. (1980). *Neglect and Violence toward Children*, 3 Can. J. Fam. Law. p. 369.
[54] O'DONNELL, Dan. SEYMOUR, Dan. (2004). p.105.
[55] BONTHUYS, Elsje. (1999). *Spoiling the Child: Domestic Violence and the Interests of Children*, 15 S. Afr. J. on Hum. p.312.
[56] Global Initiative to End All Corporal Punishment of Children. (2014). *Global Summary of the Legal Status of Corporal Punishment of Children.*
[57] United Nations, General Assembly. (2006). *Promotion and protection of the rights of children*. Sixty-first session. p.5.
[58] KORBIN, Jill E. & KRUGMAN, Richard D. (2014). *Handbook of Child Maltreatment.* p.27.
[59] DEPANFILIS, Diane. (2006). Child Neglect: *A Guide for Prevention, Assessment, and Intervention.* U.S. Department of Health and Human Services Administration for Children and Families Administration on Children, Youth and Families Children's Bureau Office on Child Abuse and Neglect. p. 9.
[60] MOLKO, R.M. Gershater; LUTZKER, J.R. & SHERMAN, J. A. (2002). *Intervention in child neglect: An applied behavioral perspective.* Aggression and Violent Behavior. p. 104.

Convention on the Rights of the Child's article 3; article 19 and 24 articulate and further the right to qualitative care regarding the health, the provisions of clean water as well as a nutritious food. In addition, article 28 points out the child's right to dwelling decent living standards, which are fitting to the child's mental and physical needs. Moreover, article 31 remarks the child's right to spending a relaxing life with various outdoor activities. Other articles in the UNCRC include issues regarding matters of neglect[61].

Neglect is related to the lack of care and attention, with or without intent, from parents/guardians to the child's needs for shelter, safety, supervision, food, health, and education that causes physical and/or emotional impairment of the child. While the effects of neglect are often obscure, those of abuse are very evident with effects like scars and bruises[62]: so, this may be one of the main factors why abuse is of utmost importance to the forms of child maltreatment. However, this does not mean that negligence is less dangerous for children than abuse. Neglect is equally life-threatening and damaging as is abuse[63]. Conducting psychobiological research among neglected children is quite cumbersome due to the several forms of neglect and challenges besides neglect that children face which may alter the psychosocial and neuropsychological data obtained from the studies [64]. Nevertheless, there are many risk factors that are related to neglect, like poverty, poor living condition, social isolation, and men[65].

1.3. Child Labour

Child labour is a wide socio-political concern with a very rich and informative history[66]. Child labour means children are deprived of their inherent potential, dignity and childhood due to the work they are supposed to do which harms their mental and

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[61] BRANDON, M.; GLASER, D., MAGUIRE, S., MCCRORY, E., LUSHEY, C., & WARD, H. (2014). *Missed opportunities: indicators of neglect – what is ignored, why, and what can be done?* p.6.
[62] DEPANFILIS, Diane. (2006). p.9
[63] The Greenbook Project. (2006). *The Co-Occurrence of Domestic Violence and Child Abuse and Neglect: A Guide for Crisis Center Advocates.* p. 7.
[64] *DE BELLIS, M.D. (2005). The Psychobiology of Neglect. Duke University.* Sage Publications, p. 150.
[65] WILKINSON, Julie. BOWYER, Susannah. (2017). *The impacts of abuse and neglect on children; and comparison of different placement options. p.24.*
[66] SCHMITZ, Cathryne L., TRAVER, Elizabeth & LARSON, Desi. (2004). *Child labour, a global view.* IV series. Greenwood press. p. 1.

physical development[67]. Because of poverty and the low education level of society, children are expected seen to benefit themselves and their fellow children, their families, and the community. Major conventions related to child labour like the 182 Convention "Worst Forms of Child Labour" and 138 Convention "Minimum Age Convention" joined forces to obliterate child labour and protect children by providing the legal means through which national and international measures can be taken against it.

International Labour Organization (ILO) Report on *Global Estimates of Child Labour* reported that, approximately 1 in 10 children are subjected to child labour globally.

Table 1.1 Regional Prevalence of Child Labour[68]

Africa	19,6%
Asia and the Pacific	7,4%
Americans	5,3%
Europe and the Central Asia	4,1%
Arab States	2,9%

As seen in the table above, the African is more prone to child labour (one-fifth – 72 million children are subjected to child labour). Asia and the Pacific ranks second (7% - in absolute terms, 62 million) children. The other percentage is divided among the Arab States (1 million), Central Asia and Europe (6 million) and the Americas (11 million)[69].

The report on global estimates of child labour (2017), notes that 25% of the children involved in child labour are aged 15–17 years, 28% are between the ages 12 and 14 while 48%of them aged 5–11 years. Minimum Age Convention, 1973 (No. 138)

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[67] MARTIN, Jack. TAJGMAN, David. *(2002). Eliminating the worst forms of child labour; A practical guide to ILO Convention No. 182. Handbook for parliamentarians* no.3. p.16.
[68] International Labour Office. (2017*). Global estimates of child labour: Results and trends*, 2012-2016.
[69] Ibid. p.12

concerning Minimum Age for Admission to Employment was set up with the aim of abolishing child labour and increasing the minimum employment age to an age where the young people are fully developed mentally and physically. It is allowed by law for a state to set its own minimum employment age and in certain instances, provisions are made where light labour is availed to the children below the designated minimum employment ages. [70]. In countries where there are no statutory guidelines for minimum employment ages like India, child labour is very common[71]. Most often than not, parents pay no attention to the nature of work their children are involved in and as such, children choose and involved themselves in unpleasant jobs due to unawareness[72]. According to a report by the global estimates of child labour, almost half of in the children per taking in child labour (up to 73 million children) engage in dangerous work which threatens their safety and pose risks of compromising their moral development and health. The United Nations Convention on the Rights of the Child (1990) states that its member parties must bring to awareness the child's right to protection against any form of economic exploitation and indulging in any work may interfere their education or pose a hazardous effect to their lives. Otherwise, children are exposed to irreversible moral, mental, spiritual, physical, and health, effects[73].

It is also required of the state parties of the International Labour Organization (ILO) Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour to sanction disciplinary measures against any acts related to child pornography and prostitution. Article 3 of the 182 ILO Convention described the following as the woeful kinds of child labour: (a) slavery and/or slavery-like practices, such as child trafficking and selling, serfdom and debt bondage and forced labour i.e. or forcefully recruiting children in acts related with armed conflicts; (b) offering, procuring and/or using children in acts of prostitution or pornography; (c) procuring, offering and using of children for unlawful ventures like trafficking and producing drugs; (d) work which in any way poses risks of

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[70] MARTIN, Jack. TAJGMAN, David. (2002). p.24
[71] JANČIĆ, O. Cvejić. (2016). p.32-33.
[72] AVAIS, WASSAN & ERUM. (2014). *Socio-Economic Causes of Child labor in Carpet Weaving Industry: A Case Study of Union Council.* Vol. 2, No. 1. p.252.
[73] 32nd Article of the United Nations Convention on the Right of the Child.

compromising the safety, morals or health of the child due to its nature or circumstances in which it is executed.

1.3.1. The Causes of Child Labour

Poverty is the main and greatest reason for the occurrence of child labour. It is important to mention that parental education has an influence on the incidence of child labour[74]. Therefore, education and social norms play major roles in child labour. UNICEF India on the Report of Child Labour mentions that other reasons for the occurrence of child labour, beside education and poverty or social norms are societal and family cultural values, under-employment and/or high adult unemployment rates, lack of awareness about the harmful effects of child labour, lack of access to basic skills training and education, and unawareness about the dreadful outcomes of child labour[75]. Child labour could be eliminated by reducing poverty and deprivation, mitigating economic shocks and supplying social protection and regular income to the families[76].

1.4. Child Protection Systems

In 2008 the UNICEF Child Protection Strategy identified that child protection systems along with influencing social norms are the pillars that can better protect children[77]. UNICEF defined child protection systems as *"a set of laws, policies, regulation and services needed across all social sectors — especially social welfare, education, health, security and justice — to support prevention and response to protection-related risks. These systems are part of social protection and extend beyond it. At the level of prevention, their aim includes supporting and strengthening families to reduce social exclusion, and to lower the risk of separation, violence and exploitation".* Convention on the Rights of the Child (the right of the child to freedom from all forms

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[74] MARTIN, Mervyn. (2013). *Child labour: parameters, developmental implications, causes and consequences,* Contemporary Social Science. p.159.
[75] http-1 https://unicef.in/Whatwedo/21/Child-Labour
[76] UNICEF. (2014). *Child Labour and UNICEF in Action: Children at the Centre. Apple Visual Graphics.* New York, USA. p.9.
[77] KATZ, Ilan; CONNOLLY, Marie; BLUNDEN, Hazel; BATES Shona& HILL Trish. (2018). *Child Protection System in four countries in South Asia*. UNICEF Rosa. p. 11.

of violence) mentions that comprehensive measures are an integral component of a child protection system at all stages of its implementation. Those stages include prevention[78], investigation, identification, treatment, referral, reporting, and follow-ups about child maltreatment, judicial and effective proceedings[79]. According to the 9th European Forum on the rights of the child (Coordination and cooperation in integrated child protection systems) and the European Commission, an integrated child protection system is defined as the means by which all system components (sub-systems, processes, procedures, resources policies and laws) and responsible bodies (state authorities represented by social services, law enforcement, child protection agencies, immigration and judicial authorities, etc.) collaborate to create an empowering and protective environment for the child. Integrated child protection system mainly focuses on children: it aims at making laws and policies, upholding good governance, collecting and monitoring data, allocating resources, as well as preventing, protecting and putting in place proper care management and response services for the safety and comfort of the child[80].

In a research conducted the 28 European Union (EU) Member States by the European Union Agency for Fundamental Rights (FRA) on national child protection system, data addressing the main components of child protection systems were collected. This data mainly focused on:1) regulatory and national legislative framework like child protection policies; 2) service providers and national authorities responsible for child protection ; 3) human and economic resources, with emphasis on personnel training and qualification of; 4) identifying and reporting on children's cases who need protection or placement in alternative care and; 5) monitoring and accountability systems for developing and monitoring common quality indicators[81]. Child protection systems aims at promoting child protection via increasing access to protection measures and raising public awareness, to prevent exploitation, neglect, abuse and violence. This

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[78] At the level of prevention, the approach includes supporting and strengthening families and communities to reduce social exclusion, and to lower the risk of separation, violence and exploitation.
[79] Convention on the Right of the Child (CRC). (2011). UN Committee on the Right of the Child. General comment no.13. The right of the child to freedom from all forms of violence. para.45, p.18.
[80] European Commission. (2015). *9th European Forum on the rights of the child; Coordination and cooperation in integrated child protection systems.* Reflection paper. p.4.
[81] http-2. (2015) https://fra.europa.eu/en/publication/2015/mapping-child-protection-systems-eu

can be done through availing suitable community services, quick responses as soon as issues or violations occur, strengthening families and communities and, most importantly, by identifying problems and promptly intervening as is required[82].

1.5. Child Safeguarding

All the children in the world, wherever they are and however the circumstances, they should be protected from all forms of abuse, violence, neglect, and maltreatment. By respecting this right is a key point of the child safeguarding. Child safeguarding can be defined as the responsibility where organizations make sure that the staff, functions and programmes won't harm children, and they do not expose children to abuse and risk of harm, and every issue that has to do with children's safety should be reported to the suitable authorities[83]. Child safeguarding is defined as the steps an organization takes to keep all the children safe, and also involves dynamic measures put in place to make certain that children aren't predisposed to harm directly or indirectly with the company[84]. Even though child protection and child safeguarding terms seem to have the same meaning, there are some very important differences between these two terms. Child protection is just, but a section of child safeguarding that covers all the measures and actions children need, in order to stop or reduce the possibility of concerns arising[85].

1.6. Child Marriage

Child marriage is a worldwide problem, which causes violation of human rights. UNICEF, United Nation (UN) and UNFPA (United Nation Found for Population Activities) defines child marriage as any marriage of two people, at least one of them or

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[82] Regional Roundtable on the Protection of Refugee Children. (2018). Framework for Strengthening Child Protection Systems in the East African Community. Arusha, Tanzania. p.14.
[83] British Council. (2018). *Child Protection Policy. Every Child Matters Everywhere in the World; how we safeguard children*. p.4
[84] RUTGERS, Catherine. (2018). *Child Safeguarding Toolkit for Business; a step-by-step guide to identifying and preventing risks to children who interact with your business.* UNICEF's Child Rights and Business Unit. p. 4.
[85] Ibid. p.4.

both should be under eighteen (18) years of age. In almost all cases about child marriage, the family is the one who forces young girls to get married, although not only girls are affected by child marriage. In some communities, boys are also victims of child marriages but, the cases involving girls is just so unbelievable[86]. Certain parents without a doubt, truly believe that marrying off their daughters is the only way to safeguard their future, whilst others regard their daughters as tradable commodities or burdens[87]. Article 16(2) of the Universal Declaration of Human Rights asserts that marriage cannot happen without the consent of both parties. According to UNICEF report about ending child marriage, the regions with the highest rates of child marriage among girls are sub-Saharan Africa and South Asia with Niger having the flag bearer of child marriages in the world and Bangladesh taking the lead with regards to marrying off girls below the age of 15[88].

Child marriage is dangerous especially for young girls because it imposes adult responsibilities on the child which prematurely puts an end to her childhood even before she is emotionally, psychologically and physically ready to take on such roles[89]. There are organizations that are constantly dealing with reports about preventing child marriage. In 2016, UNICEF, in conjunction with United Nations Population Fund (UNFPA), initiated the Global Program to Accelerate Actions to End Child Marriage[90]. This program provides the adolescent with such privileges as education to turn them away from premature marriages. In this way, they can be empowered to accomplish and achieve a meaningful life. In most states, 18 is recognized as the minimum statutory age of marriage and individuals at age and above are free by law to engage in marital arrangements without judicial approval or parental consent [91]. Notwithstanding, in some countries girls younger than 18 are allowed to get married to the parental consent or

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[86] United Nations Children's Fund. (2014). *Ending Child Marriage: Progress and prospects.* UNICEF, New York.
[87] United Nations Population Fund. (2012*). Marrying Too Young; End child marriage*. 605 Third avenue, New York, USA. p.6.
[88] United Nations Children's Fund. (2014).
[89] United Nations Population Fund. (2012). p.11
[90] UNFPA-UNICEF (2017). *Global Programme to Accelerate Action to End Child Marriage; Driving action to reach the girls at greatest risk.*
[91] Tahiri Justice Center. (2017). *Falling through the cracks. How law allow child marriage to happen in today's America*. p.8.

authorization of the court. Globally, approximately 100 million girls are very prone to child marriages except for those marriages conducted with judicial or parental consent[92]. The fact that in many countries there are no legal sanctions for those involved in child marriage may compound the issue[93]. The most effective approach to end child marriage is to impede forced marriages of children and mitigate the risks of early marriage. This can be done by setting 18 as the minimum marriage age, without exceptions[94].

1.7. Child Protection: Children's Rights

As it is mentioned in the journal article "Why It Remains Important to Take Children's Rights Seriously" it is for sure that children must have at least some rights[95]. But according to the International Justice Resource Center of children's right, it is undoubtful that children hold the same fundamental human rights and cherish freedoms as a single human being, therefore, the UN framework has provided children with special status as well as with protection just like it has granted these rights to women and indigenous people, which are considered as vulnerable groups. Many perhaps would go further and say that, because of their vulnerability, children should be entitled to some rights which adults may no longer have[96]. Children's Rights Alliance concerning to "what are children's rights" mentions that in the rights of the child should be included the rights to health, education, family life, care, play, recreation and adequate standard of living and to be protected from abuse and harm. There are special legal protections specifically addressed to children[97] but one of the most comprehensive

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[92] WODON,Q. TAVARES P. FIALA, O. LE NESTOUR A. & WISE L. (2017). *Ending child marriage; Child marriage laws and their limitations.* p.4.
[93] Ibid. p.2-3.
[94] Tahiri justice center. (2017). p.1.
[95] FREEMAN, Michael. (2007). *Why It Remains Important to Take Children's Rights Seriously*, 15 Int'l J. Child. Rts.5. p.9.
[96] HERRING, Jonathan., PROBERT, Rebecca., GILMORE, Stephen. (2012*). Great debates in Family Law.* p.55
[97] Some of the legal protection concerning to rights of the child are: Convention on the Elimination of All Forms of Discrimination Against Women; Convention on the Protection of the Rights of Migrant Workers and Members of their Families; Convention on the Prevention and Punishment of the Crime of Genocide; International Covenant on Civil and Political Rights; International Labor Organization

treaties on the rights of the child is the United Nations Convention on the Rights of the Child (CRC). UNCRC sets out that *everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.*

1.8. International Conventions and Organizations about the Child Protection

Some of the International Conventions and Organizations that are relevant to Child Protection are 1) The Convention on the Right of the Child (CRC) and 2) The Hague Conference on Private International Law.

1.8.1. The Convention on the Right of the Child (CRC)

UN Convention on the Right of the Child sets out a series of standards that States have committed themselves to observe in respect towards children[98]. The CRC was the first binding international legal instrument to establish that children have fundamental rights which should be protected under human rights law, wherein 2009 they published a General Comment on the Right of the Child to be Heard. Article 12 of the UN Convention on the Rights of the Child mentions that *1) States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2) The child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a consistent way with the procedural rules of national law.*

Article 12(1) confesses that in matters concerning children of mature age, the thoughts of the child ought to be considered as of paramount value. Meanwhile, article 12(2) mentions that in any administrative and/or judicial proceedings pertaining a

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Minimum Age Convention, 1973; International Labor Organization Worst Forms of Child Labor Convention, 1999 etc..

[98] LOWE, Nigel; NICHOLLS, Michael. (2016). p.7.

child's interest, the child has every right to voice their opinion and be heard, be it directly or indirectly. Thus, all children deserve to be heard in all options having an effect on them. Regarding the labeling whether children have the capability to form their own views, state parties are obliged to assess the child's ability to form independent opinions. State parties cannot begin with the supposition that the child is unable to communicate his or her own views[99]. In the Convention on the Rights of the Child three optional protocols are known: The first one restricts children's participation in armed conflict, the second prohibits child pornography and prostitution and selling children, and the last one is related to communication of complaints for children.

1.8.2. The Hague Conference on Private International Law

The Hague Conference on Private International Law (HCCH) is an intergovernmental organization specializing in private international law that governs various soft law instruments, protocols and international conventions [100]. It is the oldest of the many legal Hague-based institutions and organizations. The HCCH operates only in civil and commercial law, not in criminal law. It is not a court or tribunal; it renders no judgments. Its sets out practical rules for international civils and commercial matters across three main fields of work: 1) international family and child protection; 2) international civil procedure and litigation; and 3) international commercial and financial law. HCCH unifies private international law by negotiating international treaties, and the Hague Conventions which states may then join. These conventions build bridges between different jurisdictions, where they do not change the domestic laws in each jurisdiction but simply connect them[101]. In addition, there are some Conventions related to child protection such as: 1) 10th Convention of 5 October 1961 about the powers of authorities and the law applicable in respect with protection of infants; 2) 33rd Convention of 29 May 1993 on Protection of Children and Co-operation in Respect with Intercountry Adoption; 3) 34th Convention of 19 October

[99] ATKIN, BILL. (2011). *The international Survey of Family Law. Published on behalf of the International Society of Family Law.* Jordan Publishing Limited. p. 8.
[100] http-3. https://www.hcch.net/en/about Hague Convention on Private International Law.
[101] Ibid.

1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect with Parental Responsibility and Measures for the Protection of Children, and 4) 38th Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance.

2. INTERCOUNTRY ADOPTION

2.1. History Context

The phenomenon "international adoption" started shortly after World War II by the Americans upon realization that the children abandoned in Europe and Japan were facing predicaments due to the war[102] and after the Korean and Viet Nam conflict[103]. Also, the Yugoslavian civil war, the dissolution of the Soviet Union and the collapse of Ceausescu in Romania placed inter-country adoption in the global spotlight[104]. Since that time, inter-country adoption has become a multimillion-dollar business, tainted by rampant claims of abuse of human rights and concern about the ability of the law to obviate it[105]. Intercountry adoption has been practiced for different reasons and existed with two faces: first, as an act of goodwill from which both the adoptive family and child benefit and as child trafficking or baby-selling[106]. While some of the children available for adoption are the orphaned victims of war and natural disasters like disease, majority are those from unyielding backgrounds or abandoned by their parents or care givers in institutional care[107]. According to UNICEF, since 1960, there has been an increase in the number of intercountry adoptions. European Parliament on the report of Adoption of children in the European Union mentioned that inter-country adoption takes place both between EU[108] and non-EU countries and between the EU member States. The largest receiving state of inter-country adoption is the United States (in 1993, when the Hague Inter-county Convention was concluded 7377 internationally

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[102] SZEJNER, C. Ellen. (2006*). Intercountry Adoptions: Are the Biological Parents' Rights Protected?* 5 Wash. U. Global Stud. L. Rev. p. 211.
[103] LOWE, Nigel; NICHOLLS, Michael. (2016). p. 837.
[104] HILLIS, Lisa. (1998). *Intercountry Adoption Under the Hague Convention: Still an Attractive Option for Homosexuals Seeking to Adopt?* Indiana Journal of Global Legal Studies: Vol. 6: Iss. 1, Article 8. p.239.
[105] LOWE, Nigel; NICHOLLS, Michael. (2016). p. 837.
[106] MULUNEH, Yitages Alamanv. (2015). *Intercountry Adoption: Loss of Identity of a Child*, 7 Jimma U. J.L. Provided by: Ankos. p.52.
[107] O'HALLORAN, Kerry. (2009). *The Politics of Adoption; International Perspectives on Law, Policy & Practice.* 2nd Edition. Springer Publisher. p.129.
[108] These inter-country adoptions in the EU are governed by the Hague Convention of 29 May,1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, to which all EU Member States are parties.

adopted children went to the US, rising to more than 22,000 in 2004)[109]. In 2010, 50% of all children involved in all such adoptions worldwide were sent to European countries and around one-third of the estimates (30,000) children involved in inter-country adoption worldwide came from European jurisdictions[110]. Between 2000 and 2009, we witness the highest number of adopted children in the history of adoption with more than 380,000 children being adopted worldwide[111]. Intercountry adoption in industrialized countries is viewed as an option for childless couples[112].

2.2. Purposes of Intercountry Adoption

The 19 May 1993 convention on Protection of Children and Co-operation in Respect of Intercountry Adoption obliges each State to put in place suitable measures that can ensure that a child is kept under the care of his or her original family. If this is not possible, the concerned authority should find an appropriate solution within the child's country; however, if, despite all efforts a suitable decision is no arrived at, i.e. nobody applies to adopt the child in question or, take the child in foster care, inter-country adoption can then be opted for[113]. Intercountry adoption takes place in several way like: 1) Adopting a child from a Hague Convention State in accordance with the national legislation endorsing or incorporating The Hague Convention; 2) Adoption of a child from a country with 'compatible' legislation and 3) Adoption of a child from a non-Hague Convention State using other non-Hague Convention related national legislation and procedures[114]. According to the Convention on the Right of the Child (CRC) article 21/b, inter-country adoption should be taken as the last priority to address and solve the family situation of children who with insufficient parental care. however, the availability of some children is determined by their countries' social-economic

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[109] ESTIN, A. Laquer. (2010*). Families Across Borders: the Hague Children's Conventions and the Case for International Family Law in the United States*. Florida Law Review. p.80.
[110] LOWE, Nigel; NICHOLLS, Michael. (2016). p. 837
[111] SELMAN, Peter. (2015). *Twenty years of the Hague Convention: A Statistical Review*. Newcastle University, UK.
[112] O'DONNELL, Dan. SEYMOUR, Dan. (2004). p.81.
[113] JANČIĆ, O. Cvejić. (2016). p.21.
[114] O'HALLORAN, Kerry. (2009). p.131.

situation where in most cases, the aftermaths of adoption may not provide for a better welfare for the children[115].

2.2.1. Issues of Intercountry Adoption

Intercountry adoption attracts attention to several fundamental concerns such as the obvious dangers of exploiting vulnerable birth parents, the possible undesirability of transcultural and transracial adoptions, and the difficulty of international control[116]. Huge differences exist in the laws of different nations concerning various issues like the effects and benefits of adoption i.e. succession who is be adopted or is allowed to adopt [117]. Globally accepted international instruments state that inter-country adoption can only be conducted if the children's best interests and rights are fully respected and protected [118].

Besides above-mentioned issues, the prohibition of intercountry adoption is raised as an issue as well. In some countries, mostly in Islamic ones, intercountry adoption is forbidden. There are thirty countries where intercountry adoption is prohibited, in which twenty of them are under Islamic law, i.e. a Muslim dominated country (with the exception of Tunisia, Turkey and Indonesia)[119]. But there are some countries where domestic adoption is allowed but inter-country adoption is prohibited such as Bangladesh, Nigeria, Namibia, Tanzania, etc. [120]. Whilst the United Kingdom government does not actively promote inter-country adoption, it is willing to allow it where a child cannot be cared for in a suitable manner in his country of origin, the adoption would be in his best interests, with respect to the child's fundamental rights as

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[115] O'HALLORAN, Kerry. (2009). p.66.
[116] LOWE, Nigel; NICHOLLS, Michael. (2016). p. 83
[117] FAWCETT, James., TORREMANS,Paul., GRUŠIĆ, Uglješa., HEINZE, Christia., MERRETT, Louise., MILLS, Alex., CASTRILLÓN, Carmen Otero García., TANG, Zheng Sophia., TRIMMINGS, Katarina. and WALKER, Lara. (2018*). Chesire, North & Fawcett; Private International Law.* 15th Edition. Oxford University Press. p. 1206
[118] UNICEF. (1999*). Inter-country adoption. Innocenti digest.* International Child Development Centre. Florence, Italy. p.2.
[119] MIGNOT, Jean-François. (2015). *Why is intercountry adoption declining worldwide?* Population and societies. p.1.
[120] Ibid. p.1

recognized by international law; and the perspective adopter has been assessed by a registered adoption agency as eligible and suitable to adopt a child from abroad[121].

2.3. Domestic Adoption

Domestic Adoption is the form of the procedure by which a person (the adoptee), becomes a member of the family of another person (the adopter) in the same country. When a child's birth parents are unable to look after their child or the child has become an orphan a number of options are available to a local authority or others seeking long-term caregivers for the child[122]. In some cases, in domestic adoptions, adoptive parents feel intimidated by their adopted children since they can return to their biological parents, so they consider inter-country adoptions safer. Notwithstanding, European Parliament about Adoption of children in the EU 2016 briefing notes that domestic adoptions far outnumber intercountry adoptions, and that there has been a decline in the number of children being adopted into the EU from third-world countries, which reflects a wider global trend. According to the data of this briefing, between 2004 and 2014 there were, on average, 18366 domestic adoptions per year across the EU, with 19 adoptions per 100000 children. English Law in examining the rules concerning adoption, it is important to consider the jurisdiction of the English courts to make adoption orders; the choice of law rules applied by English courts; and the rules for recognition of foreign adoption[123]. Adoption may give rise to complicated problems in the conflict of laws, because the laws of different countries differ widely as to the objects that adoption should serve, the methods by which it is effected, the requirements necessary for adoption (especially the age of the adopter and of the adopted person), and the effects of adoption (especially in the matters of succession)[124].

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[121] FAWCETT, James., TORREMANS,Paul., GRUŠIĆ, Uglješa., HEINZE, Christia., MERRETT, Louise., MILLS, Alex., CASTRILLÓN, Carmen Otero García., TANG, Zheng Sophia., TRIMMINGS, Katarina. and WALKER, Lara. (2018). p. 1205.

[122] HERRING, Jonathan., PROBERT, Rebecca., GILMORE, Stephen. (2012). p.117.

[123] FAWCETT, James., TORREMANS, Paul., GRUŠIĆ, Uglješa., HEINZE, Christia., MERRETT, Louise., MILLS, Alex., CASTRILLÓN, Carmen Otero García., TANG, Zheng Sophia., TRIMMINGS, Katarina and WALKER, Lara. (2018). p. 1206.

[124] MCCLEAN, David. RUIZ ABOU-NIGM, Verónica. (2012). p.333.

2.3.1. Types of Adoption

In general, there are domestic and intercountry adoption. According to the family law, types of adoption are divided into adoption regarding procedures and adoption regarding the scope. In the adoption regarding procedures are included agency adoption, independent adoption and black-market adoption[125], whereas, in the adoption regarding the scope are included simple and full adoption. It is important to mention that it depends on the State law if countries recognize one or multiple types of adoption.

2.3.1.1. Agency Adoption

The child in agency adoption is placed for adoption by a licensed private or public agency[126]. Licensed public and private agencies are required to meet State standards and have more oversight to ensure quality service[127]. In some cases, the parent voluntarily transfers the child to the agency by executing a formal surrender document that relinquishes all parental rights to the child[128]. Biological parents must decide that adoption is the best option for their children and then, the child is placed with the agency to the adoptive parents and the biological parents usually have no further contact with the child[129]. Sometimes, a court terminates the parental rights of a parent because of abandonment, abuse, or neglect, and asks the agency to place the child for adoption[130]. In an agency adoption, adoptive parents get interviewed and investigated after regulating the application for adoption by the agency to decide about their fitness as parents[131]. The adoptive parents should wait for the child about three - five years until the child will be available for adoption[132]. After the court investigates that the child is being satisfactorily assimilated into the adoptive family and the relationship of

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[125] STATSKY, P. William. (1997). *Family Law; the essentials*. West Publishing Company. p.290.
[126] ibid. p.290.
[127] Child Welfare Information Gateway. (2015). *Adoption options: Where do I start?* Washington, DC: U.S. Department of Health and Human Services, Children's Bureau. p.2.
[128] STATSKY, P. William. (1997). p.290.
[129] WALLISCH, Natalie. (1985). *Independent adoption: Regulating the middleman*. Washburn Law Journal, 24(2), p. 329.
[130] STATSKY, P. William. (1997). p.290.
[131] TURANO, Margaret. (1976). *Black-market adoptions.* Catholic Lawyer, 22(1). p.52.
[132] WALLISCH, Natalie. (1985). p. 331.

the child and the parents is regulated well, the order of adoption is allowed[133]. Agency adoptions are more preferred[134] while they are known as non-profit objectives.

2.3.1.2. Independent Adoption

Independent adoptions are private placements happening without the support of a licensed agency[135], but with the adoptive parents, often with the help of an attorney, a doctor, or both of them[136]. Some of the reasons why biological parents', especially unmarried mothers place their children to independent adoption are: in cases when the mother is teenager, the mother wants to remain anonymous, because of the difficulty involved in receiving agency help, due to ignorance of social service agencies and for choosing the baby's family[137]. In an independent adoption, there is rarely any demand when adoptive parents are evaluated before placement because placement is usually regulated by a middleman[138]. As an advantage, independent adoption places the child in a foster home until being sure that the legal termination of the biological parent's right will be complete[139]. And if the adoptive family wants to keep the child, they should follow the same court procedures as in agency adoptions[140].

2.3.1.3. Black Market Adoption

While there are infinitely more applications for adoption than there are adoptable children, the baby market is a seller's market[141]. An adoption becomes baby buying when the payment is for the placement of the child rather than for reasonable expenses[142]. The main goal of all black-markets is profit-making[143], by creating a

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[133] TURANO, Margaret. (1976). p.52.
[134] PODOLSKI, L. Alfred. (1975). *Abolishing baby buying: Limiting independent adoption placement.* Family Law Quarterly, 9(3), p. 548.
[135] WALLISCH, Natalie. (1985). p. 334.
[136] STATSKY, P. William. (1997). p.290.
[137] GROVE, G. Daniel. (1967). *Independent Adoption: The Case for the Gray Market,* 13 Vill. L. Rev. p. 117.
[138] TURANO, Margaret. (1976). p.53.
[139] WALLISCH, Natalie. (1985). p. 334.
[140] TURANO, Margaret. (1976). p.53.
[141] GROVE, Daniel. (1968). p. 118.
[142] STATSKY, P. William. (1997). p.292.

bypass in the process of adoption. This can happen by convincing biological mothers to do the registration in the name of the adoptive mother, so the birth certificate of the child will have the surname of the adoptive parents[144] [145]. That process is not only illegitimate, but it also fails to establish the rights of inheritance normally given to a legally adopted child[146]. In black market adoptions, there are agents convincing the biological mothers that the child will be taken temporarily until they could provide better conditions for the child, and they sell the babies to the adoptive parents and leave them without the child nor compensation[147]. While the sale is the utmost goal of the baby middleman, negligence is taken to provide that the approval of the natural mother is truly voluntary[148]. The price of selling babies to the future parents' costs between $5000 and $10,000 instead of traditional adoptions price which is under $2000[149].

2.3.1.4. Full and Simple Adoptions

Adoption by law may be either 'full' or 'simple'. In the former case, the legal relationship between the birth parent/s and their child is terminated; in the latter this relationship is not completely severed. When considering recognition of foreign adoption orders, one of the difficulties which arise is that some legal systems favor 'full' adoption, in which an individual who has the status of adopted person thereby extinguishes all links of parental influence, rights of aliment, support, property and succession, with his biological family, whereas other systems favor 'simple' adoption, in which the break from the biological family is less absolute[150]. Furthermore, in full adoption, the adopter becomes the full legal parent with all obligations and rights toward the child, whereas simple adoption, as is still possible in some countries, is not

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[143] TURANO, Margaret. (1976). p. 49
[144] WALLISCH, Natalie. (1985). p. 333.
[145] TURANO, Margaret. (1976). p.49.
[146] WALLISCH, Natalie. (1985). p. 333.
[147] BISIGNARO, Susann. (1994). *"Intercountry Adoption Today and the Implications of the 1993 Hague Convention on Tomorrow,"* Penn State International Law Review: Vol. 13: No. 1, Article 5. p.127.
[148] TURANO, Margaret. (1976). p.50.
[149] BISIGNARO, Susann. (1994) p.127.
[150] CRAWFORD, Elizabeth.; CARRUTHERS, Janeen. (2010). p.420-421.

provided for[151]. Countries such as the U.K., the U.S., Australia, and the Scandinavian countries only give legal recognition to full adoptions while other countries like France, Romania, and Japan together with many countries in South America and Africa recognize simple adoptions[152]. Article 2(b) of Convention on Protection of Children and co-operation in respect of intercountry adoption clarifies that it covers all kinds of adoptions that bring about the creation of a permanent parent-child relationship.

2.3.2. Domestic Adoptions of Foreign Children

There are two aspects to the domestic adoption of foreign national children, as 1) children who are resident in the same country and 2) children who are brought to the country to be adopted. According to the AFE Regulation, there are procedures in relation to incoming and outgoing adoption, and for Convention and non-Convention adoption, respectively. *There is no mechanism under EU law, neither at the global level for the recognition and enforcement of domestic adoption. Cross-border recognition of domestic adoption in the EU is ruled by the domestic law of the Member States or by bilateral agreements*[153].

2.4. Understanding the 1993 Hague Convention on Inter-country Adoption

Guide No 1 under the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption as a preliminary matter mentions the need for the convention where it states that because there had been an increment in international adoptions in lots of states from the late 1960s, the requirement for another and novel Convention regarding intercountry adoption became notable during the 1980s. As a result, the intercountry adoption had become expansive to the degree that it had turned out to be a phenomenon that would comprise the

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[151] CHWENZER, Ingeborg. p.122.
[152] O'HALLORAN, Kerry. (2009). p.130.
[153] European Parliament's Briefing. (2015). *Adoption: cross-border legal issues and gaps in the European Union*. p. 3.

children's migration in relatively large distances, and major complications in terms of legal and human aspects ensued.

The suggestion that a new convention was needed to address the needs for substantive safeguards in intercountry adoption and for a system of co-operation between countries of origin and receiving countries, was made in a Note prepared by the Permanent Bureau in December 1987[154]. The Adoption (Inter-country Aspects) Act brought into force in the UK the 1993 Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption[155]. Preparation of the 1993 Convention involved more than sixty-five countries, including the UK, as well as non-government organizations and voluntary bodies interested in inter-country adoption[156]. It is an international agreement to safeguard inter-country adoption where 101 countries are contracting parties to this Convention. Also, it was developed to respond to the serious and complex human and legal problems in inter-country adoption and the absence of an international legal instrument that could respond to this situation[157].

Hague Adoption Convention has its principal objectives, determined in Article 1 as: *a) to establish safeguards to ensure that intercountry adoption take place in the best interests of the child and with respect to his/her fundamental rights as recognized in international law; b) to establish a system of cooperation amongst the Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children; c) to secure the recognition in the Contracting States of adoptions made in accordance with the Convention.* The aim of the Convention is to improve certainty, orderliness and fairness in inter-country adoption, and to attempt to stop the trafficking of children[158]. Hague Adoption Convention reflects an internationally recommended policy concerning different child care measures, which,

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[154] LOWE, Nigel; NICHOLLS, Michael. (2016). p. 839.
[155] CRAWFORD, Elizabeth; CARRUTHERS, Janeen. (2010) p.422.
[156] FAWCETT, James., TORREMANS, Paul., GRUŠIĆ, Uglješa., HEINZE, Christia., MERRETT, Louise., MILLS, Alex., CASTRILLÓN, Carmen Otero García., TANG, Zheng Sophia., TRIMMINGS, Katarina. and WALKER, Lara. (2018). p. 1213.
[157] The Hague Conference on Private International Law; Permanent Bureau. (2018*). 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry adoption; 25 Years of Protecting Children in Intercountry Adoption.* The Hague, Netherlands. p.10.
[158] CRAWFORD, Elizabeth.; CARRUTHERS, Janeen. (2010). p.422.

while recognizing that each child is special and that decisions affecting the child's life must be based on full respect for his or her uniqueness, sets out the following hierarchy of options generally held to safeguard the long-term 'best interests' of the child: a) family solution (return to the birth family, foster care, adoption) should generally be preferred to institutional placement; b) permanent solutions (return to the birth family adoption) should be preferred to provisional ones (institutional placement, foster care); c) national solutions (return to the birth family, national adoption) should be preferred to international ones (intercountry adoption)[159]. The convention not only provides an avenue to ensure that international adoptions are safe and legal, but it also implicitly encourages international adoption over less beneficial alternatives such as home-country institutionalization or even domestic adoption[160]. At the heart of the Hague Convention's intercountry adoption scheme lies the concept of the Central Authority where each participating State creates a Central Authority to carry out the Convention's duties[161].

The jurisdiction of the English court to make an adoption order and the law to be applied by the court depend on two different sets of legislative rules, namely Convention rules (for Hague Convention adoption) and general rules (for non-Convention adoption).

2.4.1. Convention Adoption

The Hague Convention of May 29,1993, on Protection of Children and Co-operation in respect of Inter-country Adoption is implemented in the UK by the Adoption and Children Act 2002, the Inter-country Adoption (Hague Convention) Regulation 2003, and the Adoptions with a Foreign Element Regulations 2005[162]. According to the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, adoption will apply where a child

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[159] UNICEF. (1999). p.5.
[160] RYAN, J. Elisabeth. (2006). *For the Best Interests of the Children: Why the Hague Convention of Intercountry Adoption Needs to Go Farther, as Evidenced by Implementation in Romania and the United States.* 29 B.C. Int'l & Comp. L. Rev. p.363.
[161] HILLIS, Lisa. (1998). p.242.
[162] MCCLEAN, David. RUIZ ABOU-NIGM, Verónica. (2012). p.335.

habitually resident in one Contracting State ("the State of origin") has been, is being, or is to be moved to another Contracting State ("the receiving State") either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin[163]. It also applies to only adoptions which create a permanent parent-child relationship[164].

2.4.1.1. Jurisdiction of Convention Adoption

Inter-country adoption exists if and only if the following requirements are fulfilled: the child to be adopted shall be a habitual resident in one Contracting State (the State of origin); the adoptive parent(s) shall be spouses or a person habitually resident in another Contracting State (the receiving State); the child shall be moved from the State of origin to the receiving State to live with the adoptive parents; there shall be adoption of the child either in the State of origin or in the receiving State; and the adoption shall create a permanent parent-child relationship[165]. The Convention requires that each Contracting State designates a Central Authority to discharge the duties which are imposed by the Convention upon such authorities but allows Central Authorities to delegate much of the actual workload to public authorities or other accredited bodies. In the 15th Article of 1993 Hague Convention it is defined that the moment the applicants are deemed as eligible and fitting for adoption, the background report documents must be ready by Central Authority, which then have to be transferred to the Central Authority of the State of origin. This report must be transferred to the Central Authority of the receiving state, with proof that the necessary consents have been obtained, taking care not to reveal the identity of the biological parents, if in the state of origin these identities may not be disclosed[166]. An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the other Contracting

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[163] Article 2(1) of 29 May 1993 Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption.
[164] ibid. Article 2(2).
[165] MULUNEH, Yitages Alamanv. (2015). *Intercountry Adoption: Loss of Identity of a Child*, 7 Jimma U. J.L. 49. Provided by: Ankos. p.60.
[166] CRAWFORD, Elizabeth.; CARRUTHERS, Janeen. (2010). p.424.

States[167]. The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child[168].

2.4.2. Non-convention/ Overseas Adoption

Besides Convention adoption in foreign adoptions, non-convention/overseas adoption are recognized too. Non-convention, or overseas adoption are those adoptions to or from a country which is on the UK's list of designated countries as set out in the Adoption (Designation of Overseas Adoption) Order 1973[169]. An 'overseas adoption 'is one that has taken place in another country and falls outside the definition of a Convention adoption[170].

2.4.2.1. Jurisdiction of non-Convention/ Overseas Adoption

When applying for an adoption order in non-convention adoption, there should be two conditions where one of them must be satisfied i.e. : a) at least one of the couples (in a case of a joint application), or the applicant (in the case of a sole applicant) is domiciled in a part of the British Islands, or b) both applicants (in the case of a joint application), or the applicant (in the case of a sole applicant) have/has been habitually resident in a part of the British Islands for a period of not less than one year ending with the date of the date of application[171]. The identity of the non-UK legal system involved in the inter-country adoption, be it the state of origin of the child in question, or the receiving state, will determine the classification of the adoption as Convention or non-Convention, and in turn the body of law which will regulate the adoption process[172].

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[167] Article 23(a) of 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.
[168] Article 24 of 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.
[169] HILL, David. (2014). p.139.
[170] O'HALLORAN, Kerry. (2009). p.131.
[171] FAWCETT, James., TORREMANS,Paul., GRUŠIĆ, Uglješa., HEINZE, Christia., MERRETT, Louise., MILLS, Alex., CASTRILLÓN, Carmen Otero García., TANG, Zheng Sophia., TRIMMINGS, Katarina. and WALKER, Lara. (2018). p. 1208.
[172] CRAWFORD, Elizabeth.; CARRUTHERS, Janeen. (2010). p.422.

Many countries designated for this purpose also are party to the 1993 Hague Convention, but adoption from such a Contracting State still may be treated as an overseas adoption if, for some factual reason, the adoption does not satisfy the particular requirements of Convention[173]. A non-convention or overseas adoption means an adoption order made in a country or territory on the list as 39 Commonwealth countries (excluding, inter alia, India and Bangladesh) and 22 other countries including China, the USA, South Africa and most Western European countries[174]. The validity of an overseas order cannot be impugned in proceedings in any court in England and Wales, save where the High Court Orders it to cease as being contrary to public policy or that the authority that purported to authorize it was not competent to do so[175].

2.5. The Growth and Decline of Intercountry Adoption

From 1991 to 2001 the number of immigrant children going to the United States increased more than twice from 9050 to 19347 immigrant children[176]. And then in 2004, the number of international adoptions increased to approximately 22884[177]. The frequency of intercountry adoption should be categorized as sending country and receiving country. The highest ratio of intercountry adoptees from the origin countries was Bulgaria (181 per 1000,000), Guatemala (112) and Ukraine (79), meanwhile, the highest ratio in the receiving countries were Cyprus (192 per 100,000), Norway (138) and Sweden (137)[178]. The only receiving country to have clearly reversed the downward trend is Italy: after reducing from a peak of 3,402 intercountry adoptions in 2004 to 2,874 in 2005, its total climbed back steadily to nearly 4,000 in 2008 and 2009. In recent years the number of inter-country adoption has declined drastically. Since 2004 there is a two-thirds decrease in intercountry adoption across the world. One of the

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[173] Ibid. p.426.

[174] *LOWE, Nigel; NICHOLLS, Michael. (2016). p. 866.*

[175] Ibid. p. 867.

[176] FLEISHER, Alison. (2003). *The decline of domestic adoption: Intercountry adoption as response to local adoption laws and proposals to foster domestic adoption.* Southern California Review of Law and Women's Studies, 13(1), 172-173.

[177] SZEJNER, Cynthia Ellen. (2006). p.211.

[178] MIGNOT, Jean-François. (2015). p.2.

reasons for the decrease was the influence of The Hague Convention on Protection of Children and Cooperation in respect of intercountry adoption. This global decrease can be assigned in part to the right implementation of the rule of subsidiarity, and, exclusion of intercountry adoption in specific States of origin, often following crime, abuses, irregular adoption, corruption, and trafficking children for adoption[179]. According to the Issued paper[180] of the Commissioner for Human Rights (2011), in percentage terms, the reduction in Norway appears to have been the largest (more than 50%, from 706 in 2004 to only 344 in 2009), closely followed by the Netherlands (- 48%) and Spain (- 45%). For France the reduction was 25%. In Denmark and Sweden, by contrast, numbers decreased temporarily, but had almost returned to their mid-decade highs by 2009. In 2009, an increase in intercountry adoption was recorded for Canada and Italy, but Italy's was going through until 2011, after, in 2012 it was reversed[181].

2.5.1. Arguments Pro and Against Intercountry Adoption

There is diversity of policies in accordance with allowing children to be adopted internationally and prohibition of the orphans. This diversity of policies can be divided into three groups as prohibited intercountry adoption, limited intercountry adoption, and relatively open intercountry adoption. As I mentioned before, there are some countries (most of them are under Islamic law) where intercountry adoption is prohibited. But even though countries prohibit or limit intercountry adoption, policy divergence is uncontrolled[182]. For example, *Azerbaijan indefinitely suspended the allowance of intercountry adoption pending an investigation, where it became the country which does not allow the practice of adoption*[183]. Beside prohibited intercountry adoption,

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[179] Permanent Bureau. (2018). *The Hague Conference on Private International Law;* p. 17.
[180] Adoption and Children: A Human Rights Perspective, Council of Europe.
[181] BALLARD, L. Robert.; GOODNO, H. Naomi.; COCHRAN, F. Robert& MILBRANDT, A. Jay. (2015). *The Intercountry Adoption Debate; Dialogues across disciplines.* Cambridge Scholars Publishing. p.15.
[182] HODGE, L. Jessica. (2005). *The Intercountry Adoption Argument: Variation in Policy & Perspective*. University of Tennessee, Knoxville. Honors Thesis Projects. p. 4
[183] Ibid. p.4.

there are countries that practice limited intercountry adoption. As an example, in Romania they limit the number of children getting adopted outside the country[184].

There are two different arguments that exist: the proponents for and opponents of intercountry adoption.

2.5.1.1. The proponents for ICA

We know that The Hague Convention on the Protection of Children and Co-Operation in Respect of Intercountry Adoption was developed with the goal to promote the best interests of the child and to prevent abduction, sale, or traffic of children under the mask of intercountry adoption. Also, the Convention respects birth parent rights and creates measures to help achieve these goals[185]. Proponents argue that intercountry adoption serves the needs of homeless children in their birth countries[186]. Even though the separation of children from their parents isn't in their best interests, but when he/she cannot be cared for by their parents, children deserve to live with a suitable different family[187]. They also argue that intercountry adoption in many sending countries is an orphan's best chance of getting an adoption from a family[188].

2.5.1.2. The opponents of ICA

The opponents argue that there can be an absence of cultural and racial identity for children removing them from their birth countries and is harmful to the children that no profits of intercountry adoption could exceed the costs[189]. Adopting children that have different cultures, ethnicity, and race may cause problems for the child in his/her adolescence. According to the opponents, denying the child's cultural, ethnic, or

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[184] The new law of Romania allows for intercountry adoption of children by relatives up to the fourth degree of kinship (up to first cousins) and Romanian citizens who are habitually resident abroad.
[185] BARTHOLET, Elizabeth. (2015). *The Hague Convention: Pros, Cons, and Potential cited in the "The Intercountry Adoption Debate: Dialogues Across Disciplines".* Cambridge Scholars Publishing. p. 240.
[186] HODGE, L. Jessica. (2005). p.8.
[187] WALKER, Lara. (2015). *Intercountry Adoption and the Best Interests of the Child: The Hague Convention of 1993 and the Importance of Bonding,* 27 Child & Fam. L. Q p.357.
[188] HODGE, L. Jessica. (2005). p.9.
[189] Ibid. p.6.

national heritage is irreplaceable mislay[190]. In addition to racial and cultural lines, socio-economic class is an issue that raises issues too. Mostly, the adoptive parents used to be rich people from rich countries, adopting children born to a poor birth mother, from less privileged racial and ethnic countries[191]. And according to this, some consider this as a form of child trafficking, as it involves the transfer of poor children to rich families[192].

In my opinion, I support the group of proponents for intercountry adoption. It is strongly clear that intercountry adoption is the best way to provide a child with a caring family and a suitable home. In the world out there, there are orphans or children that are born from unwanted mothers suffering, who deserve to be adopted by couples who provide a better social standing.

2.6. Who Can Adopt a Child?

Article 2(1) of The Hague Convention applies to adoption by spouses or a person. The largest group of spouses who adopt a child consists of people who cannot have children of their own. In addition, there are also many families which have one or two biological children and who want to adopt rather than bring another child of their own into the world[193]. There is an issue in the Explanatory Report according to who can be adoptive parents, where it was discussed at length in the Special Commission, in particular, whether the Convention should cover adoptions applied for by non-married persons of different sex cohabiting together in a stable manner, or by homosexuals or lesbians, living as a couple or individually. Notwithstanding the fact that these cases were thoroughly examined, the problems they raise may be qualified as false problems, since the State of origin and the receiving State shall collaborate from the very beginning and they may refuse the agreement for the adoption to continue, for instance,

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[190] Ibid. p. 6.
[191] BARTHOLET, Elizabeth. (2007). *International Adoption: Thoughts on the Human Rights Issues.* Harvard Law School Faculty Scholarship 13 Buff. Hum. Rts. L. Rev. 151 p. 153.
[192] SMOLIN, M. David. (2004). p. 283.
[193] ANDERSSON, Gunilla. JACOBSSON, Ranveig. (1981). *Inter-Country Adoption in Sweden*, 24 Int'l Soc. Work; Provided by: Ankos. p.39.

because of the personal conditions of the prospective adoptive parents[194]. Article 2(1) was considered as the less problematic approach and intended to cover heterosexual spouses and adoptions by a single person whether male or female[195]. In article 5 of the Convention, it is determined that the prospective adoptive parents first of all, should be eligible and suitable to adopt and counseled as may be necessary.

2.6.1. Parental Rights

By legally terminating the parental rights of the biological parents, the adopted child is assured a stable placement with the adoptive family without the threat of the biological mother reclaiming the child[196].

2.7. Who Can be Adopted?

Article 2(1) of the Convention applies to adoptions of a child, which means on the fact of it that it does not apply to the adoption of adults. According to the section 47(8/9) of Adoption and Children Act 2002 the adults who are nineteen years old and above cannot fall under the category of being adopted. The same applies for a person who is or has been married. But this exclusion is not that straightforward[197]. By article 3 of the Convention ceases to apply if the requisite agreement between the Central Authorities of both States that the adoption can proceed has not been given before the child attains the age of 18, but once it has, then according to the Explanatory Report, a Convention adoption can be made in respect of a child who is older[198]. The conventions' article 4(1) has established that the child should be suitable for adoption.

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[194] ARANGUREN, G. Parra. (1993). *Explanatory Report on the Convention on Protection of Children and Co-operation in respect of intercountry adoption*. para. 79.
[195] LOWE, Nigel; NICHOLLS, Michael. (2016). p. 845.
[196] BIDIGNARO, M. Susann. (1994). *"Intercountry Adoption Today and the Implications of the 1993 Hague Convention on Tomorrow,"* Penn State International Law Review: Vol. 13: No. 1, Article 5. p.144.
[197] LOWE, Nigel; NICHOLLS, Michael. (2016). p. 845.
[198] Ibid. p.845.

2.7.1. The Best Interest of the Child

With the 1993 Hague Convention, the best interests of children were put at the heart of ICAs, which contributed to 1) the creation of an international benchmark with an orderly, rules-based and State-supervised global inter-country adoption system; 2) a new division of responsibilities and clear roles for each actor in the adoption process; and 3) a safer, clearer, more ethical, transparent, and smooth adoption procedure[199]. Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption Article 1/a states that intercountry adoptions are beneficial to the child's recognized essential rights by international law. Several specific measures in the 1993 Convention are intended to support the implementation of the best interests' principle, i.e.: ensuring the child is adoptable, preserving information and matching with a suitable family[200]. The child's fundamental rights as reflected in the latter Convention include: the child's best interests shall be a primary consideration in all actions concerning children; non-discrimination of any kind, irrespective of the child's or his parents' or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other opinions; the right of a child who is capable of forming his or her own view to express these views freely and to have these views given due weight in accordance with the age and maturity of the child[201]. This fundamental principle of the child's best interests should guide the development of an integrated national childcare and protection system, of which one part may be an ethical, child-centered approach to intercountry adoption[202]. Convention on the Rights of the Child (Art.3) sets out that the best interests of the child should be considered as noteworthy and principal despite the fact that they are tackled or undertaken by such public or private welfare institutions as well as by administrative authorities of legislative bodies[203]. Within the Convention on the rights of the child, the concept is also evident in other articles, providing obligations to consider the best

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[199] Permanent Bureau. (2018). *The Hague Conference on Private International Law*; p.14.
[200] The implementation and Operation of the 1993 Hague Inter-country Adoption Convention; *Guide to good practice. Guide no.1*. p.31-32.
[201] Guide no.1. p.28.
[202] Permanent Bureau. (2018). The Hague Conference on Private International Law; p.21.
[203]SCHWENZER, Ingeborg. & DIMSEY, Mariel. (2006). p.92.

interests of individual children in particular situations in relation to separation from parent[204], parental responsibilities[205], deprivation of family environment[206], adoption[207], restriction of liberty[208] and court hearings of penal matters involving a juvenile[209]. All EU Member States' legislations provide for procedures enabling public authorities to dispense with the parents' consent for adoption in cases of abandonment, lack of contact with the child, deprivation of parental rights or unjustified or unreasonable refusal of consent by the parents where it is clearly in the children's best interests to be removed from their families[210]. The child's interests, however, must be the subject of active consideration; it needs to be demonstrated that children's interests have been explored and taken into account as a primary consideration[211]. The best interest of the child is the most important principle in child law[212]. In achieving the best interests of the child in intercountry adoption, the 1993 Hague Convention recognizes that children should grow up in a family environment, permanency is preferable to temporary measures, intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin[213].

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[204] Article 9(1) and (3)of CRC mention that "the child should not be separated from his/her parents without their will, "except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child"; and States must respect the right of the child to maintain personal relations and direct contact with both parents on a regular basis "except if it is contrary to the child's best interests".

[205] Article 18(1) of CRC mentions that "both parents have primary responsibility for the upbringing of their child and "the best interests of the child will be their basic concern".

[206] Article 20 of CRC states that "children temporarily or permanently deprived of their family environment "or in whose own best interests cannot be allowed to remain in that environment", are entitled to special protection and assistance.

[207] Article 21 of CRC states that "States should ensure that "the best interests of the child shall be the paramount consideration".

[208] Article 37(c) of CRC states that "children who are deprived of liberty must be separated from adults "unless it is considered in the child's best interest not to do so".

[209] Article 40(2)(b)(iii) of CRC states that "parents or legal guardians should be present "unless it is considered not to be in the best interest of the child".

[210] European Parliament's Briefing. (2015). p.1.

[211] UNICEF. (2007). *Implementation handbook for the convention on the right of the child.* Fully revised 3rd edition. Geneva, Switzerland. p.38.

[212] WALKER, Lara. (2015). p.359.

[213] Guide no.1. p.28.

2.8. LGBT Adoption[214]

According to the US law, LGBT community faces a lot of barriers whether adopting from a Hague Adoption Convention country or a non-Hague Adoption Convention country[215]. Whatever the circumstances, the community has been adopting for decades. According to the National Survey of Family Growth (NSFG), forty-six percent (46%) of the lesbian and bisexual woman report having considered adoption as a route to parenthood; differ from heterosexual women which was only thirty-two percent (32%)[216] .

2.8.1. Classification of LGBT Adoptive Parents

There are four groups into which prospective adopters fall for creating a family in LGBT community as: 1) individual, 2) coupled partner; 3) couple and 4) married spouses[217]. Individual or single parent category refers to single unmarried person, including lesbian, gay, and homosexual individuals adopting a child[218]. It means that the prospective adoptive parent is not engaged in a relationship and has no intention to be. The coupled partner are LGBT individuals where there are not in a committed relationship but adopt as individuals[219]. The couple of the same sex, not legally married but want to adopt as a couple[220]. The difference of couple and coupled partners are that the couple one seeks to adopt together in a foreign country, meanwhile while the coupled partners seek as individuals. Same-sex spousal refers to the couples from the same sex, who wants to adopt as a married couple to a foreign country[221].

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[214] LGBT adoptions are adoptions from lesbian, gay, bisexual and transgenders.
[215] MERTUS, J. B. (2011). *Barriers, hurdles, and discrimination: The current status of LGBT intercountry adoption and why changes must be made to effectuate the best interests of the child.* Capital University Law Review, 39(2). Provided by: ANKOS. p. 276.
[216] BAUMLE, K. Amanda & COMPTON, R. D'Lane. (2015*). Legalizing LGBT Families; How the Law Shapes Parenthood.* New York University Press. p. 49.
[217] MERTUS, J. B. (2011). p.276-277.
[218] Ibid. p. 277.
[219] Ibid. p.277.
[220] Ibid. p.277.
[221] Ibid. p.277.

2.8.2. Legal Issues of LGBT Community

LGBT adoption for some countries has been accepted legally, but this doesn't mean that in all cases and countries children can be adopted by them. Even though LGBT adoptions exist, there are a lot of controversies surrounding the adoption of children from them[222]. Due to various laws around the states, the LGBT community will have barriers to the international adoption of children. LGBT individuals experience argument with the normative sociolegal structure more regularly, which makes the law more sensitive inside family decisions[223]. Cultural beliefs that don't value parents from the same-sex may impact LGBT adopters affecting their self-efficacy[224]. There are some countries where they don't allow adoption of children by LGBT, so the effect of the law on the family can be felt even more[225]. In countries such as Iran, Northern Nigeria, Saudi Arabia, Somalia, Sudan, and Yemen homosexual people are criminalized by the death penalty. In addition, sometimes adoption agencies may refuse to work with LGBT adopters, which can indirectly impact them[226].

2.9. Surrogacy

Surrogacy involves the carrying of a pregnancy by a woman on behalf of someone else with the intention of handing the children over after birth[227]. According to the UK Surrogacy Arrangements Act 1985, a surrogate mother may be defined as a mother who willingly carries a baby, gives birth to the baby, and delivers it to the appropriate parents There are two types of surrogacy as: traditional surrogacy and gestational surrogacy[228]. In traditional surrogacy, the surrogate mother becomes pregnant with the

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[222] FARR, Rachel; PATTERSONP, Charlotte. (2013). *Lesbian and Gay Adoptive Parents and Their Children* cited in A. E. Goldberg & K. R. Allen (Eds.), LGBT-parent families: Innovations in research and implications for practice New York, US: Springer Science + Business Media. p.39.
[223] BAUMLE, K., Amanda and COMPTON, R. D'Lane. (2015). p.1.
[224] KINKLER, A. Lori & GOLDBERG, E. Abbie. (2011*). Working with what we've got: Perceptions of Barriers and Supports Among Small-Metropolitan Same-Sex Adopting Couples.* NIH Public Access. p.3.
[225]BAUMLE, K., Amanda and COMPTON, R. D'Lane. (2015*). Legalizing LGBT Families; How the Law shapes Parenthood.* New York University Press. p.1.
[226] KINKLER, A. Lori & GOLDBERG, E. Abbie. (2011). p.3.
[227] OBE, H. David. (2017). *The International Family Law Practice; 2016-2017.* 5th Edition. LexisNexis Publisher. p.754.
[228] GARRITY, Amy. (2000*). A Comparative Analysis of Surrogacy Law in the United States and Great Britain - A Proposed Model Statute for Louisiana*, 60 La. L. Rev. p.809.

sperm of the intended father or is inseminated with donor sperm[229]. The surrogate is genetically related to the child because she is the biological contributor of the egg[230]. Surrogacy in most of the European countries is prohibited, whereas, in the UK, it is legal but restricted[231]. In a number of countries like the US[232], Ukraine[233] and, India[234], traditional surrogacy is legal. The second type called gestational surrogacy is a pregnancy where one woman (the intended mother) supplies the egg, which is then fertilized, and another woman (the surrogate) gestates the fertilized egg and gives birth to the child[235]. Gestational surrogacy can take place in several ways, where the intentional mother uses her own egg and the intentional father uses his own sperm, and the embryo, which is fertilized outside of the womb, is then transplanted into the uterus of the surrogate mother[236]. In cases like this, the surrogate is not genetically related to the child and will be used when the intentional mother is physically unable to carry the child on her own[237]. Other forms of gestational surrogacy include *"the sperm and the egg of donor who decides to remain unknown", or the intended mother's egg and the sperm of an anonymous donor, in order to create an embryo that will be transplanted into the uterus of the surrogate*[238]. In almost all surrogacy cases, the woman who carries the child agrees just for economic reasons[239]. The cost of treatment varies greatly among clinics, ranging from €15,000 to €26,000 with additional costs of flights and

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[229] TRIMMINGS, Katarina& BEAUMONT, Paul. (2013). *International Surrogacy Arrangements; Legal Regulation at the International Level.* Hart Publishing, Oxford and Portland, Oregon. p. 440.
[230] ZUCKERMAN, L. Jamie. (2008). *Extreme Makeover - Surrogacy Edition: Reassessing the Marriage Requirement in Gestational Surrogacy Contracts and the Right to Revoke Consent in Traditional Surrogacy Agreements.* Nova Law Review. Vol.32, Issue 3. Art. 10. p. 663.
[231] OBE, H. David. (2017). p.755.
[232] The social and legal reaction to and perception of surrogacy in the US have evolved significantly over the last 30 years. See further: TRIMMINGS, Katarina& BEAUMONT, Paul. (2013). p. 388.
[233] Ukraine is a country which espouses one of the most liberal approaches toward surrogacy in Europe. See further: DRUZENKO, Gennadiy. p. 357. Ukraine for TRIMMINGS, Katarina& BEAUMONT, Paul. (2013).
[234] India has never prohibited surrogacy, but in recent years India has increasingly recognised the need to regulate the industry. See further: TRIMMINGS, Katarina& BEAUMONT, Paul. (2013). p. 187.
[235] ZUCKERMAN, L. Jamie. (2008). p. 663.
[236] *GARRITY,* Amy. (2000). p.809-810.
[237] ibid. p.810.
[238] ZUCKERMAN, L. Jamie. (2008). p. 664.
[239] MOHAPATRA, Seema. (2015). *Adopting an International Convention on Surrogacy— a lesson from Intercountry Adoption.* Barry University School of Law. p.28.

accommodation[240]. Surrogacy arrangements are also known as 'fertility tourism' has been drastically increased. According to the World Bank estimate, it is likely to be up to US$ 2.5 billion by 2020[241].

2.9.1. Adoption as Compared to Surrogacy

While surrogacy latches on, the number of adoptive homes will greatly decrease[242]. In the Conclusions and Recommendations, the Special Commission on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (17-25 June 2010) mentioned that the number of international surrogacy arrangements is increasing rapidly and expressed concern over the uncertainty surrounding the status of children born as a result of those arrangements and the use of the Convention is inappropriate in cases of international surrogacy. It recommended that the Hague Conference should carry out further study of the legal, especially private international law issues surrounding international surrogacy[243]. One of the reasons why they prefer to choose surrogacy instead of adoption is that it makes it much more likely that couples will obtain a child as a newborn, which is increasingly difficult in today's adoption market[244]. Also, as we know that in surrogacy there is a possibility for couples can have a genetic connection to the child who they will raise. It means that surrogacy will replace adoption.

There are important differences between adoption and surrogacy, for example in the case of adoption, the focus is on finding a family for a child in need, meanwhile, in the case of surrogacy, a child is procreated to satisfy the adults' desire for a child[245]. The next difference can be the relinquishment of parental rights. As we know that in

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[240] WHYTE, Fiona; MALONE, Seán. (2017). *Without a Doubt; an Irish couple's journey through IVF, adoption and surrogacy*. Marrion press. p.41.
[241] LOWE, Nigel; NICHOLLS, Michael. (2016 p. 874.
[242] FIELS, Martha. (1992). *Reproductive Technologies and Surrogacy: Legal Issues.* Creighton Law Rev. p.1592.
[243] Special Commission on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (17-25 June 2010); *Conclusions and Recommendations Adopted by the Special Commission*. paras. 25-26.
[244] FIELS, Martha. (1992). p.1592.
[245] BAKER, Hannah. (2013*). A possible Future Instrument on International Surrogacy Arrangements: Are These 'Lessons' to be Learnt from the 1993 Hague Intercountry Adoption Convention?* p.417. cited for the TRIMMINGS, Katarina& BEAUMONT, Paul. (ed.).

adoption parents agree (when it is necessary) to give their children for adoption after his/her birth, nonetheless, in surrogacy, the surrogate mothers agree to transfer their parental rights as soon as they enter the agreement[246]. Article 29 of 1993 Hague Convention noted that no contact will be allowed between the prospective adoptive parents and the parents of the child as an assurance of free and full consent of the former ones. This provision can't be pleased in surrogacy, because the agreement itself is a form of contact, not to mention the need to take part in medical treatment[247].

2.9.2. The Hague on Surrogacy

The 1993 Hague Intercountry Adoption Convention is the document that potentially can regulate intercountry surrogacy. Notwithstanding some authors in cooperating with the Bureau states that the 1993 Hague Convention is not an appropriate solution because both concepts (adoption and surrogacy) are different[248]. Further, the different examples that we mentioned above, provide that the 1993 Convention is not suitable to solve the difficulties of international surrogacy.

2.9.2.1. The background of The Hague and International Surrogacy

In 2009/2010 New Zealand was concerned about the increased number of international surrogacy arrangements that authority States have to deal with and about the cases that have legal complexities, so it wrote to the Secretary-General of the Hague Conference[249]. Also, it was concerned about the possible use of the 1993 Hague Convention in these cases and asked for a recommendation from the Permanent Bureau concerning if the Convention can be applied suitably as a solution to the difficulties the cases posed[250]. In April 2010, the Council on General Affairs and Policy of the Hague

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[246] ISTEREVYCH, Tetiana. (2013). *International Surrogacy Arrangements: The Problem of Recognition of Legal Parenthood.* Central European University, Hungary. p.40.
[247] Ibid. p.40-41.
[248] Ibid. p.40.
[249] BAKER, Hannah. (2013). *A possible Future Instrument on International Surrogacy Arrangements: Are These 'Lessons' to be Learnt from the 1993 Hague Intercountry Adoption Convention?* p.412. cited for TRIMMINGS, Katarina& BEAUMONT, Paul. (ed).
[250] Ibid. p.417.

Conference summoned the Permanent Bureau to ensure a quick preliminary note on the topic to the Council of 2011. Also, in relation specifically to international surrogacy arrangements, the Council admitted the intricate issues of private international law and child protection ascending from the increase in cross-border surrogacy arrangements[251]. According to the document, the Council concurred that Private International Law inquires that pertain to international surrogacy arrangements must be held under review by the Permanent Bureau.

On March 11, 2011, the Permanent Bureau drafted a briefing note on the "*Private International Law issues surrounding the status of children, including issues arising from international surrogacy arrangements"*, for the Council on General Affairs and Policy of 2011 to the members of the Hague Conference.

International surrogacy arrangement issue report was published by the Permanent Bureau of the Hague[252], which identified serious problems at an international level arising from international surrogacy arrangements, in particular difficulties of uncertain legal parentage and nationality of surrogate born children[253].

In April 2013, the Council was updated on work which was carried by the Permanent Bureau including on the preparations of the questionnaires where the Permanent Bureau is invited to present its final Report to the Council in 2014[254]. In March 2015 Council meeting, the Hague Conference members agreed upon assembling Experts Group for the purpose of exploring the possibility of furthering work in this area[255]. On February 2015, "The Parentage/Surrogacy Project was published by the

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[251] Report of the Council on General Affairs and Policy of the Hague Conference (7-9 April 2010); *Conclusions and Recommendations adopted by the Council*. prel. doc. no.3. p.3

[252] A preliminary report on the issues arising from international surrogacy arrangements drawn up by the Permanent Bureau. prel. doc. no 10.

[253] OBE, H. David. (2017). p.788.

[254] At the 2014 Council meeting (8 - 10 April 2014), Members of the Hague Conference welcomed the work carried out by the Permanent Bureau and agreed that work should continue to further explore the feasibility of drawing up a multilateral instrument in this area. To this end, the Council invited the Permanent Bureau to continue information-gathering, including obtaining further responses to Questionnaire No 1, in particular from States where international surrogacy arrangements take place. While the Council noted the support expressed by a considerable number of Members for the establishment of an Experts 'Group, it decided to defer the final determination of the matter to its meeting in 2015.

[255] Report of the Council on General Affairs and Policy of the Conference (24-26 March 2015); *Conclusions and Recommendations adopted by the Council*. prel. doc. no. 3A. par.5. p.2.

Permanent Bureau[256]. At the March 2016 meeting, the Council invited the Experts' Group to continue its work with a primary focus on recognition as a possible private international law mechanism for addressing problems in this area[257]. During the 14th - 16th March 2017 meeting, the Council on General Affairs and Policy of the Conference welcomed the Report of Experts' Group on Parentage/Surrogacy[258]. The Council noted the progress made at the Group's second meeting, including its agreement in principle on the feasibility of developing a binding multilateral instrument dealing with the recognition of foreign judicial decisions on legal parentage [259]. The Council acknowledged the Group's conclusions that further discussions are needed with respect to: a) the question of how an instrument dealing with the recognition of foreign judicial decisions on legal parentage could operate, b) the recognition of legal parentage when recorded in a public document, and c) the feasibility of the possible application of future agreed general private international law rules on legal parentage to international surrogacy arrangements, and the possible need for additional rules and precautions in these cases as well as in cases of assisted reproductive techniques[260]. During the 13th - 15th March 2018 meeting, the Council on General Affairs and Policy of the Conference welcomed the Report of the Expert's Group on Parentage/Surrogacy and its recommendations, include holding: A) a fourth meeting in September/October 2018 focusing on: 1) deepening the discussion regarding uniform applicable rules on parentage, including how such rules might operate together with public documents which record legal parentage; 2) further analyzing the possibility of recognizing or

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[256] see further: http-4. (2015). https://assets.hcch.net/docs/82d31f31-294f-47fe-9166-4d9315031737.pdf The Parentage/ Surrogacy Project: An Updating Note drawn up by the Permanent Bureau

[257] OBE, H. David. (2017). p.789.

[258] The Experts 'Group agreed that: a) in principle, on the feasibility of developing a binding multilateral instrument dealing with the recognition of foreign judicial decisions on legal parentage. Further consideration and discussion are needed on how such an instrument could operate; b) that owing to the diversity of approaches with respect to the determination of legal parentage and the recognition of the legal parentage when recorded in a public document, further consideration and discussion are needed in relation to this issue; c) that owing to the complexity of the subject and the diversity of approaches by States in cases of ISAs, definitive conclusions could not be reached at this meeting as to the feasibility of the possible application of future agreed general PIL rules on legal parentage to ISAs and the possible need for additional rules and safeguards in these cases and in cases of ART. The Group concluded that further consideration and discussion of these matters are needed.

[259] Report of the Council on General Affairs and Policy of the Conference (14-16 March 2017); *Conclusions and recommendations adopted by the Council*. para.8. p.2.

[260] Ibid. p.2.

accepting foreign public documents which record legal parentage; and 3) refining possible provisions regarding the recognition of foreign judicial decisions. B) a fifth meeting in February 2019 focusing specifically on international surrogacy arrangements (ISAs), which would consider the feasibility of the possible application of future agreed general private international law rules on legal parentage to ISAs and the possible need for additional rules and precautions in these cases, including the possibility of a Protocol for ISAs cases.[261]. The Group reserved its final conclusions and recommendations on future work pending the results of the fifth meeting that took place in January/February 2019. At its 8th - 11th March 2019 meeting, the Council on General Affairs and Policy of the Conference welcomed the reports of the Experts' Group. It endorsed the continuation of the work in line with the latest report of the Experts' Group and noted that most experts recommended that future work should focus on developing both: a) a general private international law instrument on the recognition of foreign judicial decisions on legal parentage; and b) a separate protocol on the recognition of foreign judicial decisions on legal parentage arising from international surrogacy arrangements[262]. The council agreed that another meeting of the Experts ' Group should be convened prior to Council's 2020 meeting. The initial task of the Experts 'Group is to propose provisions for inclusion in possible future instruments relating to the recognition of judicial decisions as set out in the Reports of the Experts ' Group[263]. The council underlined that any work by the HCCH in relation to international surrogacy arrangements should not be understood as supporting or opposing surrogacy[264]. It also decided that intercountry adoptions, including those within the scope of the 1993 HCCH Intercountry Adoption Convention, should be excluded from the scope of the Parentage/Surrogacy Project. Council emphasized the importance of not undermining the 1993 Intercountry Adoption Convention[265].

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[261] Report of the Council on General Affairs and Policy of the Conference (13-15 March 2018); *Conclusions and recommendations adopted by the Council*. para.6. p.1-2.
[262] Council on General Affairs and Policy (5-8 March 2019); *Conclusion and recommendations adopted by the Council*. para 7. p.2.
[263] ibid. para 8.
[264] ibid. para 10.
[265] ibid. para 11.

2.10. Court Orders According to Intercountry Adoption

With regard to court orders, as example I took Albania and Serbia law and how the courts of these two states have given decisions in relation to the issues of intercountry adoption. These States have a small number of adoptions because there are very few declared children abandoned in relation to other countries, so it is not easy to find so many cases according to intercountry adoption.

2.10.1. Cases of court orders in Albania

In certain cases, international adoption can be impossible due to the differences in the legislations that govern the guidelines for adoption in the different nations.

For instance: in one case [No. 11243-00581-00-2007 of the Basic Register; No. 00-2009-1158 of the Decision (342)[266]] which involved the adoption of one Albanian citizen by an Italian led to the nullification of the adoption by the Albanian legislative body with the argument that the adoptee who was 22 years at the time of adoption was not in the age bracket (minors below 18 years of age) considered for adoption from the Republic of Albania whose Family Code does not recognize the adoption of adults.

Even though the ruling of the government of Italy via the Civil Court of Macareta in the province of Macareta Italy had authorized the adoption process, rejection of this arrangement by the Court of Appeals of Tirana, Albania made the adoption impossible.

The court ruling followed that, with regards to article 394 of the Code of Civil Procedure "It does not matter the rule of law of foreign law that is applied by the foreign court, it is important that the effects deriving from the recognition and given effect of the judicial decision of a foreign State do not contradict the basic principles of Albanian legislation." Wherein, the substantive law applied in the concrete case in the court of the foreign State (specifically in the Italian Court) do not to conflict with the substantive law applicable to the same case in the Republic of Albania: taking into account principles like jurisdiction, competence, independence of the judiciary,

[266] Supreme Court of the Republic of Albania, http://www.gjykataelarte.gov.al/web/Kerkim_per_Vendime_37_1.php

equality, access in trial, adversarial proceedings, bail, and most importantly the basic principles of the Family Code.

For these reasons, the civil college of the high court, based on article 485(a) of the code of civil procedure, decided to leave in force the decision no. 7, dated on 12.02.2007 of the court of appeal of Tirana.

In this regard, the Court of Appeals of Tirana stated that "The decision taken by the Court of Macerata Italy should not be given force in the Republic of Albania."

In another similar case [Nr. 11243-02622-00-2012 of the Basic Register; Nr. 00-2015-1954 of the Decision (179)[267]], the adoption of another Albanian citizen by an Italian citizen was rejected by the Albanian court on grounds that the adoptee was an adult at the time of adoption (21 years of age) and that the age difference between the adoptee and the adopter was not as that prescribed in the Albanian Civil law which states that the age difference between the adopter and the adoptee "should at least be 18 years". It also follows that, despite the fact that the adoption decision taken by the Court of First Instance in Brescia of the Italian Republic, this decision was not honored in the Albanian territories on grounds of dissimilarity in the rules of adoption observed by these 2 nations. Thus, the Albanian court ruled that the decisions authorizing adoption in the foreign state (Italian republic to be specific) were not to be observed in Albania due to the differences in the Code of Civil Procedure stipulated by the laws of the Republic of Albania. In this regard, the Court of Appeals reasoned: - "Article 241 of the Family Code defines the conditions of adoption, as the adoptive parent does not appear to have an age difference of at least 18 years with the adopted child, a fact that does not comply with our Albanian law."

Furthermore, the proceedings of the Civil College of the High Court stated that:

-Article 394 of the Code of Civil Procedure provides for legal obstacles that do not allow the recognition and granting of executive power in the territory of the Republic of Albania a decision of a foreign court. In provision "dh" of this article, it follows that: "The decision of a court of a foreign state is not given force in the Republic of Albania when: dh) does not agree with the basic principles of Albanian legislation".

[267] Supreme Court of the Republic of Albania, http://www.gjykataelarte.gov.al/web/Kerkim_per_Vendime_37_1.php

In terms of the content of the above-mentioned provision, it is required that the orders of the court decision of a foreign state should not be contrary to the law of the Albanian state. In this regard, it is worth noting that the rule of Italian law that has been applied by the Italian court does not matter, but only the possible effects deriving from the recognition and granting of force of the foreign state court decision and their compliance with the basic principles of legislation.

For these reasons, the civil college of the high court based on article 485(a) of the code of civil procedure decided to leave in force the decision no. 47, dated on 23.07.2012, of the Shkodra court of appeals which rejected the adoption of L.GJ. by the Italian.

2.10.2. Cases of Court Orders in Serbia

On the other hand, it is known that, in adoption, the child is always the center of attention, his or her needs are in focus and adoptive parents are chosen for him or her, and not the other way around. In the Republic of Serbia, the Center for Social Work an institution that chooses the couple that best meets the needs of the child oversees the adoption process under the guidelines and supervision of the Minister responsible for family protection.

Of the children expecting their new mother and/or father in the Republic of Serbia, 43% are Roma and several of them have certain developmental and/or health problems. Interestingly, in 99 percent of cases, adoptive parents who are on the register want to adopt a Serbian child who is completely healthy or with some mild health problems and, as young as possible.

Our interlocuter argues that, Serbian citizens almost exclusively wanting a healthy child is related to the exclusive adoption of children with special needs by foreigners from our country. Therefore, it so happens that, there is no match for the waiting couples who then have to wait longer while the foreigners leave with the children that Serbian citizens do not want.

Currently, there are 741 couples in Serbia waiting to become parents by adopting one child. More specifically, the case involves married and unmarried couples, as well as "singles", because under the Serbian law, they can also adopt children. Also, in the registry, 161 children are awaiting to be adopted.

In one other case [no. 570-03-00256 /2008-14 of 10 July 2008; no. 560-142 / 07 of 09.05.2008[268]] in the Republic of Serbia, where the adoption of a toddler was nullified by the SUPREME COURT OF SERBIA on grounds that the adoption was entirely based on the best interest of the child but rather shunning away from parental duties on the side of the biological parents. In their initial appeal to pursue the adoption, both families involved in the adoption process were stopped by the decision of the Center for Social Work of the Municipality of Petrovac and Žagubica, Department in Žagubica against adopting a small child with the claims that this wasn't in the best interest of the child. Despite the plaintiffs' claim to reverse the decision taken by the first instance body stating that: "Adoption of the child is motivated by the desire to be free from parental responsibility and that it is essential to determine whether it is in the best interest of the child to entrust adoption to prosecutors. This is especially true for the fact that the mother is unable to exercise parental rights, so they think it makes sense to find the best and fastest way to protect the child's interest."

They also argued that this intended best interest for the child would not be found in a foster family which has already been caring for him for more than a year and a half. In response, after thorough examining, within the meaning of Article 39, paragraph 1 of the Law on Administrative Disputes (Official Gazette of the Federal Republic of Yugoslavia, No. 46/96), assessing the claims of the lawsuit, the response to the lawsuit and the file of the case of this administrative matter, the Supreme Court concluded that: Due to the reasoning of the challenged decision and the case file which were presented to the court, in the procedure that preceded the approval of the challenged decision, the assessment of the best interest was low.

Also, based on the conclusion of the team of experts of the Center for Social Work of Municipalities and for the protection of children and youth no. 560-142 / 07 of 06.05.2008, as well as the opinion of the team of experts of the second instance body

[268] Supreme Court of the Republic of Serbia, https://www.vk.sud.rs/sr-lat/solr-search-page/results?court_type=vs&matter=_none&registrant=_none&subject_number=&date_from%5Bdate%5D=&date_to%5Bdate%5D=&keywords=&phrase=&sorting=by_date_down&redirected=247&level=0&results=10

no. 570.03.256 / 2008-14 dated on 07.07.2008, the adoption agreement between the plaintiffs and the mother of the child was motivated by the husband's desire to perform the adoption, but bypassing the usual procedure provided by law, which stipulates that "the choice of the adoptive parent for children is made by the competent guardianship authority from the sole personal register of adoption." It therefore follows that, the duration of the procedure after obtaining the right to adoption until the realization of adoption is uncertain, as is the desire of the mother to fulfill the responsibility for the child.

Moreover, Article 317, paragraph 3 of the Family Law stipulates that "the choice of future adoptive parents is not made if the adoptive parents and the parent, or guardian of the child, make the choice by agreement and if the guardianship authority considers such an agreement to be in their interest."

Thus, the court finds that the decision of the first instance body dated 09.05.2008 was law based and that the contested decision did not violate the law to the detriment of prosecutors, and that the decision was taken in the interest of the minor child, and pursuant to Article 41 paragraph 2 of the Law on administrative dispute.

Based on the above, the Supreme Court of Serbia finds that nullifying the pre-current adoption arrangements was inevitable.

3. CO-OPERATION BETWEEN STATES; RECEIVING STATE AND STATE OF ORIGIN ON INTERCOUNTRY ADOPTION ACCORDING TO THE 1993 HAGUE CONVENTION

The Hague Convention was designed to establish a system of co-operation collaboration between two countries (receiving state and state of origin), to ensure that ICA happen under conditions that guarantee the elimination of abuses and the best adoption practices[269]. The State of origin and receiving State should share benefits and burdens of regulating ICA. It guarantees the automatic recognition in all Contracting States of adoptions made under the Convention[270].

3.1. The Contracting States; Ratification and Accessions

The 1993 Hague Convention makes a distinction between ratification and accessions for all contracting States which participate in the Convention[271] with the depository. Article 46 of the 1993 Convention notes that the ratification comes into force at the beginning of the month following the termination of three months after the first deposition of the third instrument of approval with the Ministry of Foreign of the Kingdom of the Netherlands.

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[269] Permanent Bureau. (2018). *The Hague Conference on Private International Law*; p.11.
[270] Ibid. p.11
[271] Art 43(2) of the 1993 Hague Convention.

Other states may root for or the Convention[272] after it has been approved and come to full force on the first day of the month following the termination of the three (3) months after the deposition of instruments of accessions[273] with the depositary[274]. Notwithstanding, article 44(3) specifies that accession must have an impact only if it considers the relations between the acceding States and those Contracting States that have not objected within six (6) months after that State has received notification. Also, there is an opposition between article 46(2) and article 44(3) which creates arguments. So, the Permanent Bureau on 2008 Guide, paragraph 469, mentions that the Convention should be treated as coming into operation between the acceding State and the existing Contracting States after the initial three months' period. So, the date of entry into force in each State is governed by Article 46(2), not Article 44(3)[275], which means that the relation between the acceding State and Contracting States should be within three months period of the deposit, not in the six months. States which have two or more regional units, in which miscellaneous frameworks of law are applicable, declare that, the ratification, acceptance, or accession ought to reach to all its territorial units or only one or more of them and may modify[276]. In case there is not any declaration from the State, the Convention reaches out to all regional or territorial units of that particular State[277].

3.2. Responsibilities of the Sending Country (State of Origin)

Responsibilities of a State of origin are: a) to establish that the child is adoptable and that intercountry adoption as opposed to placement within the country of origin is in the child's best interests[278]; b) to have ensured that the requisite consents to the child's adoption (it will be noted that the Convention does not attempt to prescribe what the internal laws on consent should be) after due counseling, have been freely given with a

[272] Article 44(1) of the 1993 Hague Convention.
[273] Article 46(2)a of the 1993 Hague Convention
[274] Article 44(2) of the 1993 Hague Convention.
[275] 2008 Guide no 1 p. 104.
[276] Article 45(1) of the 1993 Hague Convention.
[277] Article 45(3) of the 1993 Hague Convention.
[278] Article 4a/b of 1993 Hague Convention

full understanding of what is involved and without financial inducement[279] and c) to assure that the child is properly informed about the adoption impacts that can have on him or her and that no consent, payment or compensation have been coerced[280]. After the child meets these requirements, the sending country prepares a report about the child's important information as his/her family, social, ethnic, religious, medical, identity background[281]. Furthermore, the child's education is considered along with reports relating to the prospective parents and the contingent on the best interest of the child[282].

3.3. Responsibilities of the Receiving Country

Responsibilities of the accepting State are to lay that the prospective adoptive parents meet all the required criteria and fitting to adopt and to ensure that they have been counseled as may be necessary and, importantly, to have come to the conclusion that the child is eligible or will be permitted to enter and dwell perpetually in that State[283]. When the receiving state is satisfied with the eligibility of the prospective parents, country's Central Authority prepares a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an Intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care[284]. Hence, this report is then given to the sending country's Central Authority[285].

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[279] Article 4/c of 1993 Hague Convention
[280] Article 4/d of 1993 Hague Convention.
[281] Article 16(1a) of 1993 Hague Convention.
[282] Article 16(1b/d) of the 1993 Convention Hague.
[283] Article 5 of 1993 Hague Convention.
[284] Article 15(1) of the 1993 Hague Convention.
[285] Article 15(2) of the 1993 Hague Convention.

3.4. Co-operation between the Sending and Receiving States

Co-operation is a general obligation for all the countries participated in the Convention procedures, where it is noted in the 1st (b)[286] article of the Convention. Co-operation is mentioned in the 7th article where Central Authorities are charged to co-operate with each other and promote co-operation between the competent authorities in their State to protect children and to achieve the other objects of the Convention[287]. It also has to take all appropriate measures to provide information as the laws of their State concerning adoption and other general information, such as statistic and standard forms, to keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application[288]. They are also having obligations concerning particular adoptions through these may in some cases be performed to competent authorities, public authorities, accredited bodies or approved (non-accredited) bodies[289], so the 2008 Guide notes that even though the article 7 only refers to Central Authority obligations which cannot be delegated does not absolve accredited bodies from responsibility for co-operation to achieve the objects of the Convention. Contracting States must not only suppose their own determined responsibilities but also share some others to fulfill objectives in order to protection of the child's best interests[290]. Collective responsibility is important for receiving States and States of origin, so they must work together to make the Convention work as it was intended and ensure the effective regulation of intercountry adoption[291].

A conclusion and recommendation have been given on the Workshop of "Implementation of the 1993 Hague Adoption Convention in Asia: state to play and experience sharing (2017, Viet Nam)" where it is stated that the States are encouraged to share information and experiences at the regional level on, inter alia, good practices, challenges that they face and means of addressing those challenges. So, States that

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[286] The objects of the present Convention should establish a system of co-operation amongst Contracting States to ensure that the safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children is made in accordance with the Convention.
[287] Article 7(1) of the 1993 Hague Convention.
[288] Article 7(2) of the 1993 Hague Convention.
[289] LOWE, Nigel; NICHOLLS, Michael. (2016). p. 841.
[290] 2008 Guide no 1 p. 113.
[291] Ibid. p.113.

possess more experience in implementing it are encouraged to provide assistance to new States Parties or those interested in joining the Convention[292].

3.4.1. Reservations

Article 40 mentions that no reservations are permitted to the Convention. In addition, any Contracting State may declare to the depositary that it will not be bound under the Convention[293] to recognize adoptions made in accordance with an agreement among one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations.[294].

3.4.2. Denunciations

Denunciations are possible for the State Parties toward Convention[295]. By article 47 of the Convention, denunciations require a written notification addressed to the depositary and takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary.

3.5. Institutional Structures

The 1993 Hague Convention encouraged community between all suitable authorities and bodies, at internal and international levels[296]. The specific institutional structures are Central Authority and accredited bodies that are provided by the Convention. In addition, there are also non-accredited person and bodies that are involved in the adoption process which are not specifically controlled by the Convention. All Contracting States have to determine which authority performs what special functions[297]. Report of the 2000 Special Commission recommends that each

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[292] Workshop (2017). *"Implementation of the 1993 Hague Adoption Convention in Asia: state of play and experience sharing"*. Hanoi, Viet Nam.
[293] Article 25 of the 1993 Hague Convention.
[294] Article 39(2) of the 1993 Hague Convention.
[295] Article 47 of the 1993 Hague Convention.
[296] Permanent Bureau. (2018). *The Hague Conference on Private International Law;* p.16.
[297] LOWE, Nigel; NICHOLLS, Michael. (2016). p.846.

Contracting State should describe how the various responsibilities and tasks under the Convention are divided among Central authorities, public authorities and accredited bodies, so that the entities responsible to act under particular articles of the Convention are identified, as well as the mechanisms by which they interact with one another.

3.5.1. Central Authorities

The Central Authority must be designated by the state, after signing the Hague Convention, so it enforces responsibilities and duties affiliated with being a party to the Convention. All the information referred to the extent of their functions, the names and addresses of the accredited bodies should be kept up to date and informed of any changes including withdrawals of accreditation and authorization to act to the Permanent Bureau[298]. The information should be at the time of ratification or accession[299], not later than the date of the entry into force of the Convention in that State[300]. Article 6(2) provides that the Federal States with more than one system of law or States that have autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Central Authority provides information concerning adoption and other general information i.e. statistic and standard forms[301]. It means that it keeps citizens informed in accordance with adoption law, statistics and requirements. Besides this, it keeps one another informed about the operation of the Convention and, eliminate any obstacles to its application[302]. One of the most important functions of the Central Authority is mentioned in article 8, where, it must take, directly or through public authorities, all measures to prevent improper financial or others gains in connection with an adoption and deter all practices contrary to the objects of the Convention. Central Authority

[298] Article 13 of the 1993 Hague Convention and 2008 Guide no 1. para 155.
[299] 2008 Guide no.1. para. 153
[300] 2000 Report and Conclusions of the Special Commission on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption. para. 12(a), recommendation no.2.
[301] Article 7(2a) of the 1993 Hague Convention.
[302] Article 7(2b) of the 1993 Hague Convention.

oversees the accreditation process of adoption agencies involved in the intercountry adoption process. It should regulate only non-profit objectives of accredited bodies[303].

The duty that Central Authorities have is either directly or through public authorities or other bodies duly accredited in their State, is to take all appropriate measures to 1) collate, preserve and exchange information about the situation of the child and prospective adopters, 2) facilitate and expedite proceedings, 3) promote the development of adoption counselling and post-adoption services in their State, 4) provide each other with general evaluation reports about the experience with intercountry adoption, and 5) reply, in so far as is permitted by the law of their State, to justify requests from other Central Authorities or public authorities for information about a particular adoption situation[304].

Another issue of the Central Agency is whether the system supervising intercountry adoption must be a fully public or semi-public system, which allows private agencies to monitor the adoption[305]. As for independent adoption, the 2008 Guide mentions that Central Authorities should not participate in independent adoptions. Independent adoptions are those in which have been approved by their Central Authority of accredited body, the prospective adoptive parents are permitted to go to the State of origin to find for themselves a child to adopt[306].

Central Authority is a connecting bridge because it opens communication among sending countries (states of origin) and receiving countries to safeguard the best interests of the child.

3.5.2. Accredited Bodies

One of the Convention's most important safeguards to prevent the abduction, child selling and child trafficking, is the mandatory procedure for the accreditation or licensing of adoption agencies which undertake intercountry adoptions under the 1993

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[303] 2008 Guide no.1 para. 177.
[304] Article 9 of the 1993 Hague Convention.
[305] BALLARD, L. Robert; GOODNO, H. Naomi; COCHRAN, F. Robert& MILBRANDT, A. Jay. (2015). p. 219-220.
[306] LOWE, Nigel; NICHOLLS, Michael. (2016). p.848.

Hague Convention, and their supervision by the Central Authorities[307]. It was inspired by the 1989 United Nations Convention on the Rights of the Child in which article 21(a) mentions:

"ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary"[308].

The van Loon Report identified the many abuses in intercountry adoption at the time and noted the link between these abuses and the prevalence of unregulated private and independent adoption, recommended that the new Convention require prospective adoptive parents to obtain official permission to adopt[309].

According to the Guide no.2, a private adoption agency usually is an accredited body that has been through a process of accreditation or licensing. Article 10 of the Convention asserts that only the bodies which are eligible and which manifest competence to handle the task impeccably and properly should be complemented with the accreditation. Physical persons cannot be accredited[310]. The Explanatory Report of G. Parra-Aranguren, para. 249 makes clear that article 10 refers to bodies and therefore, physical persons cannot be accredited of the Convention[311]. Meanwhile, the article 11 of the Convention lays down some basic requirements that accredited bodies should "*a) pursue only non-profit objectives; b*) *be directed and staffed by persons qualified by their ethical standards and training or experience to work in the field of intercountry adoption and c) be subject to supervision as to its composition, operation and financial*

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[307] Accreditation and Adoption Accredited Bodies*; Guide to Good practice, 2012 Guide no.2* para. 24.
[308] Ibid. para. 25.
[309] Ibid. paras. 27,32.
[310] Ibid.para.195.
[311] Explanatory Report (1993). paras. 249-250.

situation". Article 12[312] mention that *"a body accredited in one Contracting State can act in another Contracting State only if the competent authorities of both States have authorized it to do so"*. The 2012 Guide mentions that in article 12 the authorization is in the Convention, for example, authorization can occur or be given only by the adoption body that has met all the required criteria and has been accredited. In this case, the consent of both States is indispensable[313] . The para. 269 of the Explanatory Report cite that article 12 is draw up in general terms so authorization ought to be taken from both States so that it can act in both ways, namely directly or indirectly.

3.5.2.1. Approved (non-accredited) Person and Bodies

The term approved (non-accredited), according to the 2012 Guide, depicts a person or a body that has been named as per article 22(2)[314] to execute certain Central Authority operations. Unless the law of the Contracting State doesn't allow this person to operate in the adoption field, then the person cannot be supervised by the qualified authorities of the approving State[315]. Furthermore, the question of whether the approved (non-accredited) persons or bodies are allowed to be authorized to function in another Contracting State or not has been raised by the para. 397 of Explanatory Report. It is clear that the person or the body still will be subject to such procedure found in article 12. Nevertheless, the adoption still may occur between the receiving country and the country of origin, declared under the article 22(4)[316].

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[312] See further, Explanatory Report (1993). para. 268.
[313] See further 2012 Guide no.2 para.148.
[314] Article 22(2) of the 1993 Hague Convention provides that any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under articles 15-21 may be performed in that State, to extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who- a) meet the requirements of integrity, professional competence, experience and accountability of that State; and b) are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.
[315] 2008 Guide no.1 para. 216.
[316] Article 22(4) of the 1993 Hague Convention provides that any Contracting State may declare to the depositary of the Convention
that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.

3.6. The Procedure of the Convention

The procedure of the Convention for each intercountry adoption is governed by Chapter IV (article 14-22). These requirements are obligatory and should be followed for every adoption and in-family adoptions too[317]. Explanatory Report's para. 282 defines that *"Chapter IV aims at designing a procedure that will protect the fundamental interests of all the parties involved in intercountry adoption, in particular the child, the biological parents, and the prospective adoptive parents. Consequently, it establishes significant safeguards for the protection of these interests, but, at the same time, an effort was made to simplify the existing procedures and to boost the chances of homeless children being integrated into adequate homes in other Contracting State".*

3.6.1. Applying to Adopt a Child in Another Contracting State

According to the article 14 of the 1993 Hague Convention "persons that are habitually resident in a Contracting State, who wishes to adopt a child habitually resident in another Contracting State, must apply to their own Central Authority in the State of their habitual residence"[318]. Furthermore, article 15(1) asserts that a report comprising data about the applicants' personal information such as their identity, qualifications, the adequacy to adopt; family, medical, social, environment background as well as the justification of the adoption shall be set out if the Central Authority of the receiving State is pleased and deems the applicants as adequate to adopt. Explanatory Reports on paragraph 295 explains that anytime a married person decides to apply for a single adoption, legal conditions must be verified as well as obtain the consent of the other spouse which corresponds to the Convention. So, "the report must be transmitted to the Central Authority of the State of origin[319]".

This report is known as the report of the article 16. By article 16(1), matching of the child and family is done if the Central Authority of the State of origin is pleased that the child fulfills all criteria to be adopted, and hence a report must ensue. There are some

[317] 2008 Guide no.1 para. 312.
[318] Article 14 of the 1993 Hague Convention.
[319] Article 15(2) of the 1993 Hague Convention.

requirements that I mentioned before on accordance with article 16 if the Central Authority of the State of origin is consent with the adoptable child. This report is not in the interest of the families waiting for adoption, but it is in interest of the existence of the child who can be better protected across intercountry adoption, and to ensure that the placement is made as soon as it can, to prevent delays which are harmful to the welfare of the child[320]. The report on the child does relate to the matching process that should be transmitted by the state of origin and is set off by receiving an application from the Central Authority of the receiving State.

According to article 17, after the report of the child that is given from the State of origin, then the Central Authority of the receiving State should approve that the PAPs finds the match fitting the appropriate by the State that officially agrees or approves the ruling or the verdict and PAPs are eligible and suited to adopt[321] and that the child is lawfully and officially permitted to enter and live perpetually in the receiving State[322]. The adoption itself and the trust of the towards adoptive parents may proceed according to the law of the origin State[323].

3.6.2. General Prohibition of Contact During the Matching Stage

According to article 29, *"there must be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child, unless the adoption takes places within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin".* But there is an exception for this case. For inn-family adoptions, the contact is possible, unless the parties are unknown to each other, then no contact shall occur. Another alternative is if the adequate authority lays out certain criteria for contact.[324]. In addition, the 2005 Special Commission recommendation no.15, "*recommends that States actively discourage direct contacts between prospective adoptive parents and*

[320] Explanatory Report, para. 311.
[321] Article 17(c) of the 1993 Hague Convention.
[322] Article 17(d) of the 1993 Hague Convention.
[323] 2008 Guide no.1 para. 319.
[324] 2008 Guide no.1 para. 359.

authorities in the State of origin until authorized to do so". But there could be an exception[325], where the contact at the appropriate time could be desirable, for example if there is a child with special needs.

3.6.3. Transfer of the Child

Article 19, 20[326], 21 and 28[327] of the Convention has to do with transferring the child from State of origin in the receiving State. The child can be transferred only when the article 17 criteria are fulfilled and have been completely satisfied[328]. Under article 19(2) both States must assure that the transferring must be done in ways that cannot be threatening to the child, and both parents must be present when the transferring process is carried out. Convention makes sure that the States Parties take all measures necessary to guarantee that transferring occurs in safe and sound circumstances.

There are different alternatives of legislation or regulation that provides the transfer of the child i.e. the transfer can take place in the adoptive parent(s) companionship; the presence of one parent can be viable; the presence of both parents or accompanied by a person with the parent's or parents' choice[329]. But according to the majority of the Special Commission which had agreed that the best way to transfer the child is the transfer in the company of the adoptive parents if the process of adoption will take place after the transfer is completed, either in the State of origin or in the

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[325] Permanent Bureau. (17-23 September 2005) Conclusions and Recommendations of the Second Meeting of the Special Commission on the Practical Operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption. Recommendation no. 15, p.52.

[326] By article 20 of the 1993 Hague Convention, the Central Authorities must keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

[327] By article 28 of 1993 Convention, the Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

[328] Article 19(a) of the 1993 Hague Convention.

[329] International Social Service, International Resource Centre on the Protection of Children in Adoption. Information Note, (2003). *Transfer of the child from country of origin to receiving country.* p.6.

receiving State. If the transfer of the child does not take place[330], the reports under article 15 and 16 are to be sent back to the other authority[331].

3.7. Recognition and Effects of a Convention Adoption

Recognition and effects of the adoption issues are mentioned in Chapter V (article 23-27) of the Convention. By article 26(1) recognizing and adopting is comprised of the following "*a) the legal parent-child relationship between the children and their adoptive parents; b) parental responsibility of the adoptive parents for the child; and c) the termination of a pre-existing legal relationship between the children and their mother or father".* Article 23(1) states that "*an adoption certified by the Competent Authority of the State of the adoption as having been made in accordance with the Convention must be recognized by the operation of law*[332] *in the other Contracting State. The certificate shall specify when and by whom the agreements under article 17, sub-paragraph c), were given".* By article 23(2), *"each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities".* According to the 2008 Guide, the certificate must be issued by an authority that is competent, after the adoption is finalized. Furthermore, the certificate may arise a problem, because in some States it is given automatically or very easily but in some other States, they should apply for it[333].

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[330] Article 19(3) of the 1993 Hague Convention
[331] Explanatory Report para. 352.
[332] Even though the phrase "by operation of law" is not very accurate, there could be found no better wording to express that recognition must take place automatically, without the need for a procedure for recognition, enforcement or registration. See Expandatory Report, para. 409.
[333] 2008 Guide no.1 para. 384.

3.7.1. Refusing Recognition

There were concerns about who could be PAPs and whether the Convention must cover adoptions of unmarried heterosexual couples, or by same-sex persons, living individually or as a couple. Adoptions applied for these cases, may be qualified as false problems, since the State of origin and the receiving State must cooperate from the very beginning and they may refute the agreement for the adoption to continue, for instance, because of the personal conditions of the PAPs[334]. Recognition may be refused in two ways, the first one under the article 24, by which "the recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child".

The second refusal is under the article 25 by which, "any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognize adoptions made in accordance with an agreement concluded by application of article 39, paragraph 2, made with one or more other Contracting States. A copy of the agreement must be transmitted to the depositary of the Convention[335].

3.7.1.1. The Effect of Recognition

As is mentioned in article 23(1) that an adoption certificate must be recognized by operation of law in the other Contracting State, the recognition applies not only among the two States that are involved but against all Contracting States[336]. Article 26(2) states that the child is prone to enjoying the relationship in the receiving State as well as in any other Contracting State if the child did not enjoy the legal parent-child pre-existing relationship. Even though article 26 does not solve all the questions as to the effect of the adoption in the Contracting State that recognizes it, it gives the adequate solutions for many of the situations that may appear, taking into account the different regulations of the adoption in the various States[337]. Under article 27(1), if the pre-existing legal-parent relationship is not subject to the effect of termination in the State of origin, the

[334] Explanatory Report, para. 79.
[335] Article 39(2) of the 1993 Hague Convention.
[336] LOWE, Nigel; NICHOLLS, Michael. (2016). p. 856.
[337] Explanatory Report, para. 472.

receiving State under the Convention recognizes a situation along with such effects: a) if the receiving State law allow; b) if article 4 consents are completed, sub-paragraphs c and d have been or are given for the aim of such an adoption. Furthermore, the article 27(2) asserts to eschew any doubts related to the recognition of the conversion operation of law under article 23. The possibility of converting a simple adoption into a full adoption is provided in Article 27 of the Convention.

3.8. Post-adoption Issues

Prospective adoptive parents and accredited bodies have to discuss during the preparation stage about the possible need for post-placement or post-adoption[338]. Post-adoption is a function of accredited bodies in the receiving States. Meanwhile, the Convention obligations on Contracting State do not end with the transfer of a child to adoptive parents[339]. According to the 2012 Guide, the main objective of these services is to ensure that the prospective adoptive parents who experience adjustment problems with their adopted child have the support they need to deal with these issues[340]. Post-adoption obligations include the collection and preservation of information[341], the promotion of post-adoption services and, the provision of post-adoption reports to the State of origin[342].

3.8.1. Preservation of Information

The information mentioned in article 30 states "1) where the contracting State qualified authorities' task is to meticulously preserve the child's origins, in particular, the child's parents' identity and medical history and 2) they must ensure that the child has access to that information"[343]. According to the Explanatory Report, article 30 must be read in relation with article 16, because the information referred to is mainly that

[338] 2012 Guide no.2 para. 538.
[339] 2008 Guide no.1 para. 564.
[340] See more 2012 Guide no.2 para. 538-539.
[341] 2012 Guide no.2 para. 191.
[342] In other words, a full adoption. see LOWE, Nigel; NICHOLLS, Michael. (2016). p. 857.
[343] Article 30 of the 1993 Hague Convention.

required for the preparation of the report on the child that the Central Authority of the State of origin is to transmit to the Central Authority of the receiving State. In addition, it can be useful for States to incorporate the retention of records as a duty. Also, needs to be given the length of time that information should be kept[344]. Children should have the right to information about his/her origins and are underscored by article 7 of the Convention on the Rights of the Child. Whereas, article 30 restricts the right of the child to have information so far as it is allowed by the law of that State[345]. Children's background identifying information is permitted for the States of origin from the report in accordance with article 16. According to 2008 Guide[346], there is a difference to be made among the information about the birth parents and the disclosure of their identity, so information about them should be uncovered without finding their identity. Article 31 states that data which are collected shall be used only for the purpose for which they are collected or transmitted.

3.8.2. Counselling and Post-adoption Services

By article 9(c), Central Authorities are obligated to uphold the progress of adoption counseling and services that are offered after the adoption occurs. It is States work to give consideration to who they will provide post-adoption services when they develop a national or intercountry adoption system[347]. States should take all the right measures to promote them even though the nature and extent of these services isn't specified[348]. The 2008 Guide promote that it is difficult to see how a Contracting State can promote these services without taking steps to also provide the services. Explanatory Report[349], says that the amendment on post-adoption services were added at the suggestion of some origin countries because of the importance of post-adoption services to make sure the child feels safe and secure in his/her new home or

[344] 2008 Guide no.1 para. 569.
[345] Explanatory Report, para.512.
[346] 2008 Guide no.1 para. 573.
[347] Permanent Bureau, (17-23 SEPTEMBER 2005). *Conclusions and Recommendations*, para.150, p.39.
[348] Ibid. para.150.
[349] Explanatory Report, para. 235.

environment, and effective outcome of the adoption. Whereas, 2008 Guide[350] mention that post-adoption service is the need for better for families who struggle with concerns too difficult for them to manage without help from professionals when problems concerning children who had suffered trauma before the adoption took place.

3.8.3. Post-adoption Reports

As 2012 Guide points out that one of the most serious issues happen if the receiving State do not comply with the rules of sending post-adoption reports. As we mentioned before that there should be an obligation for Central Authorities of both (receiving State and State of origin), during the process to its completion, *"to provide each other with general evaluation reports about experience with intercountry adoption*[351] *and reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation*[352]*"*. Reasons for the need of post-adoption report of the State of origin is mentioned at the 2005 Special Commission where 1) it improves domestic public opinion on intercountry adoption, which is sometimes perceived as a national failure; 2) it creates better preparation of children for adoption and prospective adoptive parents and 3) determines with which States the ICA are most successful[353]. Post-adoption reports are not regulated by the Convention for individual children. By the 2008 Guide, in some States, it is required that the reports from the receiving State on adopted children are mandatory to be completed and sent to the State of origin[354], in a period of one-two years. The Special Commission suggests a limitation period over the post-adoption reporting that States of origin must abide by due to the common trust that the system for complicity is provided by the Convention[355].

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[350] 2008 Guide no.1 para. 581.
[351] Article 9(d) of the 1993 Hague Convention.
[352] Article 9(e) of the 1993 Hague Convention.
[353] Permanent Bureau, (17-23 SEPTEMBER 2005). *Conclusions and Recommendations*, para.152, p.39.
[354] 2008 Guide no.1 para. 592.
[355] Permanent Bureau. (17-23 September 2005). Conclusions and Recommendations of the Second Meeting of the Special Commission on the Practical Operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption. Recommendation no. 18, p. 52

3.9. Serbia as a Hague Convention Country

Serbia is a contracting party to one Protocol[356] and 11 Hague Convention[357], one of which is Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption. On April 1, 2014 Serbia, as a state of origin, has entered into force to the 1993 Hague Intercountry Adoption Convention.

3.9.1. Prospective Adoptive Parents Seeking to Adopt in Serbia

There are some requirements for adoptive parents wishing to adopt children imposed by Serbia. Firstly, the minimum age requirements where the prospective adoptive parents must be at least 18 years old and the difference in years is required where prospective adoptive parents are not allowed to be more than 45 years older than the child, they intend to adopt[358]. Secondly, PAPs wishing to adopt, should be married heterosexual couples, or heterosexual couples in a legally registered partnership or haven't legally formalized their relationship[359]. It is optional for single parents seeking to adopt whereas LGBT individuals are not allowed for adoption in Serbian family law. Also, persons who have been convicted of serious crimes are ineligible to adopt.

3.9.1.1. Application File of PAPs

There must be some documents submitted along an application as: a) adoption application filled out by PAPs; b) the 'approval to adopt' statement issued by the legally qualified authority in the receiving State; c) a report on the PAPs comprised of 'home study' and other personal evaluations; d) copies of PAP's passports or other identification document copies; PAP's birth certificates copies; e) PAP's children birth certificates (if any); f) copies of marriage, divorce or death certificates; g) evidence of

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[356] Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations.
[357] http-5. (2006). https://www.hcch.net/en/states/hcch-members/details1/?sid=65 HccH Member: Serbia
[358] POPOVIC, S., & VULEVIC, D. (2015). *Country Profiles, 1993 Hague Intercountry Adoption Convention; Serbia, state of origin*. p.12- 13.
[359] Ibid. p.12.

the financial circumstances of the family; h) regular employment status certificate of the PAPs and i) proof of no criminal record[360].

3.9.2. Central Authorities and Accredited Bodies

Ministry of Labor, Employment, Veterans and Social Issues as a Central Authority which is designated under the 1993 Adoption Convention has different roles in the area of family and social protection and especially for domestic and international adoptions[361]. Courts as competent authorities in the intercountry adoption procedure are engaged in solving the family status of a child prior to the adoption decision. Also, parents may dispossess of from parental rights by court decisions[362]. Serbia has authorized two foreign accredited adoption bodies to work with, one from the USA (Hopscotch Adoptions) and one from Sweden (Adoptionscentrum)[363]. These foreign accredited bodies aid in achieving requirements from art. 5,16, and 17 of Hague Convention.

3.9.3. The Authorization Procedure in Serbia

As I mentioned, in Serbia, Ministry of Labour, Employment, Veterans and Social Issues is responsible for the authorization of foreign accredited bodies. Criteria that Ministry is asking for granting authorization from foreign accredited bodies *are a) the valid license and Hague accreditation; b) organization structure, adoption statistics from last two years; c) information about in-country representative and if agencies have recommendations*[364]. There is not a correct time for how long authorization should be granted. Cooperation might be withdrawn permanently if the agency or accredited body is involved in illegal practice[365], but if the agency does not know about the illegal

[360] Ibid. p.13-14.
[361] Ibid. p.2.
[362] Ibid. p.3.
[363] Ibid. p.5.
[364] Ibid. p.7.
[365] Ibid. p.7.

practices that only individuals from the agency are involved then authorization must be withdrawn for as long as responsible persons are not changed.

As for the approved (non-accredited) persons, mentioned in article 22(2) they are not permitted in intercountry adoption procedures in Serbia.

3.9.4. Children Proposed for ICA in Serbia

Children that need of intercountry adoption if they cannot find domestic adoptive families, are mostly children with special needs, as (down, west, or turret syndrome), cognitive (light or moderate) delays, behavioral, (social and emotional) disorders, older children and siblings, and (partly) Roma children[366]. As for the age, children may be of any age.

3.9.4.1. The Adoptability of a Child

Social service is responsible for establishing that a child is adoptable, where they are organized on a municipal level. If a child's parents are not alive, or their habitual residence is unknown and it is not possible to know where it is, or when parents are due to illness assessed (by the court) as unable to work, or when parents are deprived of parental rights by the court decision, in these cases the child is considered without parental care so he can be fit for adoption[367].

3.9.4.2. The Report on the Child

Social service is responsible for preparing the report on the child's health as well as social, emotional and educational status should be a part of it[368].

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[366] Ibid. p.8.
[367] Ibid. p.9.
[368] Ibid. p.15.

3.9.5. The Matching Stage of the Child and the PAPs in Serbia

Social service besides that is responsible for preparing the report, it is also responsible for the matching of the child and the PAPs in Serbia. While social service[369] (being in charge of child protection) is cognizant of the child's best interests, it is actually performing matching[370]. Central Authority of Serbia is responsible for notifying the receiving State of the matching.

3.9.5.1. Acceptance of the Match

Meanwhile getting a visa for the children to enter the receiving State, accredited body informs competent bodies about matching and that it is approved by the state of origin[371]. As for the time about deciding whether to accept a match or not, there is no limit about it.

3.10. Kosovo as a Non-Hague Convention Country

Kosovo is not part of the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption. Kosovo's Adoption procedure is regulated by Law on Family of Kosovo (2004), articles 160-202.

3.10.1. Reasons why Kosovo is not a Part of HCCH

In the HCCH 26.06.2017 declaration[372], the Republic of Kosovo, through its Embassy to Kingdom of the Netherlands brought to the attention of all Parties of HCCH's Apostille Convention that Serbia rejected the designation of the Republic of Kosovo despite presenting all the instruments of accession to the Apostille Convention

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[369] Social service has a multidisciplinary team of four experts (social worker, psychologist, pedagogue and jurist) that decide about matching the child.
[370] POPOVIC, S., & VULEVIC, D. (2015). p. 16.
[371] Ibid. p.16.
[372]http-6. (2017).
https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=1319&disp=resdn
Declaration, reservation, and notification of the Hague Conference on the Private international law.

by its official name “the Republic of Kosovo” to the Depository of the Convention. Additionally, in this Note Verbal, Kosovo objected Serbia’s refusal to recognize the Republic of Kosovo as a legally independent State despite the fact that the Republic of Kosovo is internationally recognized as a sovereign country with total of 114 countries and is a member of several international organizations.

Moreover, the Republic of Serbia via its Embassy declared to extend territorial applicability of the Authorities of Serbia in Kosovo on 29.05.2017 even there are no established diplomatic relations between the two States. This is an act that the Republic of Kosovo strongly objected claiming it violates the commitments Serbia displayed during the dialogue which included the return of the normal conditions and relations with the Republic of Kosovo under the facilitation of the European Union to dismount all structures which are functioning in the Republic of Kosovo territory.

These issues are yet to be solved and as such, Kosovo, currently considered a party of HCCH hasn’t been declared an official member of the Convention; and thus, cannot in its jurisdiction authorize inter-state/international child adoption because it lacks the statutory power and proper legislations as it required by the Hague Conference on Private International Law.

3.10.2. Adoption in Kosovar Law

The normative regulation of the institute of adoption in Kosovar Law is specific. It differs from many other rights, because it mixes the special features and characteristics of the two types of adoption, which is incompatible with the tradition and historical experience of adoption development.

While international human rights instruments provide for an adoption regime through which adoption is judged by the competent authorities, in fact, the legal framework in Kosovo also provides that the adjudication of adoptions is a matter within the exclusive jurisdiction of the courts[373]. Despite such provisions, many adoptions in Kosovo today are judged by administrative bodies instead of courts.

[373] OSCE. (2010). Child Adoption Procedure in Kosovo. Department of Human Rights and Communities Legal System; Monitoring Section. 6th edition. p.2.

3.10.2.1. Adoption Procedure in Kosovo

The adoption procedure is within the competence of the court. The court may seek advice from the guardianship authority when making a decision on adoption. Adoption is established by legal action and it is established in a non-contentious procedure before the court with the submission of the proposal by the adoptive parent.

3.10.3. Prospective Adoptive Parents Seeking to Adopt in Kosovo

According to the Law on the Family of Kosovo, article 164, a) the married couples may adopt the child only jointly and b) the unmarried person may adopt the child alone. There are some requirement for PAPs seeking to adopt, which are specified in the legal provisions as: 1) the adoptive parent must have the ability to act; 2) to have the necessary personal qualities for the successful exercise of parental rights and obligations; 3) not to suffer from any diagnosed mental illness or mental retardation as well as the person suffering from any contagious disease that would endanger the child's health; 4) to be 21 years old[374]. The child can also be adopted by the spouses, where one of them must have reached the age of 25 and others must have reached the age of 21.

3.10.3.1. Application File of PAPs

Parents who want to adopt children must submit some documents to the Ministry of Labor and Social Welfare*:* 1) the written request of the adoptive potential parents; 2) the birth certificate (for both parents); 3) the marriage certificate (not older than six months); 4) the doctor's certificate proving the ability of the adoptive parents to adopt the child; 5) the opinion of a psychologist (detailed description of adoptive parents); 6) opinion of professional experts from the professional service within the Center for Social Work; 7) certificate or verification of economic status (including property); 8) document on personal income of adoptive parents; 9) photocopies of identification

[374] Article 175-178 of the Law on the Family of Kosovo.

documents; 10) certificate from the court that the PAPs are not under investigation for any criminal offenses; 11) certificate from the court providing that the parental right and the capacity to act has not been taken away.

3.10.4. Competent Authority of Adoption

According to article 161 of Law on Family of Kosovo, the adoption procedure is within the competence of the court. The court may seek advice from the guardianship authority when making a decision of adoption. The Custodian Body will appoint only specially trained personnel who will be suitable for the task, due to personal characteristics and who will have professional experience of working with children[375].

3.10.5. Children Proposed for Adoption in Kosovo

According to article 174 of the Law on Family of Kosovo, only a minor can be adopted. Nonetheless, a minor child who has the same blood type as the PAP cannot be adopted. This prohibition applies to persons of the bloodline in a straight line without borders, regardless of the degree of closeness, i.e. for all prenatal and postnatal. Neither the brother nor the sister can adopt the brother or sister[376]. This means that adoption is prohibited between persons of the same blood type in the line of blood up to the second degree.

[375] Article 161 of the Law on the Family of Kosovo.
[376] Article 177 of the Law on the Family of Kosovo.

4. CONCLUSION

Children are the world's most precious resource and its best hope for the future. There are millions of orphans worldwide who need protection, care and support. Any child under the age of 18, regardless of where they live, whether they are with or without parental care, must be protected from child abuse, whether it is physical, sexual or psychological, child trafficking, child violence, child labour or child marriage. Child protection is an ongoing issue in every country. Creating a protective environment for children, especially for those in greater need, will help prevent abuse, violence, and exploitation. According to the CRC, children must be protected and cared for, taking into account the rights and duties of their parents, legal guardians, or persons legally responsible for them, taking all necessary administrative and legislative measures. There are many organizations and treaties that deal with child protection, such as UNICEF, CRC, and HCCH on which are included many child protection conventions, one of which is the 33rd Convention on Protection of children and co-operation in respect of Intercountry Adoption.

Essentially, a child should grow up in a family environment, in an atmosphere of happiness, love and understanding. As far as intercountry adoption is concerned, it is a new notion that began to be recognized after world war II, where many children were left without care. Wars, natural disasters, and disease have left many children homeless, so intercountry adoption was and continues to be a return to a normal family life for children. Furthermore, adoption is an institution that offers a homeless child an alternative family. In addition, there are many children in orphanages in poorer countries, where they are in need of intercountry adoption. For some, intercountry adoption is known as an international business, where children are trafficked or bought from poor families and they sell to the developed rich countries. But for some others, where I am of the same opinion, intercountry adoption is aimed at housing abandoned children, regardless of the circumstances, so it is known as an act of goodwill, which benefits both children and adoptive parents. The Hague Adoption Convention is also of this opinion, acknowledging that the upbringing of children in the family is of paramount importance to the happiness and healthy development of the child. Under

this convention, when a child does not find a suitable family in his or her state of origin, it is given the opportunity to find it in another state.

Always bearing in mind that the creation of this Convention is exercised and continues to have only the purpose for the best interests of the child and the goal is to protect the interests of children. If clear procedures are established and if the relevant improper benefits are prohibited, then the Convention provides more certainty, anticipation for all parties to the adoption. In addition, a key point of the convention is to prevent illegal practices, including the abduction, selling or trafficking children.

Co-operation between authorities of the State of origin and receiving State is necessary to ensure that intercountry adoption occurs only in order to guarantee better practices of adoption and elimination of abuses. By co-operating with each other, they share the burdens and benefits of regulating intercountry adoption. Functions within the process of deciding which state to perform are clearly defined in the Convention. In order for children to be protected from dangers of illegal, irregular and ill-prepared adoptions abroad then co-operation between states takes place. The receiving State has the duty to confirm that the adopted child will have permanent residence and that the prospective adoptive parents have been assessed as suitable.

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