

Draft European Convention on the Adoption of Children (revised)

Preamble

The member states of the Council of Europe and the other signatories hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that, although the institution of the adoption of children exists in the law of all member states of the Council of Europe, differing views as to the principles which should govern adoption and differences in adoption procedures and in the legal consequences of adoption remain in these countries;

Taking into account the United Nations Convention on the Rights of the Child, of 20 November 1989, and in particular its Article 21;

Taking into account The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption;

Noting the content of Recommendation 1443 (2000) of the Parliamentary Assembly of the Council of Europe on international adoption: respecting children's rights, and the Council of Europe's White Paper on principles concerning the establishment and legal consequences of parentage;

Recognising that some of the provisions of the 1967 European Convention on the Adoption of Children (ETS No. 58) are outdated and contrary to the case law of the European Court of Human Rights;

Recognising that the involvement of children in family proceedings affecting them has been improved by the European Convention of 25 January 1996 on the Exercise of Children's Rights (ETS No. 160) and by the case law of the European Court of Human Rights;

Considering that the acceptance of common revised principles and practices with respect to the adoption of children, taking into account the relevant developments in this area during the last decades, would help to reduce the difficulties caused by the differences in national laws and at the same time promote the interests of children who are adopted;

Being convinced of the need for a revised Council of Europe international instrument on adoption of children providing an effective complement in particular to the 1993 Hague Convention;

Recognising that the best interests of the child shall be of paramount consideration,

Have agreed as follows:

Part I - Scope of the convention and application of its principles

Article 1 - Application of principles

Each State Party shall adopt such legislative or other measures as may be necessary to ensure the conformity of its law with the provisions of this convention and shall notify the Secretary General of the Council of Europe of the measures taken for that purpose.

Article 2 - Scope of **the convention**

1. This convention applies to the adoption of a child who, at the time when the adopter applies to adopt him or her, has not attained the age of 18, is not and has not been married, **is not and has not entered into a registered partnership** and has not reached majority.¹

2. This convention covers only legal institutions of adoption which create a permanent child-parent relationship.

Part II - General principles

Article 3 - Validity of adoptions

An adoption shall be valid only if it is granted by a court or an administrative authority (hereinafter the "competent authority").

Article 4 - Granting of an adoption

1. The competent authority shall not grant an adoption unless it is satisfied that the adoption will be in the best interests of the child.

2. In each case the competent authority shall pay particular attention to the importance of the adoption providing the child with a stable and harmonious home.

Article 5 - Consents to an adoption

1. Subject to paragraphs 2 to 5 of this article, an adoption shall not be granted unless at least the following consents to the adoption have been given and not withdrawn:

- a* the consent of the mother and the father; or if there is neither father nor mother to consent, the consent of any person or body who is entitled to consent in their place;
- b* the consent of the child considered by law as having sufficient understanding; a child shall be considered as having sufficient understanding on attaining an age which shall be prescribed by law and shall not be more than 14 years;
- c* the consent of the spouse or registered partner of the adopter.

¹ Proposed change by the United Kingdom delegation (See document *DD(2007)187* dated 3 April 2007). Proposal considered acceptable.

2. The persons whose consent is required for adoption must have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin. The consent must have been given freely, in the required legal form, and expressed or evidenced in writing.

3. The competent authority shall not dispense with the consent or overrule the refusal to consent of any person or body mentioned in paragraph 1 save on exceptional grounds determined by law. However, the consent of a child who suffers from a disability preventing the expression of a valid consent may be dispensed with.

4. If the father or mother is not a holder of parental responsibility in respect of the child, or at least of the right to consent to an adoption, the law may provide that it shall not be necessary to obtain his or her consent.

5. A mother's consent to the adoption of her child² shall be valid when it is given at such time after the birth of the child, not being less than six weeks, as may be prescribed by law, or, if no such time has been prescribed, at such time as, in the opinion of the competent authority, will have enabled her to recover sufficiently from the effects of giving birth to the child.

6. For the purposes of this convention "father" and "mother" mean the persons who according to law are the parents of the child.

Article 6 - Consultation of the child

If the child's consent is not necessary according to Article 5, paragraphs 1 and 3, he or she shall, as far as possible, be consulted and his or her views and wishes shall be taken into account having regard to his or her degree of maturity. Such consultation may be dispensed with if it would be manifestly contrary to the child's best interests.

Article 7 - Conditions for adoption

1. The law shall permit a child to be adopted:

a. by two persons of different sex

i. who are married to each other, or

ii. where such an institution exists, have entered into a registered partnership together³;

² Paragraph 6.1 of Opinion 266 (2007) of the Parliamentary Assembly of the Council of Europe proposed to replace the words "A mother's consent to the adoption of her child" by the words "the mother's and, where possible, the father's consents to the adoption of their child". This is considered to be unacceptable as the consent of the father is already covered by this Article and paragraph 5 gives a special protection to the mother during a short period after giving birth to the child.

³ Paragraph 6.2 of Opinion 266 (2007): the Parliamentary Assembly proposed that paragraph 1.a should be extended to cover persons who are living together in a stable relationship. This is considered unacceptable as this possibility

b. by one person.

2. States are free to extend the scope of this convention to same-sex couples who are married to each other or who have entered into a registered partnership together. They are also free to extend the scope of this convention to different-sex couples⁴ and same-sex couples who are living together in a stable relationship.

Article 8 - Possibility of a subsequent adoption

The law shall not permit an adopted child to be adopted on a subsequent occasion save in one or more of the following circumstances:

a. where the child is adopted by the spouse or registered partner of the adopter;

b. where the former adopter has died;

c. where the adoption has been annulled;

d. where the former adoption has come or thereby comes to an end;

e. where the subsequent adoption is justified on serious grounds and the former adoption cannot in law be brought to an end.

Article 9 - Minimum age of the adopter

1. A child may be adopted only if the adopter has attained the minimum age prescribed by law for this purpose, this minimum age being neither less than 18 nor more than 30 years. There shall be an appropriate age difference between the adopter and the child, having regard to the best interests of the child, preferably a difference of at least 16 years.

2. The law may, however, permit the requirement as to the minimum age or the age difference to be waived in the best interests of the child:

a. when the adopter is the spouse or registered partner of the child's father or mother; or

b. by reason of exceptional circumstances.

Article 10 - Preliminary enquiries

1. The competent authority shall not grant an adoption until appropriate enquiries have been made concerning the adopter, the child and his or her family. During such enquiries and thereafter, data may only be collected, processed and communicated according to the rules relating to professional confidentiality and personal data protection.

has already been given to States under paragraph 2. If such a requirement were to be included in paragraph 1.a a number of States would be opposed to this text.

⁴ Paragraph 6.3 of Opinion 266 (2007): the Parliamentary Assembly proposed to delete the reference to heterosexual couples in paragraph 2. However, as the CDCJ did not accept the proposal in paragraph 6.2 of the Opinion, the CDCJ considers this redundant proposal also unacceptable.

2. The enquiries, to the extent appropriate in each case, shall concern, as far as possible and *inter alia*, the following matters:

- a. the personality, health and social environment of the adopter, particulars of his or her home and household and his or her ability to bring up the child;
- b. why the adopter wishes to adopt the child;
- c. where only one of two spouses or registered partners applies to adopt the child, why the other does not join in the application;
- d. the mutual suitability of the child and the adopter, and the length of time that the child has been in his or her care;
- e. the personality, health and social environment of the child and, subject to any limitations imposed by law, his or her background and civil status;
- f. the ethnic, religious and cultural background of the adopter and of the child.

3. These enquiries shall be entrusted to a person or body recognised for that purpose by law or by a competent authority. They shall, as far as practicable, be made by social workers who are qualified in this field as a result of either their training or their experience.

4. The provisions of this article shall not affect the power or duty of the competent authority to obtain any information or evidence, whether or not within the scope of these enquiries, which it considers likely to be of assistance.

5. Enquiries relating to the suitability to adopt and the eligibility of the adopter, the circumstances and the motives of the persons concerned and the appropriateness of the placement of the child shall be made before the child is entrusted with a view to adoption to the care of the prospective adopter.

Article 11 - Effects of an adoption

1. Upon adoption a child shall become a full member of the family of the adopter(s) and shall have in regard to the adopter(s) and his, her or their family the same rights and obligations as a child of the adopter(s) whose parentage is legally established. The adopter(s) shall have parental responsibility for the child. The adoption shall terminate the legal relationship between the child and his or her father, mother and family of origin.

2. Nevertheless, the spouse or partner, whether registered or not,⁵ of the adopter shall retain his or her rights and obligations in respect of the adopted child if the latter is his or her child, unless the law otherwise provides.

6 Paragraph 6.4 of Opinion 266;(2007): The Parliamentary Assembly's proposal to include the "unmarried partner, provided that the couple live together in a stable relationship" is a consequence of the proposal for changes in Article 7 paragraph 1.a. The proposed addition to Article 11 paragraph 2 is unacceptable as the proposal to change Article 7 paragraph 1 is considered unacceptable. However, the CDCJ would propose to modify the sentence in order to

3. As regards the termination of the legal relationship between the child and his or her family of origin, States Parties may make exceptions in respect of matters such as the surname of the child and impediments to marriage or to entering into a registered partnership.

4. States Parties may make provision for other forms of adoption having more limited effects than those stated in the preceding paragraphs of this article.

Article 12 - Nationality of the adopted child

1. States Parties shall facilitate the acquisition of their nationality by a child adopted by one of their nationals.

2. Loss of nationality which could result from an adoption shall be conditional upon possession or acquisition of another nationality.

Article 13 - Prohibition of restrictions

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

2. A person who has or is able to have a child shall not on that account be prohibited by law from adopting a child.

Article 14 - Revocation and annulment of an adoption

1. An adoption may be revoked or annulled only by decision of the competent authority. The best interests of the child shall always be the paramount consideration.

2. An adoption may be revoked only on serious grounds permitted by law before the child reaches the age of majority.

3. An application for annulment must be made within a period prescribed by law.

Article 15 - Request for information from another State Party

When the enquiries made pursuant to Articles 4 and 10 of this convention relate to a person who lives or has lived in the territory of another State Party, that State Party shall, if a request for information is made, promptly endeavour to secure that the information requested is provided. Each state shall designate a national authority to which a request for information shall be addressed.

Article 16 - Proceedings to establish parentage

ensure, in states where single persons may adopt, and where such persons are living together with the biological parent of the child, that the rights and obligations of the latter parent are retained.

In the case of pending proceedings for the establishment of paternity, or, where such a procedure exists, for the establishment of maternity, instituted by the putative biological father or mother, adoption proceedings shall, where appropriate, be suspended to await the results of the parentage proceedings. The competent authorities shall act expeditiously in such parentage proceedings.

Article 17 - Prohibition of improper gain

No one shall derive any improper financial or other gain from an activity relating to the adoption of a child.

Article 18 - More favourable conditions

States Parties shall retain the option of adopting provisions more favourable to the adopted child.

Article 19 - Probationary period

States Parties are free to require that the child has been in the care of the adopter before adoption is granted for a period long enough to enable a reasonable estimate to be made by the competent authority as to their future relations if the adoption were granted. In this context the best interests of the child shall be the paramount consideration.

Article 20 - Counselling and post-adoption services

The public authorities shall ensure the promotion and proper functioning of adoption counselling and post-adoption services to provide help and advice to prospective adopters, adopters and adopted children.

Article 21 - Training

States Parties shall ensure that social workers dealing with adoption are appropriately trained in the social and legal aspects of adoption.

Article 22 - Access to and disclosure of **information**

1. Provision may be made to enable an adoption to be completed without disclosing the identity of the adopter to the child's family of origin.
2. Provision shall be made to require or permit adoption proceedings to take place in camera.
3. The adopted child shall have access to information held by the competent authorities concerning his or her origins. Where his or her parents of origin have a legal right not to disclose their identity, it shall remain open to the competent authority, to the extent permitted by law, to determine whether to override that right and disclose identifying information, having regard to the circumstances and to the respective rights of the child and his or her

parents of origin. Appropriate guidance may be given to an adopted child not having reached the age of majority.⁶

4. The adopter and the adopted child shall be able to obtain a document which contains extracts from the public records attesting the date and place of birth of the adopted child, but not expressly revealing the fact of adoption or the identity of his or her parents of origin. States Parties may choose not to apply this provision to the other forms of adoption mentioned in Article 11, paragraph 4, of this convention.

5. Having regard to a person's right to know about his or her identity and origin, relevant information regarding an adoption shall be collected and retained for at least 50 years after the adoption becomes final.

6. Public records shall be kept and, in any event, their contents reproduced in such a way as to prevent persons who do not have a legitimate interest from learning whether a person was adopted or not, and if this information is disclosed, the identity of his or her parents of origin.

Part III - Final clauses

Article 23 - Effects of the convention

1. This convention shall replace, as regards its States Parties, the European Convention on the Adoption of Children, which was open for signature on 24 April 1967.

2. In relations between a Party to the present convention and a Party to the 1967 convention which has not ratified the present convention, Article 14 of the 1967 convention shall continue to apply.

Article 24 - Signature, ratification and entry into force

1. This convention shall be open for signature by the member states of the Council of Europe and the non-member states which have participated in its elaboration.

2. The convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3. This convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three signatories have expressed their consent to be bound by the convention in accordance with the provisions of paragraph 2 of this article.

4. In respect of any state mentioned in paragraph 1, which subsequently expresses its consent to be bound by it, the convention shall enter into force on the first day of the month

Paragraph 6.5 of Opinion 266 (2007): The Parliamentary Assembly proposal to change the wording of Article 22 paragraph 3 is considered unacceptable since it does not ensure a necessary balance between the best interests of the child and those of the parents when accessing and disclosing information on the child's origin.

following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 25 - Accession

1. After the entry into force of this convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties, invite any state not a member of the Council of Europe and not having participated in its elaboration to accede to this convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, and by unanimous vote of the representatives of the States Parties entitled to sit on the Committee of Ministers.
2. In respect of any acceding state, the convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 26 - Territorial application

1. Any state may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this convention shall apply.
2. Any State Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 27 - Reservations⁷

1. No reservations may be made to this convention except in respect of the provisions of Article 5, paragraph *b*, Article 7, paragraphs 1.a.ii and 1.b, and Article 22, paragraph 3.

⁷ Paragraph 6.6 of Opinion 266 (2007): the Parliamentary Assembly proposed to delete all paragraphs in Article 27 and to replace them with the following words: "No reservations may be made to this convention". The proposal is not considered acceptable as during the finalisation of the text of the draft Convention at the 82nd plenary meeting of the CDCJ on 26 February - 1 March 2007 a number of States, while indicating a great interest in acceding to the Convention once adopted, insisted on a minimum degree of flexibility and the allowance of a limited number of reservations, since it would otherwise be impossible for them to accede to the Convention.