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DIRECTORATE-GENERAL JUSTICE and CONSUMERS

Directorate A: Civil justice
Unit A.1 : Civil justice policy

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MISSION REPORT

Subject: Participation in the 4th Special Commission on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Inter-country adoption (The Hague, 8-12 June 2015)

The undersigned has participated on 8 June in the first meeting of the 4th Special Commission on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Inter-country adoption.

The first day of the meeting was devoted to examination of the state of play of the 1993 Convention after 20 years since its entry into force (1995).

Professor Peter Selman, Visiting Fellow in the School of Geography, Politics & Sociology at the Newcastle University, UK, illustrated the current trends in inter-country adoption based on the available data.

The first important remark is the dramatic decline of the number of inter-country adoption (ICA) since 2004. The global number of inter-country adoptions peaked in 2004 after a steady rise in annual numbers from the early 1990s. Since then, annual numbers have decreased to the point that by 2008 the total was lower than it had been in 2001 and by 2009 lower than it was in 1998. During this time, the rise and fall was evident in most regions and countries. By 2013 the annual total was the lowest since 1993.

There have been 45.284 inter-country adoptions in 2004; in 2009 the number decreased to 29.447 (fall of -35%); between 2009 and 2013, all States considered, there has been a fall of -45% (-65% in Denmark, -60% in Spain).

The top 9 States of origin in 2013 were China; Ethiopia; Russia; Ukraine; Congo; Colombia; Philippines; Haiti; Bulgaria.

It is worth to notice that, for many years, ICA from Africa was rare. Now Africa has become the new frontier for ICA, which has increased by almost 300% in just eight years. This rise is set against a backdrop of globalisation, the shortage of adoptable children in other parts of the world, increasing poverty in Africa, weak institutional law enforcement capacity, and a lack of accurate data on adoptable children. An increasing number of illicit activities relating to adoptions on the African continent include child selling and buying, trafficking, and improper financial gains in the context of ICA. These are a clear indication of the lack of preparedness for the number of ICA applications being received.

The second important remark is the changing profile of the adopted children: they are more and more children with "special needs", meaning older or with physical or mental problems.

Ms [REDACTED], Principal Legal Officer at the HccH, presented Preliminary Document n.3, assessing the impact of the 1993 Convention on practices and laws related to adoption.

The document was prepared by the Permanent Bureau of the HccH on the basis of the contribution of the Central Authorities of the Contracting Parties and Euroadopt, which have answered to Questionnaire n.1.

The 1993 Hague Convention has 93 Contracting Parties: this means that more than half of adoptions are carried out under the Convention, but at least 50% of adoptions are dealt with outside the Convention framework.

The top 5 receiving States in 2013 were: USA (7094); Italy (2825); France (1343); Canada (1243) and Spain (1188).

Main objectives of the convention are: establishing minimum standard of protection for the children; building a system of cooperation between the parties, preventing abduction, sale and trafficking of children, ensuring automatic recognition of adoption decisions.

Overall, the Convention has stimulated "community building" through the establishment of Central Authorities and accredited bodies and the certificate under Article 23 has ensured automatic recognition of adoption decisions (even if there are still problems to be tackled later in the Special Commission).

On the basis of the answers received to the questionnaire, it can be said that the Convention has also reinforced the principle of subsidiarity, by encouraging national adoptions and the development of child-care programs.

It was also noted that, in general, the profile of the adopted children has changed: while the "most wanted" typology of children remains the same (young and healthy), the adoptable children are more and more children with "special needs".

Also the modern technologies applied to human reproduction and surrogacy arrangements can play a role in contributing to the decline of ICA.

Other issues observed are: the increase of the duration of the inter-country adoption procedure (caused by more safeguards, excess of bureaucracy, fewer adoptable children in good health, etc...); the increase in the costs (more professionalized procedure, increased controls and monitoring, length of procedure generating additional costs, etc....)

Three round tables were held during the day: the first one, chaired by Hans Van Loon, former Secretary-General of The Hague Conference on Private International Law, was devoted to the implementation of the principle of subsidiarity after 20 years since the entry into force of the 1993 Hague Convention. The discussion showed that implementation of the subsidiarity principle is central to the success of the Convention, and ensures that an inter-country adoption takes place "in the best interests of the child and with respect for his or her fundamental rights".

It was noted that the principle of subsidiarity is enshrined in the UN Convention on the Rights of the Child and the ICA is a suitable option, as it could give the child the advantage of a permanent solution (family).

Among the actions devoted to the implementation of the subsidiarity principle, the participants to the round table mentioned: improvement a child welfare and child protection systems; simpler procedures for national adoptions; services aimed at maintaining the child in the family of origin when possible; strategy to combat violence and poverty, facilitating social inclusion.

If the child cannot stay with his/her family, ICA could represent a valid option in comparison to institutionalisation, as the family environment may be preferable for the child development. Overall, the main conclusion was that there is a range of options and, on a case by case basis, the authorities have to consider which is the best suitable one for any given child. However, one Contracting Party noted that if, for instance, the law of the country of origin establishes that "no child under 3 years can be adopted", there is no case by case analysis and no consideration of the best interests of the child. Others Contracting Parties noted that the Convention does not require that "all alternatives have to be exhausted before proceeding with ICA" as this would put an unnecessary burden on authorities and will cause delays in the process. It was observed that the passing of time is irreversible for the child. Some Parties underlined the value of technical assistance programme carried about by the Hague Permanent Bureau to improve the subsidiarity principle (ICATAP).

The second round table was focused on the actions aimed at ensuring that the Convention does not cause unnecessary delays contrary to the best interests of children.

The participants to the round table explained their procedures in order not to delay adoption procedures: mandatory timelines; clear steps for decision-making in order to avoid leaving the child in a sort of limbo but find a permanent solution as soon as possible; periodical revision of the file. In general, Contracting States should do their utmost to prevent unnecessary delays at all stages of the inter-country adoption process, while respecting the safeguards of the Convention. Some intervening Contracting States noted that sometimes taking a final decision in a short timeframe is not possible, as it is the attitude of the social services to keep the child as long as possible in foster care.

The third round table was devoted to how to address the changed landscape of ICA. As said before, ICA faces an overall global decline in numbers, higher costs, more bureaucracy, lengthy procedures, less adoptable children. How to deal with these issues?

It was suggested to increase information and transparency towards the prospective parents, who need to be duly informed of the reality of the process; post-adoption reports should be improved; more cooperation and communication between countries of origin and receiving countries is needed; better-monitored costs and fees; professionalization of accredited bodies.

States of origin should be encouraged to specify through their Central Authority any limits in relation to the number and type of applications for ICA which they will accept, in light of the number and profile of inter-country adoptable children in the State. Receiving States should respect any limits.

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The conclusions and the recommendations adopted by the Fourth Meeting of the Special Commission are attached.

(signed)
Patrizia De Luca

Cc: Ms [REDACTED] (CAB), Ms Michou; Mr [REDACTED] JUST LIST A1; Mr [REDACTED];
Mr [REDACTED]; Ms [REDACTED]