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Intercountry Adoptions in Türkiye According to the Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption*

Çocukların Korunması ve Ülkelerarası Evlat Edinme Konusunda İşbirliğine Dair Sözleşme Uyarınca Türkiye’de Uluslararası Evlat Edinme

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ABSTRACT

The adoption of children who lost their relatives in the recent earthquake in Türkiye brought this issue to light. National adoptions within Türkiye will be the major option for the adoption of these children, whose pain is still recent. However, there are also adoption requests coming from outside of Türkiye, and following the earthquake, lots of families submitted applications to become foster families. Currently, these demands are not being taken into account, but requests for worldwide adoption most likely will be in the future. The adoption of children who lost their relatives in the recent earthquake in Türkiye brought this issue to light. National adoptions within Türkiye will be the major option for the adoption of these children, whose pain is still recent. However, there are adoption requests coming from outside Türkiye, and many families have applied to be foster families in the wake of the earthquake. These demands are not currently being considered, but proposals for international adoption will likely be in the future. In this context, the Convention on the Protection of Children and Co Operation in Respect of Intercountry Adoption, which is implemented by 103 contracting states, would be utilized. The Convention establishes cooperation rules for international adoption between contracting states for the protection and well-being of children. In this paper, the rules of the Regulation on the Conduct of Intermediation Activities in the Adoption of Children which Türkiye enacted to determine the rules to be followed in international adoptions and intermediary activities and the adoption provisions in the Turkish Civil Code and the International Private and Civil Procedure Law are examined.

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ÖZ

Yakın zamanda Türkiye’de meydana gelen deprem nedeniyle, depremde ailesini kaybeden küçük çocukların evlat edinilmesi gündeme gelmiştir. Acıları henüz çok taze olan bu çocukların evlat edinilmesinde öncelikli tercih elbette Türkiye içinde gerçekleştirilecek olan ulusal evlat edinmeler olacaktır. Ancak bu süreçte Türkiye dışından da evlat edinme talepleri olmuş, pek çok aile koruyucu aile olmak için başvurmuşlardır. Bu talepler şu an için değerlendirilmese de muhtemelen ilerleyen zamanda yurtdışından gelen uluslararası evlat edinme talepleri değerlendirilecektir. Bu bakımdan 103 devlet tarafından onaylanarak yürürlüğe alınan Çocukların Korunması ve Ülkelerarası Evlat Edinme Konusunda İşbirliğine Dair Sözleşme bu kapsamda değerlendirilebilir. Sözleşme ülkelerarası evlat edinmelerde, çocukların güvenliği ve iyilikleri için taraf devletler arasında gerçekleştirilecek evlat edinmelerde işbirliğinin kurallarını belirlemektedir. Bu çalışmada Sözleşme kuralları ve Türkiye’nin sözleşme uyarınca uluslararası evlat edinmelerde ve evlat edinmelerde aracılık faaliyetleriyle ilgili izlenecek kuralları belirlemek için çıkardığı Tüzük, ve Türk Medeni Kanunu ve Milletlerarası Özel Hukuk ve Usul Hukuku Hakkında Kanun’da yer alan evlat edinme ile ilgili hükümler incelenmiştir.

Anahtar Kelimeler: Uluslararası evlat edinme, evlat edinmede işbirliği, küçüklerin evlat edinilmesi, kamu düzeni, yabancıların Türkiye’de evlat edinmesi, çocukların korunması ve ülkelerarası evlat edinme konusunda işbirliğine dair sözleşme, Türkiye’de lahey konvansiyonu uyarınca evlat edinme.

Introduction

With the occurrence of events that cause turmoil and chaos, such as earthquakes, tsunamis, and hurricanes around the world, children who are left without parents in those regions attract the attention of the whole public, and many people want to protect and adopt these children with a humanitarian feeling. However, it would be a very naive approach to assume that everyone who wants to adopt has humanitarian motives. It can be stated that the world is divided into two different approaches in terms of children in the regions after natural disasters. This distinction is determined by the nation in which the fires, floods, storms, or earthquakes take place. In affluent nations with strong infrastructure and robust economy, reconstruction efforts for children who lost their parents start immediately. These children are thus kept in the society where they belong. Unfortunately, humanitarian organizations have found that adoption by people living in prosperous countries is the most effective way to help children from underdeveloped or develo-

ping nations instead of considering keeping them within a community where they belong. Adoption is not the answer for children who live in western nations like the USA, Australia, or England when natural calamities strike. But when a natural disaster strikes a nation that is less developed than these nations, adoption of children who live there is advocated as the most reasonable approach¹.

However, as noted by UNICEF, the UN High Commissioner for Refugees, the UN Committee on the Rights of the Child, the Hague International Private Law Conference, the International Committee of the Red Cross, and numerous other international non-governmental organizations, first, family follow-up should be carried out after natural disasters, and children and their families should be kept together. International adoptions should only be resorted to as a last resort when these pursuits are inconclusive or when stable solutions cannot be found within the country². Unfortunately, what happens with the ideal does not always turn out like this; the French charity “Zoe’s Ark”, which was founded to help children affected by the earthquake that occurred in the Indian Ocean in 2004 and the tsunami that followed, was caught trying to smuggle 103 children out of Chad by air in 2007. Although the employees of the charity claimed that these children were taken from orphanages in Darfur, it was revealed that the children had families or legal guardians in Chad, and these children were taken away from their families, and families were promised that their children will have education in France. The charity employees were sentenced to prison after the trial, but later it was accepted to pay compensation to the families of the children with the initiative of France, and the criminals were pardoned by the President of Chad in 2009 and extradited to France³.

In another similar example, after the 2010 earthquake in Haiti, because of the increasing number of applications received by American adoption agencies, approximately 1150 children were removed from Haiti for adoption through expedited processes without adequate research and adequately prepared paperwork. 33 of these children were saved at the border while being abducted by missionary groups, and later group members were extradited to the United States even though they were sentenced by the Haitian authorities for child abduction⁴.

1 Patricia Fronek, Denise Cuthberd, “History Repeating, Disaster-Related Intercountry Adoption and the Psychosocial Care of Children”, *Social Policy & Society* (2012), Volume 11, Issue 3, (429–442), Cambridge University Press, 2012, p. 430.

2 <https://www.unicef.org/media/intercountry-adoption> (13/02/2023).

3 Fronek, Cuthberd, p.433-434; <https://www.theguardian.com/world/2008/apr/01/france.internationalaidanddevelopment> (13/02/2023).

4 Peter Selman, “Intercountry Adoption after the Haiti Earthquake: Rescue or Robbery?”, *Adoption&Fostering*, Volume 35, Number 4, 2011, p. 41; Fronek, Cuthberd, p.434.

The examples present an obvious perspective. Unfortunately, this rate is fairly low despite the fact that following such catastrophes, vulnerable children sought to be adopted for extremely humanistic reasons that spring from human compassion. Because of the post-disaster management and security disarray in those countries, the majority of these kids unfortunately become an easy target for malicious individuals; they are abducted for abuse and human trafficking. Recently, the Netherlands is suspended all adoptions from abroad with immediate effect, after an official inquiry found many abuses at intercountry adoptions⁵. In 2020, Chinese officials indicated temporary suspension of intercountry adoptions from China due to the COVID-19 pandemic and intercountry adoptions are still suspended today⁶.

The Pazarlık Earthquake, with a magnitude of 7.8, struck central southern Türkiye, affected 11 large cities. Tens of thousands of citizens died, and many children lost their parents, family members and became orphans⁷. In the statement made by the Ministry of Family and Social Services (*Aile ve Sosyal Hizmetler Bakanlığı*), 1362 unaccompanied children in the provinces affected by the earthquake were registered in the Ministry's system, 1071 of the children were identified, and 369 of them were matched and delivered to their families. It has been stated that officials are working to keep these children safe and continuing to search for their parents and families⁸. These numbers released by the Ministry will undoubtedly rise in the days ahead. Many people applied to be foster families as children, one of the most vulnerable groups, were left without parents and relatives in such a catastrophe, and the majority of these applications came from Turkish living abroad.

The procedures and principles regarding the foster family institution in Türkiye are regulated in the Foster Family Regulation (*Koruyucu Aile*

5 The government formed an independent commission in 2018 to look into international abuses after a lawsuit showed that the Dutch government had been involved in an illegal adoption from Brazil in 1980 and pointed to the possibility of more such cases. Experts said they knew of no other Western country that had stopped international adoptions, <https://www.nytimes.com/2021/02/09/world/europe/netherlands-international-adoptions.html#:~:text=The%20Netherlands%20has%20temporarily%20halted,trafficking%2C%20between%201967%20and%201998> (13/02/2023).

6 <https://travel.state.gov/content/travel/en/News/Intercountry-Adoption-News/china--intercountry-adoptions-from-china-.html> (11/05/2023).

7 <https://www.hurriyet.com.tr/gundem/son-dakika-bakan-soylu-cnn-turkte-acikladi-depremde-can-kaybi-50-bin-399-oldu-42246005#:~:text=CNN%20T%C3%9CRK'e%20C3%B6zel%20a%C3%A7%C4%B1klamalarda,bin%20399'a%20y%C3%BCkseldi%C4%9Fini%20duyurdu.&text=%C4%B0%C3%A7i%C5%9Fleri%20Bakan%C4%B1%20S%C3%BCleyman%20Soylu%2C%20%22Can,50%20bin%20399'a%20y%C3%BCkseldi> (14/04/2023).

8 <https://www.aile.gov.tr/haberler/bakanimiz-derya-yanik-refakatsiz-cocuklara-iliskin-aciklamalarda-bulundu/> (15/02/2023).

Yönetmeliği)⁹. According to the Regulation, it is mandatory for the foster family to be a Turkish citizen and permanently residing in Türkiye¹⁰. Turkish nationals living abroad are therefore unable to adopt children because they do not have a permanent address in Türkiye. Currently, only Turkish nationals who live permanently in Türkiye are eligible for this status. Also, even if a foreigner lives permanently in Türkiye, cannot foster a child due to foster families have to be Turkish nationals.

In addition to the requests from Turkish citizens who live abroad to become foster families, news about the adoption of earthquake-affected children by foreigners was also reflected in the press¹¹. Such requests are currently denied, preventing the mess caused by the disaster from turning into a kind of expedited adoption process. This decision is also in line with the decision at the International Private Law Conference held in The Hague in 2010 that earthquakes cannot be a reason to skip the procedures necessary for the safe and legal adoption of children and that expedited adoptions should not be allowed after disasters¹².

This paper will address about the legal requirements that the “Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption” places on foreigners who wish to adopt children from Türkiye. The relevant international adoption conventions will be covered in part one, and in part two study will focus on the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and Turkish Law and explain the legal requirements that foreign adopters may follow. In part three, the legal consequences of the international adoption will be discussed.

I. Adoptions Under International Conventions

Intercountry adoption is a relatively recent phenomenon. It expanded slowly after World War II, until the 1970s, when the numbers increased considerably. By the 1980s, it was recognized that this phenomenon was creating serious and complex human and legal problems, and the absence of existing domestic and international legal instruments indicated the need for a multi-

9 Official Gazette (O.G.), 14/12/2012-28497.

10 Foster Family Regulation, Art.8/1(a).

11 <https://www.ntvspor.net/futbol/besiktasli-oyuncu-josef-bir-depremzede-cocugu-evlat-edinmek-istiyor-63ea4cb70d0b571020611b9c> , <https://www.trtspor.com.tr/haber/futbol/josef-de-souza-bir-kiz-cocuk-evlat-edinmek-istiyoruz-270198.html>,<https://www.bbc.com/news/world-middle-east-64588133>, <https://edition.cnn.com/2023/02/12/world/children-orphaned-earthquake-intl/index.html> (15/02/2023).

12 Selman, p. 43.

lateral approach¹³. As a result, many declarations and conventions have been prepared to lay out the basic principles of adoption.

International Conventions are important in Turkish law because those duly put into effect in accordance with the provision of Art. 90 of Law Number 2709 Turkish Constitution (*Türkiye Cumhuriyeti Anayasası*) are considered to have the force of law and are applied with priority in terms of the area they regulate¹⁴. In accordance with Art. 1(2) of Law Number 5718, International Private and Civil Procedure Law (IPPL) (*Milletlerarası Özel Hukuk ve Usul Hukuku Hakkında Kanun*), the international conventions to which the Republic of Türkiye is a signatory are reserved¹⁵.

There are two international conventions relevant on intercountry adoption that Türkiye has ratified. The first of these is the “Convention on the Rights of the Child” and the second is the “Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption,” which this study will focus on mainly later.

A. Convention on the Rights of the Child

The “Convention on the Rights of the Child” was adopted by the United Nations General Assembly on November 20, 1989¹⁶. Convention establishes the profound idea that children are not just objects who belong to their parents and for whom decisions are made, or adults in training. Rather, they are human beings and individuals with their own rights. For the purposes of the Convention, child means every human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier¹⁷. The Convention says childhood is separate from adulthood and lasts until age 18; it is a special, protected time in which children must be allowed to grow, learn, play, develop, and flourish with dignity. The Convention went on to become the most widely ratified human rights treaty in history and has helped transform children’s li-

13 Hague Conference on Private International Law Permanent Bureau, The 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption Information Brochure, March 2017, p.5, <https://assets.hcch.net/docs/994654cc-a296-4299-bd3c-f70d63a5862a.pdf> (17/02/2023); G. Parra-Aranguren, “Explanatory Report on the 1993 Hague Intercountry Adoption Convention, in Proceedings of the Seventeenth Session, 1993, pp. 543 and 545. Available on the Hague Conference website, www.hcch.net under “Intercountry Adoption Section” then “Explanatory Documents”.

14 Law Number 2709 Turkish Constitution, O.G., 9/11/1982- 17863.

15 The Turkish International Private and Procedural Law enacted on 27 November 2007 was entered into force on 12 December 2007. O.G., 12/12/2007-26728.

16 Türkiye ratified the convention in 1995. O.G., 27/01/1995-22184.

17 Convention on the Rights of the Child, Art. 1.

ves¹⁸. Many basic principles are set out in the Convention for children to grow up in safety, health, and well-being. In terms of the subject of this study, Art.21 of the Convention should be mentioned. States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration, and they shall:

1. Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the 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;

2. Recognize that inter-country adoption may be considered an alternative means of a child's care if the child cannot be placed in a foster or adoptive family or cannot be cared for in any suitable manner in the child's state of origin.

3. Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption.

4. Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it.

5. Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavor, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs¹⁹.

The convention does not promote a legal rule regarding adoption. Instead, it emphasizes the importance of cooperation for children' right to special attention and assistance and helps their families receive the necessary protection and assistance to fully fulfill the responsibilities expected from them in the society for children' development and well-being.

B. Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption

The main subject of this paper will be the "Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption" (Convention), drafted in 1993 in The Hague with the aim of protecting the best interests

18 <https://www.unicef.org/child-rights-convention#:~:text=In%201989%2C%20world%20leaders%20made,children's%20lives%20around%20the%20world> (17/02/2023).

19 <https://www.unicef.org/child-rights-convention/convention-text> (18/02/2023).

of children. Türkiye ratified the Convention in 2004²⁰. The Convention gives effect to Art. 21 of the “United Nations Convention on the Rights of the Child” by adding substantive safeguards and procedures to the broad principles and norms laid down in the Convention on the Rights of the Child.

The Convention establishes minimum standards but does not intend to serve as a uniform law of intercountry adoption²¹. According to the provisions of this Convention, in an intercountry adoption process, which is within the scope of the Convention, priority will be given to the provisions of the Convention as per the relevant provisions of the Constitution and IPPL. Other intercountry adoptions in Türkiye that stay out of the Convention and have a foreign element will be subject to IPPL Art. 18²². Furthermore, when adoptive parents apply to a court for recognition of a foreign adoption court order, they must provide evidence that they live in a contracting state, the child lived in a contracting state, the adoption was carried out in accordance with The Convention’s rules, and official certification was approved by the authorities. Otherwise, Turkish courts will apply the rules of IPPL Art. 18 and parties will not be able to benefit of the convenience of the Convention²³.

The Convention recognizes that growing up in a family is of primary importance and is essential for the happiness and healthy development of the child. It also recognizes that 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 origin²⁴. Therefore, the Convention stipulated that even in emergency situations, efforts to reunify a displaced child with his or her

20 O.G., 19/04/2004-25438, Full text of the convention, see: <https://www.resmigazete.gov.tr/eskiler/2004/04/20040419.htm#2> (16.02.2023).

21 <https://assets.hch.net/docs/994654cc-a296-4299-bd3c-f70d63a5862a.pdf>, p.6 (16/02/2023).

22 Adoption Art.18- (1) The relevant national law of each of the parties at the time of an adoption shall govern the legal capacity and conditions of adoption.

(2) The national laws of the spouses shall be jointly applicable to adoption with respect to the consent to the adoption of the other spouse.

(3) The adoption itself shall be governed by the national law of the adoptive parent, and in case of a joint adoption, by the law governing the general provisions of the marriage.

23 Court of Cassation, 8. HD., E. 2019/4986 K. 2019/10588 T. 27.11.2019, “The plaintiff in the relevant court decision has not stated that they reside in USA which is a contracting state of the Convention and did not submit information that adoption was conducted in accordance with the rules of The Convention, and official certification approved by the authorities.” (www.lexpera.com.tr).

24 Sibel Özel, “Ülkelerarası Evlat Edinme”, *Galatasaray Üniversitesi Hukuk Fakültesi Dergisi*, Cilt 1, 2011, Prof. Dr. Ata SAKMAR’a Armağan, p. 611; Report of the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption (meetings of 28-30 September and 8 November 2021), Annex I, p.5. <https://assets.hch.net/docs/35d8530a-b5bd-4330-b2fc-abda099e7f6b.pdf> (17/02/2023).

parents or other family members must take priority, and that premature and unregulated attempts to arrange the adoption of such a child abroad should be avoided and resisted. States must consider the national solution methods, and if no solution is found, due to the best interests of the child, international adoption will be considered²⁵.

The Convention also establishes a system of cooperation between authorities in countries of origin and receiving countries, designed to ensure that intercountry adoption takes place under conditions that help guarantee the best adoption practices and the elimination of abuses, and to ensure effective and functioning adoption processes through the stipulated rules²⁶.

The Convention sets out the procedural requirements for intercountry adoption between the contracting states²⁷ establishes a system of automatic recognition of adoptions. Every adoption, whether a simple or full adoption, that is certified to have been made in accordance with Convention procedures, is recognized “by operation of law” in all other Contracting States. In other words, the Convention gives immediate certainty to the status of the child and eliminates the need for a procedure for recognition of orders, or re-adoption, in the receiving state. In other contracting states, an adoption must be certified by the competent authority of the state of origin as having been made in accordance with the Convention²⁸. However, the public order of the contracting states cannot be ignored. Therefore, if the recognition of an adoption is manifestly contrary to the public policy of the contracting state due to the best interests of the child, recognition of such a decision may be refused²⁹.

The Convention requires that only competent authorities should perform Convention functions. Competent authorities may be central authorities or public authorities, including judicial or administrative authorities. The Convention provides for a system of central authorities in all contracting states and imposes certain general obligations on them³⁰. The central authorities shall cooperate with each other and promote cooperation amongst the competent

25 Press Release, Asian-African Tsunami Disaster and The Legal Protection of Children, The Hague, 10 January 2005; The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention, Guide Number1, Hague Conference on Private International Law 2008, p. 112 (Guide No. 1).

26 <https://assets.hcch.net/docs/994654cc-a296-4299-bd3c-f70d63a5862a.pdf>, p.6 (16/02/2023), Özel, p. 611.

27 Convention, Art.14.

28 Convention, Art.23; <https://assets.hcch.net/docs/994654cc-a296-4299-bd3c-f70d63a5862a.pdf>, p.8 (16/02/2023).

29 Convention, Art.24.

30 Convention, Art.5.

authorities in their states to protect children and achieve the other objects of the Convention³¹. In this regard, each state of origin, where the habitual residence of the child is, and each Receiving state, where the habitual residence of the adopter or adoptive parents is, shall appoint a central authority to fulfill the obligations assigned to them by the Convention³². The central authority in Türkiye is the Department of Child Services under the General Directorate of Social Services and Child Protection Agency (*Sosyal Hizmetler ve Çocuk Esirgeme Kurumu Genel Müdürlüğü Çocuk Hizmetleri Dairesi Başkanlığı*)³³.

The Convention does not apply to refugees or internationally displaced children who are not habitually resident in a contracting state. The exclusion of refugee children from the scope of the Convention will not prevent the intercountry placement of these children. Refugee children will continue to be subject to intercountry adoption to the extent permissible under current law. Although such adoptions are often subject to the approval of other international institutions such as the U.N. High Commissioner for Refugees, they lack the benefit of the rules created by the Convention³⁴.

The Convention does not specify the criteria for adoptability³⁵. This is a matter for the law of the state of origin, including the rules of choice of law. The state of origin will usually apply the rules that are relevant to national adoptions in that state. On the other hand, it may apply foreign laws if required to do so by its own choice of law rules. It is possible that in a state of origin, the child could have another citizenship than the state of origin's; in this situation, the law applicable to the question of the adoptability of the child is (at least in part) the law of the child's nationality. It is only in this exceptional situation that the law of the country of which the child is a national may be relevant in determining the child's adoptability under the Convention³⁶.

Also, the competent authorities of the receiving state should have determined that the prospective adoptive parents are eligible and suited to adopt³⁷. The Convention does not specify the criteria for eligibility. This is a matter of the law, including the rules of choice of law, of the receiving state. The recei-

31 Convention, Art.7.

32 Convention, Art.6.

33 Regulation on Conducting Intermediary Activities in the Adoption of Minors, Art.2(1)(i).

34 Richard R. Carlson, "The Emerging Law of Introductory Adoptions: An Analysis of the Hague Conference on Intercountry Adoption.", *Tulsa Law Journal*, Volume 30, Number 2, Winter 1994, p.249.

35 Convention, Art.4(a).

36 Gudie No. 1, pr.485.

37 Convention, Art.5(a).

ving state will usually apply the rules that are relevant to national adoptions in that state. It is possible that the receiving state may, by its own choice of law rules, be required to establish that the prospective adopters are eligible under the law of their nationality. Only in this exceptional situation would the nationality of the adopters become relevant to the question of their eligibility³⁸. In the United States, for example, only USA citizens and habitual residents can apply for intercountry adoptions. If a person lives in the United States but is not a citizen, he or she cannot adopt a child from another contracting state under the rules of Convention³⁹.

The nationality of the child or of the adopters is irrelevant in determining the scope of application of the Convention⁴⁰. In order for the Convention to be implemented, the states of habitual residence of the parties must be parties to the Convention. In other words, both the habitual residence of the child and the habitual residence of the prospective adopters/prospective adopter parents must be in a contracting state. But parties must be residents of contracting states, in a decision a child wanted to be adopted by his relatives, but child was already present in prospective adopters' habitual resident country for purposes unrelated to adoption, with a student visa. Since child was not emigrated from a foreign state to be adopted, prospective adoptive parents' request to adopt him under the rules of Convention had denied. Habitual residence (of the child and of the adopter(s)) is the important connecting factor. For example, if adopters, who are nationals of France, but habitually resident in Belgium, wish to adopt a child who is habitually resident in another contracting state, their central authority will be in Belgium, which will be responsible for receiving and processing the application⁴¹. Also, if adopters have the citizenship of one of the contracting states but reside in a non-contracting state, they cannot adopt a child under the scope of the Convention. In a decision of United States District Court, court decided that if a child arrives a contracting state for purposes unrelated to adoption, such as with a student visa, later he/she cannot be adopted under the Convention rules since he/she was not emigrated to contracting state for the purpose of adoption⁴².

However, there are different examples in practice; parents with dual nationality travel to one of their countries of nationality and adopt children accor-

38 Gudie No. 1, pr.486, p.107.

39 <https://www.uscis.gov/sites/default/files/document/forms/i-800a.pdf> (08/05/2023).

40 Convention, Art. 2(1).

41 Gudie No. 1, pr.479, p.106.

42 United States District Court, W.D. Kentucky, Louisville Division, *Fingerson v. Dep't of Homeland Sec.* 198 F. Supp. 3d 786 (W.D. Ky. 2016), Decided Jul 26, 2016.

ding to the procedure for national adoptions, and then bring the children back with them to their state of habitual residence. Receiving states are in a difficult position as to the recognition of such adoptions: on the one hand, if recognition is refused, the children may be left in limbo, but on the other hand, such practices should not be encouraged. While such cases may not be deliberate attempts to avoid the Convention rules, the possibilities for abuse do exist⁴³. In relation to temporary workers, if they acquire habitual residence in the new country (the State of Origin) and wish to adopt a child there under the internal law, that is a matter for the law of the State of Origin. The law of the worker's home state may also be relevant in determining that the child may be permitted to reside there permanently, should the family return there later⁴⁴.

II. Adoption Under National Law of Türkiye in the scope of Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption

A. Regulation on the Conduct of Intermediation Activities in the Adoption of Children

After the signing of the Convention, Türkiye issued the "Regulation on the Conduct of Intermediation Activities in the Adoption of Children", (*Küçüklerin Evlat Edinilmesinde Aracılık Faaliyetlerinin Yürütülmesine İlişkin Tüzük*), (Regulation) which was prepared in accordance with Art. 320 of the Turkish Civil Code Number 4721⁴⁵ (TCC) (*Türk Medeni Kanunu*). In compliance with the Convention, the Regulation creates guidelines to safeguard children's fundamental rights while upholding their best interests throughout inter-country adoption intermediary activities⁴⁶. According to the Regulation, children should be adopted primarily within the country to prevent kidnapping, sale, or trade, and intercountry adoption is the last remaining choice if no one can be located to adopt the child within the country. In the third part of the Regulation, the provisions on international adoption are regulated, and it has been determined that the international adoption procedures will be carried out in accordance with the relevant provisions of the Regulation and the provisions of the Convention on Cooperation in the Protection of Children and International Adoption⁴⁷.

43 Gudie No. 1, pr.481, p.106.

44 Gudie No. 1, pr.483, p.107.

45 O.G.,08/12/2001-24607.

46 O.G.,15/03/2009- 27170; Özel, s. 615.

47 Regulation, Art.15.

Considering that the adoption process impacts a child's life and alters their personality, future, and entire existence, it must be conducted with the utmost care to prevent abuse of both the child and the adopters. For this reason, there is no non-governmental or private intermediary institution authorized for adoption in Türkiye. Since 1961, this authority has only belonged to the General Directorate of Social Services and Child Protection (*Sosyal Hizmetler ve Çocuk Esirgeme Kurumu Genel Müdürlüğü*). A child placed in one of the social service institutions can only be adopted through the intermediary activity of the institution, but this does not cover children living with their parents. These children can be adopted without the intermediation of the institution in Türkiye⁴⁸(private adoptions). However, the Convention will not apply to these adoptions that take place without the institution's intervention. To be covered by the Convention, the adoption procedure must involve a central authority if the child is with his or her biological parents and not placed in a social service institution. Such private adoptions are allowed under the national legislation of some contracting states, like in Türkiye, while they are prohibited in many others. Private adoptions in Türkiye therefore fall within the scope of the Convention and are subject to Convention requirements⁴⁹.

The child must fulfill the requirements of Art. 2 of the Convention, which state that he or she must be a habitual resident of one contracting state (the state of origin) and be moving to another contracting state (the receiving state) either after being adopted in the state of origin by spouses or a person who is a habitual resident of the receiving state, or for the purposes of such an adoption in the receiving state or in the state of origin. The Convention covers only adoptions that create a permanent parent-child relationship. Also, all the requirements of Articles 4 and 5 must be met, including, that:

- a. Due consideration should have been given to possibilities for placement of the child within the state of origin.
- b. The biological parents should have been properly counseled.
- c. The consent of the mother should have been given only after the birth of the child, and
- d. It should have been determined that the prospective adoptive parents are eligible and suited to adopt⁵⁰.

48 Cem Baygın, *Soybağı Hukuku*, On İki Levha Yayıncılık, İstanbul, 2010, p.195.

49 Gudie No. 1, pr.520, p.115.

50 Gudie No. 1, pr.521-522, p.115.

However, despite the fact that a private adoption process that is automatically recognized in the contracting states occurs within the purview of the Convention and that the process initially begins as a private adoption, it becomes difficult to address as a fully private adoption because the central authorities in the contracting states are involved in the procedure in the steps that follow. For this reason, there is a separate adoption procedure called "Independent Adoption". It has been explained in the implementation guide of the Convention (Guide), and thus it has been determined which type of adoption will be an independent adoption completely out of scope of the Convention⁵¹.

The Guide made a distinction between purely private adoptions and independent adoptions. The term "independent adoption" is used to refer to those cases where the prospective adoptive parents are approved as eligible and suited to adopt by their central authority or accredited body. They then travel independently to a State of Origin to find a child to adopt (without the assistance of a Central Authority or accredited body in the State of Origin); such adoptions are not consistent with the Convention because the safeguards of the Convention to protect the interests of the child cannot be guaranteed, in particular the safeguards in Articles 4, 16, and 17 of the Convention. The safeguards of the Convention are also intended to protect the interests of the biological family and the adopter/adopters⁵². Independent adoptions are also valid in Türkiye, and it is not obligatory to apply to an intermediary institution for the adoption of children, but it should be known that since the Central Authority is not involved in the process, adoption will not be covered by the Convention nor automatically recognized in contracting states.

B. Legal Requirements of the Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption and Adoption Requirements According to Turkish Law

Since the Convention has not determined the rules of law in international adoption, the legal requirements of the adoption under the Convention are left to the determination of the contracting states' national laws. The Convention only provides a clear set of basic procedures and minimum standards for intercountry adoption, governing, *inter alia*, the application process, the preparation of reports on the child and the adopter/adopters, the obtaining of necessary consents, the exchange of information between the two states concerned, the decision concerning entrustment, authorization for the child to reside perma-

⁵¹ The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention, Guide Number 1, Hague Conference on Private International Law, 2008.

⁵² Guide No. 1, pr. 525, p. 116.

nently in the receiving state, and the transfer of the child from the state of origin to the receiving state⁵³. In this respect, the domestic law rules of the state of origin of the child to be adopted and the state that is the habitual residence of the adopter or adopters determine the legal requirements for adoption. The Regulation defines two categories of prospective adopters: Turkish citizens and foreign nationals whose habitual residency is abroad in a contracting state⁵⁴.

Examining the Regulation reveals that the requirements for international adoption are equivalent to those established in TCC. The capacity and requirements for adoption in Turkish law are related to public order, even though legal requirements are left to the domestic law of the contracting states⁵⁵. In Turkish law, an adoption relationship cannot be established by a contract between the parties; it can only be established by a court order⁵⁶, and it creates an artificial paternity lineage between the parties, not a natural paternity blood line that occurs spontaneously at birth⁵⁷. Therefore, adoption is considered a public process⁵⁸. Due to this consideration, the Turkish legislator takes into account the best interests of the child, determines the requirements in this matter, which it deems to be in accordance with the public order, and wants to prevent the adoption from the beginning, which may be contrary to the Turkish public order, even if it is in accordance with the rules of another law. Considering the opposite scenario, the same result would have occurred, if the requirements associated with TCC were not included in the Regulation, the result would have been the same. An adoption that is against TCC rules would still be possible, but the establishment of the adoption process would once more be halted in order to preserve public order. Therefore, the legal requirements set out in Regulation for intercountry adoption are determined by Turkish legislation, the same as in TCC.

53 Guide No. 1, 440, p. 99.

54 Regulation Art.5 (1)(b).

55 Court of Cassation 2. HD, E. 2003/8317, K. 2003/9830, T. 30.6.2003.

56 Ahmet M. Kılıçoğlu, *Aile Hukuku*, 6. Edition, Turhan Kitapevi, Ankara 2022, p.445; In Turkish law, an adoption relationship cannot be established by a contract between the parties. It doesn't matter if this contract is made in the presence of a notary public; it shall be null and void; For the comment criticizing this, see: Hüseyin Hatemi, *Aile Hukuku*, 9. Edition, On İki Levha Yayıncılık, İstanbul 2021, p.179.

57 Baygın p.137 footnote:1; Turgut Akıntürk, Derya Ateş, *Türk Medeni Hukuku, Aile Hukuku*, 2. Volume, 24. Edition, Beta Basım Yayım Dağıtım, İstanbul 2022, p.369.

58 Murat Aydoğdu, *Çağdaş Hukuki Gelişmeler Işığında Evlat Edinme*, 2. Edition, Adalet Yayınevi, Ankara, 2010, p. 7.

In the following section, the legal requirements that Turkish legislation established for the Convention will be examined. These conditions are also in Section 4 of the TCC between Art. 305 and Art. 320; therefore, both legal rules will be examined in parallel to give a clearer understanding of the requirements⁵⁹.

1. Determination of the Child's Suitability for Adoption

In the Convention, it is stipulated that the child must not have reached the age of 18 and be eligible for adoption as of the date when the Central Authorities of both States have agreed that the adoption may proceed⁶⁰. However, the conditions for eligibility for adoption have not been explained, and it has been stated that these criteria will be determined by the domestic law of each contracting state⁶¹. The state of origin will usually apply the rules that are relevant to national adoptions in that state. In terms of Turkish law, there are certain conditions for the adoption of a child which are specified in Art.1(2) of the Regulation. Accordingly, children's best interests and fundamental rights should be protected, and children should be adopted primarily within the country to prevent kidnapping, sale, or trade; intercountry adoption should be considered a last resort if no person or spouse can be found to adopt a child in the country.

Many children who become available for intercountry adoption have special needs or identified medical conditions⁶². Adoption of children with "special needs" are becoming more common, as are adoptions of older age children and of sibling groups. In 2005, the percentage of children adopted from China with special needs was 9% for all adoptions in all receiving countries. By 2007, the number of adopted children from China with special needs had risen to 30%. By 2009, 49% of all adopted children from China were children with special needs. This trend was echoed in a report by a U.S. coalition of child welfare

59 <https://rm.coe.int/turkish-civil-code-family-law-book/1680a3bcd4> (18/02/2023).

60 Convention, Art.3. It should also be noted that the birth dates of children born abroad are not always precisely documented in the countries where they were born. Adoptive parents may discover that their child is younger than the age listed on official documents after adoption is completed. In this instance, they can request a court to officially correct the child's age. Example case *In re Adoption of MAJB*, Supreme Court, State of Wyoming, 478 P.3d 196 (Wyo. 2020) • 2020 WY 157, Decided Dec 28, 2020.

61 Guide No. 1, pr. 60, p.31.

62 Some receiving countries like USA, requires child's medical records from adoption service provider. This information must be provided to prospective parents no later than two weeks before they are asked to accept or decline a referral. Therefore child must go a medical examination by a physician who has been designated by the Department of State. <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/before-you-adopt/health-considerations.html> (08/05/2023).

organizations that said many countries of origin are increasingly limiting intercountry adoption to older children or those who may have special needs⁶³.

The same tendency can be seen in Türkiye, where children aged 5 and up with continuing health issues or impairments are typically included in intercountry adoptions, often with siblings but not always⁶⁴. However, if the child is more than three years old, prospective adopter or one of the spouses must be able to speak in Turkish. Turkish language proficiency is not required for children under the age of three⁶⁵. Therefore, if a child has not been adopted in Türkiye and if an international adoption is in the best interests of the child, this child will be suitable for adoption under Turkish law. The determination that the child's adoptability should be made before adopters are matched with the child. The state of origin should not match a child with a family in the receiving state if the determination that the child is adoptable will not be accepted by the receiving state⁶⁶.

2. Intercountry Adoption is in the Child's Best Interests

An adoption within the scope of the Convention shall take place only if the competent authorities of the state of origin have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests⁶⁷. The best interest of the child is the most important principle in child law. Intercountry adoption serves the child's best interests if it provides a loving, permanent family for the child in need of a home. In Turkish law, the best interest of the child is an indispensable condition of the adoption process⁶⁸. Since the

63 Department of State: Proposed Rules: "Intercountry Adoptions: Regulatory Changes to Accreditation and Approval Regulations in Intercountry Adoption", [FR DOC #2020-24391].", Volume 85, Number Friday, November 20, 2020, p. 74493.

64 [https://www.aile.gov.tr/osmaniye/basvurular/evlat-edinme/\(07/03/2023\)](https://www.aile.gov.tr/osmaniye/basvurular/evlat-edinme/(07/03/2023)).

65 Özel, p. 616.

66 Guide No. 1, pr. 507, p. 113, In the U.S. states have laws that specify the persons who can be adopted. In general, a child is considered eligible for adoption if parental rights have been terminated and the court has determined that such placement is in the best interests of the child, A child may also be deemed eligible for adoption after an involuntary termination of parental rights by an adjudicatory body; such an action is subject to Constitutional protections relating to due process, as well as additional protections that vary state by state, <https://assets.hcch.net/docs/2488afaf-741d-4874-9f34-77c3654a7ee3.pdf> (12/05/2023), In India, healthy male and female children from age 6 to 18 years and children having special needs in the age group of 0 to 18 years require rehabilitation through Inter-Country adoption. But children with physical and mental disability, siblings and children above five years of age may be given preference over other children for inter-country adoption, <https://assets.hcch.net/docs/adb1436f-163d-4f2c-8ba5-8b3e7a0552da.pdf> (12/05/2023).

67 Convention Art.4(b).

68 Akıntürk, Ateş, p.371.

best interest of the child is an abstract concept, the elements that will reveal the existence of the child's best interest have been determined by the TCC⁶⁹.

According to the TCC, the personality and health of the adopter and the child, mutual relations, the socio-economic status of the adopter or adopters, the adopter's ability to educate, the reasons leading to adoption, family relations and developments in the one-year probationary period, and the relations between the adoptive and the family members of the adopter should be evaluated⁷⁰. In a decision of a District Court in Türkiye, one of the adoptive spouses has scoliosis and the other one has limb-length discrepancy. The Court has ruled that these impediments do not constitute an obstacle under the Art. 6(e) of the Regulation since spouses are evaluated and found suitable to adopt a child, they carry out their work and transactions in their daily lives without needing the help of another person, and their impediments will not adversely affect the childcare in the future⁷¹.

In addition, the adopter should have a consistent, balanced personality that can give enough love to the child, have characteristics that will not contradict the norms and values of the society in terms of social relations, and should not have been punished for a disgraceful crime⁷². The opinions of experts should be used while making these evaluations⁷³. However, if the adopter leads a dishonorable life and is fond of alcohol and gambling and addicted to drugs, if the child is given for adoption in exchange for money or cheap labor, if the legal heirs aim to eliminate or reduce the inheritance rights, if the personalities of the parties do not match, for example, if the child has a calm personality but the adopter is irritable, these are traits that will be considered contrary to the child's best interests⁷⁴. It has been stated that in the implementation of the

69 TCC Art. 316(2).

70 Baygın, p. 148.

71 The District Court Decision, Erzurum BİM, 3. İDD, E. 2019/1384 K. 2020/52 T. 11.2.2020. (www.lexpera.com.tr).

72 Akıntürk, Ateş, p.148.

73 TCC m. 316 f.2, Court of Cassation - 2nd HD., E. 2009/16480 K. 2010/18718 T. 8.11.2010; "According to Art. 316 of the Turkish Civil Code, which imposes an obligation on the judge to investigate before making a decision on adoption, adoption can only be made after a comprehensive investigation of all circumstances and conditions deemed essential, the hearing of the adopter and the adopted, and the taking of the opinion of experts when necessary. In the research, it is necessary to clarify the personality and health of the adopter and the person adopted, their mutual relations, economic conditions, the ability of the adopter to educate, the reasons leading to adoption, and the developments in family relations and care relations. In accordance with Articles 305 and 316 of the Turkish Civil Code, the court decided to accept the case with an incomplete examination, without hearing the children of the plaintiffs, and without conducting a comprehensive investigation." (www.lexpera.com.tr).

74 Baygın, p.149; Aydoğdu, p.143-144.

Convention, each contracting state can interpret the determined framework rules in line with their own practices, considering the principle of the child's interest. Contracting states may interpret it as being in the best interest of the child to cooperate with contracting states with which they are culturally close, for example, with whom they share a common language⁷⁵. Therefore, Regulation states that Turkish citizens whose place of residence is abroad, who are Turkish citizens by birth but renounced their citizenship with the permission of the Ministry of Interior (*İçişleri Bakanlığı*), and who have linguistic and cultural affinity with the child will be given priority in the ranking⁷⁶. India takes the same approach for intercountry adoptions, locating prospective adoptive parents, preferably of Indian origin. The rationale behind finding Indian parents or parents of Indian origin is to ensure that the children should grow up in Indian surroundings so that they retain their culture and heritage⁷⁷.

3. Not Unfairly Injuring the Interests of Other Children of the Adopter

If adopter or adopters already have children, the interests of the other children of the adopter or adopters should not be unfairly damaged by the adoption process. When the adoption process takes place, the children of the adopter or adopters will inevitably be affected materially and morally by this situation; to think otherwise would be against the rules of inheritance law. The important thing here is that the effect that will occur remains within the limits of equity⁷⁸. Regulation states that the attitudes and thoughts of the other children of the adopter or adopters about the child to be adopted should be evaluated and reported⁷⁹.

4. Consent of the Child's Parents

The determination of the persons, institutions, and competent authorities that must consent to the adoption in accordance with the contract will be de-

75 Guide No. 1, 445, p.100.

76 Regulation, Art. 16(4).

77 Ranjit Malhotra, Anil Malhotra, "Conflict of Laws in Intercountry Adoptions: The Indian Perspective with Special Reference to the Position after India Ratified the Hague Convention on Adoptions", *International Survey of Family Law*, 2009, p. 223.

78 Akıntürk, Ateş, p. 372; Kılıçoğlu, p. 454.

79 Regulation, m. 12(2), Court of Cassation - 2. HD., E. 2009/16480 K. 2010/18718 T. 8.11.2010; "...In any case, the adoption should be for the benefit of the minor, and the other children of the adopter should not be unfairly damaged. For this reason, it has been seen that the attitudes, thoughts, and benefits of the plaintiff's children were not evaluated in accordance with the above-mentioned provisions. In accordance with Articles 305 and 316 of the Turkish Civil Code, the court decided to accept the case with an incomplete examination without hearing the children of the plaintiffs and without a comprehensive investigation, and it was found to be against the procedure and the law." (www.lexpera.com.tr).

terminated by the law of the state of origin⁸⁰. These persons are not limited to the biological parents of the child, if any; the consent of the child's relatives or legal representatives can also be obtained. Türkiye seeks the consent of the child's parents for adoption⁸¹. Some contracting countries such as USA, require DNA testing to make sure consent is really taken from child's biological parents, Türkiye does not require DNA test as a proof⁸². This consent does not depend on whether the mother or father has the right to custody of the child, if the child has biological parents, they must have consented to the adoption of the child, whether they have custody or not⁸³. The parents must give their consent together; if one of the parents does not give consent, the child will not be given for adoption⁸⁴. The consent of the parents must be expressed. Implicit consent is unacceptable⁸⁵ and must be officially recorded verbally or in writing in the court where the child or his/her parents reside⁸⁶. The consent of the child's parents is a unilateral declaration of will, and it has legal consequences as soon as it reaches the court and is recorded in the report⁸⁷. The consent given will be valid even if the names of the adopters are not specified or the adopters have not yet been determined⁸⁸.

It is stated in the Convention that the mother's consent will only be accepted if it is given after the birth of the child⁸⁹. TCC also made a timeline regarding the timing of consent. Accordingly, parents cannot give their consent before six weeks have passed after the birth of the child. Parents are allowed a one-time waiver of their consent. If they want to withdraw their consent, they can do so in court with a written or verbal statement within six weeks, starting from the

80 Convention, Art. 4(c).

81 TCC Art. 309 f.1; Regulation Art.4(1)(d).

82 Questionnaire on The Practical Operation of the 1993 Adoption Convention, Prel. Doc. 3 of February 2020 for the Special Commission Meeting, 2021.

83 Baygın, p.175; Aydoğdu, p. 196.

84 Aydoğdu, p. 200; Akıntürk, Ateş, p. 376.

85 Kılıçoğlu, p. 457.

86 TCC Art. 309 f.2; Convention m. 4(c)(2).

87 Court of Cassation 2. HD., E. 2011/10286 K. 2011/14804 T. 3.10.2011 "... The child was born out of wedlock. The father is not legally determined. It is not legally possible to ask for a court decision regarding the child's mothers or father's consent for adoption. The consent of the minor parents shall be disclosed orally and in writing in the court of their place of residence and recorded in the report. Consent is given, and it is valid even if the names of the adopters are not specified or the adopters have not been determined yet (TCC Art. 309). The consent of the minor's parents is a unilateral declaration of will that is reached in court and has legal consequences as soon as it is recorded in the report. Consent cannot be given less than six weeks after the birth of the child (TCC Art. 310). The plaintiff's mother declared that she consented to the adoption of the minor. This statement of the mother should be recorded and determined." (www.lexpera.com.tr).

88 TCC Art.309 pr.3.

89 Convention m.4(c)(4).

date of recording their consent. If parents give consent again after this withdrawal, this consent will be final and cannot be withdrawn⁹⁰.

It is stated in the TCC that consent is not required in exceptional cases. Consent will not be sought if the identity of the mother or father is unknown or where they have lived for a long time, if they are constantly lacking in the power of discernment, or if they do not adequately fulfill their duty of care towards the child⁹¹ or if the child is placed in an institution for adoption, it is legal to not seek the consent of the parent or parents for the adoption of the child⁹². An unknown mother or father is often the case with found or abandoned children. This may be the result of situations where parents knowingly and willfully leave their children, sometimes unintentionally in situations like natural disasters, wars, kidnapping, or the disappearance of the child⁹³. However, children whose parents are unknown are usually those born out of wedlock and abandoned by their mothers and/or fathers. These children were abandoned before a legal paternity relationship could be established between their parents⁹⁴. Apart from this situation, if the consent of one of the parents is missing before the child is placed in an institution for adoption, the court of the place where the child resides, upon the request of the adopter or the institution that mediates the adoption, decides whether to seek this consent. In cases other than this, the decision on whether to seek the missing consent is made during the adoption proceedings. If one of the parents' consents is not required due to insufficient fulfillment of the duty of care towards the child, the court will not seek it, and the party who does not fulfill the duty of care will be officially notified⁹⁵, and mother or father will be able to oppose this decision if they have justified reasons⁹⁶.

90 TCC Art. 310.

91 TCC Art. 311.

92 TCC Art. 312.

93 Aydoğdu, p. 246.

94 Baygın p. 179.

95 TCC Art. 312, Court of Cassation 18. HD., E. 2012/8743 K. 2012/9197 T. 10.09.2012. "The defendants had a civil marriage contract, and they got divorced, but they continued to live together after the divorce. The defendants had six children who were not of legal age; the defendant stayed with his mother. It is understood that their houses were closed four times by the official authorities on the grounds of prostitution it is not meet the health and hygiene conditions, were not suitable for the healthy development of the children, and their safety was in danger. The defendant's father is unemployed and does not take care of the children, does not have a regular life, and the children are still under government protection and stay in the orphanage. If the parents fail to fulfill their duty of care towards the minor in accordance with Art. 311 of the Turkish Civil Code, and in accordance with Art. 312 of the same law, if the minor is placed in an institution for adoption, it is legal to not seek the consent of the parents for the adoption of the minor." (www.lexpera.com.tr).

96 Kılıçoğlu, p. 460.

5. Obtaining the Consent of the Child with the Power of Discernment

The term “Power of Discernment” refers to children who are mentally mature enough to understand the meaning of adoption and its consequences⁹⁷. Every child can reach this maturity at different ages. In a decision of the Court of Cassation, nine years of age was found to be sufficient to understand the meaning of adoption and its consequences⁹⁸. However, this age should be evaluated individually for each child⁹⁹.

The Convention states that the child should be sufficiently informed about the consequences of the adoption. The child’s wishes, and views should be considered, and his or her consent should be taken in accordance with the legal forms: freely and in writing¹⁰⁰, if the child has the power of discernment, the adoption cannot be placed without the child’s consent¹⁰¹. Consent to adoption is strictly a personal right and must be exercised by the child who owns the right; even allowance for consent by the legal representative of the child is not sought¹⁰².

6. Permission of the Guardianship Offices Must Be Obtained If the Child is Under Guardianship

In Turkish law, children whose parents are unknown, have died, or whose custody rights have been revoked are placed under guardianship¹⁰³. If the child is under guardianship, he or she can be adopted with the permission of the guardianship offices¹⁰⁴. In this respect, it does not matter whether the child has the power of discernment or not. If the child is under guardianship, this permission

97 Baygın, p. 169.

98 Court of Cassation, 2. HD., E. 2009/16483 K. 2010/19941 T. 30.11.2010, “It was found that the decision to accept the case without the consent of the minor, who was nine years old on the date of the case and who wanted to be adopted, was contrary to the procedure and the law.” (www.lexpera.com.tr).

99 In USA, older children’s consent is required to their own adoption. Age of the children for consent varies from 10 to 14 from state to state. For more information, see: Child Welfare Information Gateway. (2022). Consent to adoption. U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, <https://www.childwelfare.gov/pubPDFs/consent.pdf> (12/05/2023). In India, if the child is above 5 years of age his/her consent shall be obtained after due counselling, <https://assets.hcch.net/docs/adb1436f-163d-4f2c-8ba5-8b3e7a0552da.pdf> (12/05/2023). In Vietnam, if a child’s age full 9 years or older, his/her consent is required by the law, consent of the child who is aged 9 years or older must be obtained by officers and the child must be provided with sufficient consultation on intercountry adoption to ensure that the child be completely voluntary and not be compelled. <https://assets.hcch.net/docs/do63c818-e048-4d33-95e4-109fe9339868.pdf> (12/05/2023).

100 Convention m.4(d).

101 TCC Art. 308 pr.2; Regulation Art.4(1)(ç).

102 TCC Art.16 pr.1.

103 TCC Art. 404 pr.1; Baygın p. 171.

104 TCC art.308 pr.3; Regulation Art.4(1)(e).

will only be obtained from the Civil Court of Peace, which is also the guardianship office, after the approval of the Civil Court of First Instance¹⁰⁵. The guardianship office should examine whether the adoption is in the best interest of the child¹⁰⁶. Children under guardianship need to be brought into a warm family environment more than children under custody. Due to this necessity, legislators waive the consent of the child who has the power of discernment under guardianship¹⁰⁷.

7. The Adoptive Person or Spouses Must Be At least Eighteen Years Older Than the Child

The child must be at least eighteen years younger than the adopter or adopters¹⁰⁸. The minimum age difference of eighteen years between the child and the adoptive party is required as a special condition related to public order in Turkish law¹⁰⁹. Regulation determines the age difference according to the TCC, and the basis of this provision is the desire to make the adoption relationship a natural parent-child relationship¹¹⁰. Domestic law of the receiving state may govern a lesser age difference between parties, such as 16 for example¹¹¹, in these cases, Turkish court will not automatically prevent the adoption due to public order as long as there is 18 years or more age difference between the prospective parent(s) and child. Therefore, crucial factor is the age difference between parties in each specific case and 18 years difference should be maintained even domestic law of the receiving state's governs a lesser age difference.

8. The Unmarried Person Wishing to Adopt Must Be Over the Age of Thirty

The unmarried person wishing to adopt a child alone must be over the age of thirty¹¹². Therefore, the person who wants to adopt a child alone must meet

105 TCC Art.397 pr.2.

106 Aydoğdu, p. 281.

107 Baygın p.171-172; For opposite opinion, see: Aydoğdu p. 276-277.

108 TCC Art.308 pr.1; Regulation Art. 1(4) c.

109 In India, age difference between the prospective adoptive parent(s) and the child is 25 years, <https://assets.hcch.net/docs/adb1436f-163d-4f2c-8ba5-8b3e7a0552da.pdf> (12/05/2023), In vietnam age difference between the prospective adoptive parent(s) and the child is 20 years, <https://assets.hcch.net/docs/do63c818-e048-4d33-95e4-109fe9339868.pdf> (12/05/2023).

110 Akıntürk, Ateş p. 375; Aydoğdu p.333; Baygın p.157.

111 Like in Spain, age difference between the prospective adoptive parent(s) and the child is 16 years, and the highest age limit for adoption is 45 years., <https://assets.hcch.net/docs/29e84871-2de9-49c4-b6a0-bcfo02af6e2e.pdf> (12/05/2023).

112 TCC Art. 307; Regulation Art.4 (1)(f). To be eligible to adopt under American Federal Law, an unmarried person must be at least 25 years old. <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/before-you-adopt/who-can-adopt.html> (08/05/2023), India also requires that an unmarried person must be at least 25 years old to adopt, and age limits also specified in Indian law, minimum age limit is 25, maxi-

both conditions: he or she must be single and over the age of thirty. The age requirement is more of a condition to protect the family institution. People who wanted to get married solely to have children would not get married and instead have children through adoption if the age of adaptor was kept low and available to everyone¹¹³. Since the single adoptive will take on the responsibility of two parents, he or she must be mature enough to bear the financial and moral responsibility of raising a child alone.

9. Spouses Should Have Been Married For At Least Five Years or Both Should Have Reached the Age of Thirty

The Convention states that the child can only be adopted by one single person or married spouses, and adoption establishes a permanent mother, father-child relationship¹¹⁴. However, who will be accepted as a spouse is left to the domestic laws of the contracting states¹¹⁵. In Turkish law, the right to adopt a child by two persons is only granted to spouses¹¹⁶. It requires an official marriage to be a spouse. Any kind of partnership will not be recognized as a marriage, even if it is lawfully registered in the receiving state. According to Turkish law, marriage is a civil law contract between a man and a woman to form a family in front of a lawfully appointed official¹¹⁷. The sex of the couple to be married is also clearly stated. Therefore, within the scope of the Convention, the spouses who want to adopt a child in Türkiye must be male and female and must have a legal marriage¹¹⁸. Spouses in homosexual marriages that are legally recognized by the law of the receiving state cannot adopt a child in Türkiye¹¹⁹. The contracting states have the right to refuse recognition of same-sex couples' adoption if the state finds it manifestly contrary to the child's best interests and its public order¹²⁰. Additionally, Turkish

mum age limit is 55 for adoption, <https://assets.hcch.net/docs/adb1436f-163d-4f2c-8ba5-8b3e7a0552da.pdf> (12/05/2023).

113 Aydoğdu, p.294.

114 Convention Art.2(1).

115 Parra-Aranguren, pr. 80.

116 TCC Art.306; Kılıçoğlu, p. 455.

117 Marriage Regulation, Art.2(f), O.G.7/11/1985-18921.

118 Same approach represented in Indian law, prospective adoptive spouses should be heterosexual couples with two years of stable marriage, <https://assets.hcch.net/docs/adb1436f-163d-4f2c-8ba5-8b3e7a0552da.pdf> (12/05/2023). Vietnam only accepts married, heterosexual couples, single man and single woman as prospective adoptive parent(s), <https://assets.hcch.net/docs/adb1436f-163d-4f2c-8ba5-8b3e7a0552da.pdf> (12/05/2023).

119 In the response report of the contracting states to the Convention, it has been declared by Türkiye that only heterosexual marriages will be accepted, Türkiye Country Profile, 1993 Hague Intercountry Adoption Convention, p.10 <https://assets.hcch.net/docs/1de659c5-1796-4c11-bc1d-9611a92d7e09.pdf> (17/03/2023).

120 Convention Art. 24.

law does not recognize the ideas of partnership, registered partnership, or life friendship as spouses. Therefore, couples who live together out of wedlock cannot adopt together, whether they are in a heterosexual or homosexual relationship¹²¹.

The Regulation mandates that either both spouses must be at least thirty years old or that they must have been married for at least five years¹²². There are two options for joint adoption for spouses. If they have been married for at least five years, they may choose to adopt a child together under the first of these options. The spouses do not have to be thirty years old if the marriage has completed the five-year period¹²³. Spouses can be younger than thirty as long as there is an eighteen-year age gap between them and the child. These two options for spouses to jointly adopt are a necessity; they will have reached a certain maturity either through marriage or in terms of age.

There are three exceptions to the rule that spouses can adopt together in Turkish law, and these exceptions also specified in TCC and Regulation. In these three cases, the spouse who is married and has reached the age of thirty will be able to adopt alone in Türkiye:

- a. If the other spouse has a persistent lack of discernment,
- b. If the other spouse's whereabouts have been unknown for more than two years,
- c. If spouses are legally separated by a court order for more than two years¹²⁴.

In the presence of one of these exceptional situations, a spouse over the age of thirty will be eligible to adopt a child alone. In the first exception, the other spouse's persistent lack of discernment must be proven by a doctor's report¹²⁵. In the second exception, the lone adoptive spouse must have done the appropriate investigation and contacted law enforcement to inquire about the spouse's whereabouts, but a court declaration of the spouse's absence is not essential¹²⁶. In the last exception, as can be understood from the wording of the provision, separation must be based on a court order. Thereby, in the event of an ongoing legal separation between spouses, sole adoption is allowed as this marriage is considered to have already ended¹²⁷.

121 Baygın p.161; Aydoğdu p.321.

122 Regulation Art. 4(g).

123 Akıntürk, Ateş p. 373; For the opinion stating that this provision, which allows adoption at very young ages like 22, assuming a couple got married at 18 years old, should only be allowed if it is documented that it is not possible for spouses to have children, see: Hatemi, p. 181.

124 Regulation Art. 4(2); TCC Art. 307 pr. 2.

125 Aydoğdu p. 313.

126 Aydoğdu p. 314.

127 Baygın p.166.

10. Stepparent Can Adopt the Child of His or Her Spouse

In accordance with TCC and Regulation, a stepparent may adopt the child whose habitual residence is in the state of origin. One of the essential conditions for adoption under the Convention is that the parties must have their habitual residence in separate contracting states. Therefore, the adoptive spouse and stepchild should have resided in different contracting states. In order to adopt, the adoptive spouse and the adoptive child's parent should have been married for at least two years, or if the adoptive spouse must be older than thirty¹²⁸. In the doctrine, it is argued that the adoption of a stepchild should only be allowed in an established marriage for the best interest of the child. This point of view, which I agree too, instead of two years of marriage, spouses should have completed at least five years of marriage¹²⁹.

11. The Condition of Care and Education of the Child

The child should have been cared for and trained in the family residence of the adoptive person or married spouses for at least one year before adoption is legally concluded¹³⁰. Thereby, as stated in the law's preamble, any child who is not taken care of and has not received any contribution to his or her education from adopter or adopters cannot be adopted. The one-year probationary period is very important in the process of adoption, as it creates a real family environment and gives parties the opportunity to get to know each other and decide if adoption will take the next step¹³¹.

Care and education should be shaped according to the child's age and include the child's education, health, physical and mental integrity, nutrition, and shelter¹³². The person or spouses whose adoption application is judged suitable for the care and education of the child will sign a "temporary care contract" with the Social Services and Child Protection Agency, which is the central aut-

128 TCC Art.306 pr. 3; Regulation Art. 4(ğ).

129 Baygın p. 134.

130 TCC Art. 305 pr. 1; Regulation Art.4(1)(a); Court of Cassation, 2. HD., E. 2005/7729 K. 2005/10050 T. 27.6.2005; "...The minor should have been cared for and trained by the adopter for one year. This is a condition for adoption. It is understood from the content of the file that there is no evidence that the plaintiff, who is understood to be residing in Canada, looked after and educated the minors for one year. It has been found that it is against the procedure and the law to make a written decision without collecting the necessary evidence to determine whether the condition of care and education for a period of one year specified in the article has been fulfilled or not." (www.lexpera.com.tr).

131 [https://www.lexpera.com.tr/mevzuat/gerekceler/turk-medeni-kanunu-madde-gerekceleri/1# \(07/03/2023\)](https://www.lexpera.com.tr/mevzuat/gerekceler/turk-medeni-kanunu-madde-gerekceleri/1# (07/03/2023)).

132 Albayrak Ceylan, Nazlı, *Adoption in Private International Law*, PhD Thesis, Marmara University Institute of Social Sciences Department of Private Law, Istanbul, 2022, p. 85.

hority in Türkiye¹³³. After signing the temporary care contract, the child is sent to the receiving state in safe and appropriate conditions for care and education for at least one year, accompanied by the adopter or adoptive spouses¹³⁴. In this one-year period, the ability of the adoptive person or spouses to educate the child, their family relations, health situations, developments in their relations with the child, and changes in their social and economic conditions will be monitored by the relevant officials, and then a social examination report will be prepared and forwarded to the central authority in Türkiye¹³⁵. If the adopter or adoptive spouses have their own child or children, their attitudes and thoughts about the child are also evaluated in the report¹³⁶.

If a report shows that the parent's responsibility has not been fulfilled during the temporary care contract period, officials can remove the child without waiting for the contract's expiration. Additionally, the social evaluation may not find the adopter or adoptive spouses fit for adoption after one year of temporary care. If this is the case, their adoption request will be rejected. Furthermore, the child will be brought back if the adopter or adoptive spouse is declared suitable for adoption but does not proceed and request the court to finalize the adoption before the appointed time¹³⁷.

In a relatively recent legal recognition decision of the Court of Cassation, the adoption order was made in the Republic of Niger without one-year probatory care and education period was legally recognized in Türkiye. The Court of Cassation decided that it is necessary to establish protective measures for international adoptions in accordance with the best interests of the child, as the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption has established. The Convention determines the conditions of international adoption and the limits of adoption, but the condition of care and education for a certain period is not mentioned in the Convention. Therefore, even though TCC Art. 305 p.1 requires one-year temporary care for a child in recognition of an adoption decision that is taken in a foreign state, the absence of such a period would not constitute a clear violation of the Turkish public order, considering the high benefits of the child¹³⁸.

133 Regulation Art. 2/1. c.

134 Regulation Art. 17.

135 Regulation Art.17/5.

136 Regulation Art.12.

137 Regulation Art.13.

138 Court of Cassation, 2. HD.E. 2021/5783, K. 2022/2231, T. 9.3.2022 (www.kazanci.com.tr).

In our opinion, the high court's verdict can be criticized. Because a probationary period can be foreseen before the adoption is concluded, according to Art. 20 of the Convention. During the drafting period of the Convention, Colombia, Costa Rica, and El Salvador proposed the removal of the probationary period statement in Art. 20, but this proposal was rejected because it would force the receiving state to recognize an adoption granted in the state of origin, even though no probationary period has taken place as specified in the receiving state's national law. Furthermore, the importance of the probationary period was strongly stressed, and the absence of any reference to it was considered against the objectives of the Convention¹³⁹. The probationary period in Art. 20 refers to the post-matching period prior to the adoption, where services are provided to ensure the adjustment and integration of the child with the prospective adopter or adoptive parents, as well as their emotional readiness for the legal union¹⁴⁰. Therefore, the argument in the Court of Cassation's justification that the Convention fails to mention a probationary period is subject to scrutiny.

In the relevant case, adoption was made under the rules of the Nigerian law not the Convention's provisions. The court decided to recognize this adoption even though one-year care and education period is not taken. If this adoption was concluded under the rules of the Convention, such an adoption would never have taken place because it did not meet the one-year probationary period required in the Regulation. Türkiye gives great importance to this period in order to establish a real family union for parties. Therefore, it may require this condition even when Türkiye is the receiving state.

The Convention does not specifically answer the question as to whether an adoption granted in a contracting state and falling within its scope of application but not in accordance with the Convention's rules could be recognized by another contracting state whose internal laws permit such recognition. Undoubtedly, in such a case, the contracting state granting the adoption is violating the Convention because its provisions are mandatory, and such conduct may give rise to the complaint permitted by Art. 33¹⁴¹, but the question of recognition would be outside of the Convention, and the answer should depend on the law applicable in the recognizing state, always considering the best interests of the child¹⁴².

139 Parra-Aranguren, pr. 355.

140 Parra-Aranguren, pr. 356.

141 Art. 33: "A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken."

142 Parra-Aranguren, pr. 411.

In our opinion, Türkiye has authority to decline to recognition of an adoption order that is finalized in the State of Origin if such period has not taken place and the absence of such a period would result in a contradiction with the public order given the significant benefits of the child. Since this period is intended to build a true family environment and allow the parties to get to know one other before the final adoption order, officials will ensure that the child will be safe and nurtured by a loving parent or parents in a genuine family setting. Whereas adoption decisions are frequently emotional ones, if parties do not have this time, they will get to know one another after they begin to live together. If this results in disappointment, it emotionally damages the children, and an adoption order is difficult to reverse.

12. Eligibility of the Prospective Adoptees

The central authority of the receiving state is the one that will decide on the adopter's or adoptive parents' eligibility to adopt. If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, a report will be prepared 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 care¹⁴³. This report about prospective adoptive parent(s) is valid for two years in Türkiye after submitted by the Central Authority of the receiving State¹⁴⁴. Each contracting state should provide clear descriptions of its legal and administrative procedures, procedures for applications, eligibility guidelines, and costs and fee structures¹⁴⁵. Once the application is presented to the Central Authority of the receiving state, it must verify whether the prospective adoptive parent(s) are eligible and suited to adopt. Therefore, the Central Authority shall establish their compliance not only with all legal conditions prescribed by the applicable law, as determined by the Receiving state, but also with the necessary socio-psychological requirements needed to guarantee the success of the adoption¹⁴⁶.

In the case Türkiye is the receiving state, the eligibility of the person or spouse whose habitual residence is in a contracting state is determined by the IPPL due to the presence of the foreign element in this relationship. In Turkish Law, the law to be applied in the transactions and relations related to the private law that has the element of foreignness is determined by the IPPL in

143 Convention Art. 15(1); Regulation Art.16(3).

144 <https://assets.hcch.net/docs/1de659c5-1796-4c11-bc1d-9611a92d7e09.pdf> (12/05/2023).

145 Guide, pr.131.

146 Parra-Aranguren, pr.294.

accordance with Art.1(1) of the IPPL. Art. 18 of the IPPL states the eligibility to adopt will be subject to the national law of each of the parties at the time of adoption. The phrase “national law of each party” may be interpreted to refer to either the application of these laws separately or to both laws at once¹⁴⁷. Pursuant to the opinion we agree with, the national laws of each party should be reviewed separately and evaluated in the context of public order¹⁴⁸. Therefore, it is appropriate to decide in the Convention that the eligibility to adopt is also determined by the domestic law of the receiving state and IPPL art. 18 cannot be replaced by the Regulation’s provisions when Türkiye is the receiving state. However, in this study, the focus will be on Türkiye’s State of origin position, where the child’s habitual residency is located. Therefore, no further explanation will be made about the eligibility of the person or spouse.

III. Completing the Adoption

According to the Convention, the adoption of a child in Türkiye by a person or spouses whose habitual residence is in another contracting state must meet all the conditions that we have explained. Applications that do not meet the specified conditions will be rejected without social examination¹⁴⁹. Prospective adoptive parents must also provide or fill out necessary documents. Such as; an application form, a statement of “approval to adopt” issued by a competent authority in the receiving state, a report on prospective adoptive parents including “home study” and other personal assessments, copies of their passports or other personal identification documents, copies of marriage, divorce or death certificates, as applicable, information concerning the health of the prospective adoptive parents, for example a health report indicating that adoptive parents are not having physical, mental disability, chronic or infectious illness, alcohol and substance addiction, evidence of the financial circumstances, employment status and proof of no criminal record¹⁵⁰.

147 Ergin Nomer, *Devletler Hususi Hukuku*, 23. Edition, Beta Basım Yayım Dağıtım, İstanbul 2021, p. 286; Sibel Özel, Mustafa Erkan, Hatice Selin Pürselim, Hüseyin Akif Karaca, *Milletlerarası Özel Hukuk*, On İki Levha Yayıncılık, İstanbul 2022, p. 306; Aysel Çelikel, B. Bahadır Erdem, *Milletlerarası Özel Hukuk*, 16. Edition, Beta Basım Yayım Dağıtım, İstanbul 2020, p. 317; Cemal Şanlı, Emre Esen, İnci Ataman-Figanmeşe, *Milletlerarası Özel Hukuk*, 7. Edition, Beta Basım Yayım Dağıtım, İstanbul 2019, p. 185; Gülören Tekinalp, Ayfer Uyanık, *Milletlerarası Özel Hukuk Bağlama Kuralları*, 12. Edition, Vedat Kitapçılık, İstanbul 2016, p. 182; Ziya Akıncı, Cemile Demir-Gökyayla, *Milletlerarası Aile Hukuku*, Vedat Kitapçılık, İstanbul 2010, p. 138.

148 Özel, Erkan, Pürselim, Karaca, p. 307.

149 Regulation Art.8(1).

150 Türkiye’s Country Profile report for 1993 Hague Intercountry Adoption Convention as state of origin, p. 11-12; <https://assets.hcch.net/docs/1de659c5-1796-4c11-bc1d-9611a92d7e09.pdf> (01/04/2023).

After all the conditions are met, the person or spouses will be officially notified that adoption requests are approved based on the social examination report prepared at the end of the child's one-year care and education period or by a decision of the commission¹⁵¹ upon objection¹⁵². The Convention allows the adoption to take place both in the State of origin and in the Receiving state. Hence, the adoption can be made before the transfer of the child to the receiving state or after the transfer. However, the State of origin may prohibit the child from leaving the country without adoption pursuant to Art. 28¹⁵³. Convention does not affect certain prohibitions established by the law of the state of origin¹⁵⁴.

If the intercountry adoption is to be completed in Türkiye, the adoption process can only be established by a court order in accordance with Turkish law¹⁵⁵ and thereafter it will be approved by the central authority. The central authority makes a certification, attesting that the Convention's rules were complied with and that the permissions were given, specifying when and by whom¹⁵⁶. Once the certification is presented, the adoption granted is to be recognized "automatically", by operation of law¹⁵⁷. Turkish courts refuse to recognize adoptions if certification is not submitted to the court¹⁵⁸. The recognition of an adoption may be refused in a contracting state if the adoption is manifestly contrary to its public order, considering the best interests of the child¹⁵⁹. Also, the Convention permits future agreements between certain contracting states when they share traditional, historical, geographical links, or other factors that impose the application of this Convention¹⁶⁰. Accordingly, any contracting state may declare that it will not be bound to recognize adoptions made in accordance with these kinds of agreements¹⁶¹.

With the recognition, the permanent parent-child relationship between the parties and the parental responsibility of the adoptive parents for the child are

151 Regulation Art. 2(1)(f), explains the Commission (Komisyon): It is the evaluation group consisting of at least three people, chaired by the Provincial Director (İl Müdürlüğü), and attended by the person who prepared the social investigation report, and expert professional staff of the Institution, depending on the nature of the case.

152 Regulation Art. 13(1).

153 Özel, p. 614.

154 Parra-Aranguren, pr. 488.

155 TCC Art. 315(1).

156 Parra-Aranguren, pr. 402.

157 Convention Art. 23.

158 Court of Cassation, 2. HD., E. 2011/14615 K. 2012/8392 T. 05.04.2012 (www.lexpera.com.tr).

159 Convention Art. 24.

160 Parra-Aranguren, pr. 570.

161 Convention Art. 25.

accepted by the receiving state¹⁶². Opposite to some countries like India¹⁶³, the child's ancestry with the birth parents does not vanish under Turkish law after adoption. While this paternity relationship continues on a limited basis, a new paternity is formed between child and adoptive family. The child's inheritance rights from the previous family are protected because the child's lineage with the previous family is not completely broken¹⁶⁴. For foreign nationals in particular, this may be an undesirable circumstance. It's possible that they don't want the child to have any ties to the previous family. The Convention specifically regulated this issue and gave an opportunity to convert the adoption¹⁶⁵. If the adoption granted in one contracting state does not terminate the pre-existing legal relationship between the child and his or her family of origin, like in Türkiye and the receiving state only admits the type of adoption that terminates such relationship, the adoption may be converted into a "full" adoption according to Art. 27¹⁶⁶. Nevertheless, child's biological parents, or relatives, or legal guardians should have been notified before taking their consents that adoption will result in the termination of the legal relationship between the child and his or her family of origin. Because intercountry adoption has been understood by innumerable first families as educational and economic opportunities for their children that ultimately would assist the family, rather than as permanent severance of the child's relationship with the family. Countless parents who intended to benefit their children with opportunities and support while maintaining contact and parental status, have found themselves permanently severed from their children¹⁶⁷. Therefore, if these people were not notified about this final rupture, it violates one of the fundamental conditions for the granting of the adoption¹⁶⁸. The conversion of the adoption will also be automatically recognized in all contracting states in accordance with Art. 23 of the Convention, without being subject to a separate recognition procedure¹⁶⁹.

162 Convention Art. 26.

163 Malhotra, Malhotra, p. 227.

164 TCC Art. 314 pr. 5; Baygın p. 213; Aydođdu p. 524; Akıntürk, Ateş p. 384; The child's birth parents are deprived of his or her inheritance. For the comment criticizing this, see: Hatemi, p. 179.

165 Convention Art. 27.

166 Parra-Aranguren, pr. 473(f).

167 David M. Smolin, "The Case for Moratoria on Intercountry Adoption.", *Southern California Interdisciplinary Law Journal*, Volume 30, Number 2, 2021, p. 510.

168 Parra-Aranguren, pr. 137.

169 Parra-Aranguren, pr. 484.

Conclusion

The Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption protects the rights of the parties in international adoption, prioritizes the best interests of the child, ensures that protective measures are taken to prevent unfair gains and benefits from children, prevent abduction, sale, or trafficking by securing the child's fundamental rights and aims to provide a family environment for them. The Convention essentially wants children to live in the culture and society where they belong, therefore it allows international adoption only if children cannot be adopted in their home country. As of 2023, 103 states around the world have signed the Convention and put it into effect. Any adoption that has been performed in one of these states will therefore be automatically recognized by other contracting states upon request.

The Convention provides a roadmap by laying out the fundamental principles of adoption but does not introduce any legal rules and leaves this authority to the contracting states. Each contracting state has made the necessary arrangements in accordance with their domestic law. In Türkiye, a Regulation has been issued as the law of compliance with the Convention and has determined the conditions for adoption as a state of origin. When these conditions are examined, it is understood that the Regulation also seeks same requirements sought in the TTC for children and prospective adoptive parents. According to the Convention, the conditions to which the adoptive parents are subject will be determined by their country of habitual residence, but adoption is considered to be related to public order in Türkiye. Therefore, many future adoptions that are likely to be revoked after discovering that they are contrary to public order have been prevented from the start with Regulation's requirements.

Also, adoption is not an individual decision that can be left solely in the control of the child's birthparents, legal guardians, prospective adoptive parents, or other intermediaries; rather, it is a social and legal measure for the protection of children, which is why the public order approach in Turkish law is reflected in intercountry adoptions in accordance with the Convention. For the same reasons, Turkish citizens who reside abroad, Turkish citizens by birth who renounce their citizenship with the state's permission, and any adoptive parents who shares a common language and culture with the child will be given priority for international adoption in Türkiye. Thus, Türkiye has chosen to favor its own citizens and people who will provide an environment to the child that he or she is familiar with, even in intercountry adoptions pursuant to the Convention. Türkiye's public order approach also manifests itself in other conditions sought by adoptive parents. To preserve the institution of the

family, the adoption of children is permitted only by single or married persons of different sexes. Concepts of partnership, registered partnership, and life friendships are not allowed, even though these unions are legally registered elsewhere. Only legally married heterosexual spouses are permitted to adopt.

The purpose of this study was to show that the Convention is one of the most effective routes of international adoption for contracting states. It safeguards children, their families, and prospective adopters against the risks of illegal, premature, or ill-planned adoptions. It includes measures to ensure that all intercountry adoptions are in the best interests of the children and provides a system of automatic recognition of adoption decisions, which makes it easier to recognize an adoption decision in contracting states. As a result, we have clarified the legal procedures that prospective adopters may encounter if they wish to adopt children from Türkiye under the terms of the Convention.

While preparing this paper, the question was to find out how many children were adopted from Türkiye in accordance with the Convention. Unfortunately, it has not been possible to find any data from written sources nor statistics published on the web pages of the Convention or the Ministry of Family and Social Services in Türkiye. Therefore, the author requested information from the relevant ministry through official channels based on the right provided by Right to Information Act Number 4982 (*Bilgi Edinme Hakkı Kanunu*). In the ministry's response, as of 2020, six children whose habitual residence was Türkiye, have been adopted by four families in a receiving state. Five of these six children were Turkish citizens and adopted by families that also hold Turkish citizenship. One child had foreign nationality and was adopted by a foreign family. There is no child adopted from another contracting state by a family residing in Türkiye. Children under the protection and care of the ministry are not given for intercountry adoption. There is no obstacle for the adoption of children under protection; those who meet the conditions stated in the Regulation can be adopted, however it appears it is not preferred. The data given by the Ministry covers a fairly close time period when considering that the Convention has been in effect since 2004 in Türkiye, but no further information has been obtained about the implementation of the Convention. Lastly, contrary to the low numbers given by the Ministry, according to the international adoption statistics published by USA, under the rules of the Convention, just 29 children have been adopted from Türkiye since 2004 by the families in the USA¹⁷⁰. Therefore, considering that 103 states around the world

170 For more detail about the children's profiles, visit: https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/adoption-statistics-esri.html (10/04/2023).

are contracting states of the Convention, the number of children adopted from Türkiye under the terms of the Convention might be considerably higher worldwide in this context.

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