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Draft convention on the adoption of children (revised)

Opinion¹

Social, Health and Family Affairs Committee

Rapporteur: Ms Ruth-Gaby VERMOT-MANGOLD, Switzerland, Socialist Group

1. Committee's conclusions

1. The Social, Health and Family Affairs Committee first wishes to welcome the initiative of drawing up a draft convention on the adoption of children, which undoubtedly constitutes a considerable step forward in the protection of children's rights.

2. In particular it thanks the rapporteur of the Committee on Legal Affairs and Human Rights, Mr Bartumeu Cassany, for his excellent report and for the amendments, with which the Social, Health and Family Affairs Committee fully concurs given that they take account of social trends common to all states and reinforce equality of opportunity, a principle upheld by our Organisation.

2. Explanatory memorandum

3. The Social, Health and Family Affairs Committee endorses Mr Bartumeu Cassany's proposal that reservations be made completely inadmissible, failing which harmonisation of the law governing adoption is extremely difficult. The committee's support for this proposal is all the stronger since it has always held that, in such a sensitive field as adoption, consideration absolutely must be given to the child's consent, where he or she has sufficient understanding, bearing in mind that the child is the main person involved and that all decisions must be taken in the child's sole interest, in keeping with the spirit of the United Nations Convention on the Rights of the Child of 1989, which all Council of Europe member states have ratified.

4. The Social, Health and Family Affairs Committee nonetheless also wishes to point out that the above-mentioned Convention on the Rights of the Child recognises children's right to know and be cared for by their parents (Article 7). The committee consequently considers that the proposed draft convention on adoption in a national context should focus on this non-negotiable principle, namely respect for the child's right to know his or her origins, which is an essential human right of vital importance to the child's development. As already stated, where several rights conflict, the child's best interest must take precedence over all other considerations in the decision-making process.

5. The draft convention should accordingly be based on the principle that children have an absolute right to know their parents and their origins, and the right of the mother or father to non-disclosure of his or her identity should constitute a mere exception.

¹ See Doc. 11274 (draft convention) and Doc. 11381 (report), tabled by the Committee on Legal Affairs and Human Rights

6. The Social, Health and Family Affairs Committee expressed the wish that research be undertaken on data on international adoption in order to ask the competent authorities to examine them and to allow a follow-up.

The Committee stressed also that measures concerning adoption should be undertaken by recognised organisations agreed by national governments.

7. For reasons of harmonisation, the Social, Health and Family Affairs Committee seizes this opportunity to ask the member states' governments also to take the necessary steps to revise the Convention on Intercountry Adoption as soon as possible.

3. Proposed amendment to the draft convention

8. "Replace Article 22(3) with the following:

The adopted child shall have the right to know his or her parents of origin and to have access to information held by the competent authorities concerning his or her origins. Where his or her parents of origin are exceptionally entitled by law not to disclose their identity, a competent authority shall determine whether it is appropriate to disclose identifying information, having regard to the circumstances and to the respective rights of the child and of his or her parents of origin. Appropriate guidance may be given to an adopted child not having reached the age of majority."

Reporting Committee: Committee on Legal Affairs and Human Rights

Committee for opinion: Social, Health and Family Affairs Committee

Reference to Committee: reference No. 3344 of 20 April 2007

Opinion approved by the Committee on 8 November 2007

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