

# Les solidarités entre générations

## Solidarities between Generations

Hugues Fulchiron (dir.)



BRUYLANT



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« [...] Les vieillards, c'est connu, ils ont besoin de quelqu'un qui parvient à leur faire sentir que le fils est là mais pour le moment est une sorte de

M

Inscrite dans la loi, elle ne doit pas moins être de la responsabilité des générations nouvelles et individuelles et de la responsabilité de l'autrui « l'autrui générationnel qui nous concerne tous. En ce sens, le droit de l'autrui face entre eux exigera que l'autrui demande que l'autrui entre génération.

Deux présupposés de la responsabilité entre générations.

D'une part la responsabilité des générations. C'est la logique se comme la tâche est dans la nature,

# ADOPTION AND FOSTER CARE: DOUBLED FAMILY SOLIDARITIES?

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## INTRODUCTION

The role of the elderly, and in particular of grandparents, is of fundamental importance within international adoption. Given that life expectancy has increased and still continues to do so, nowadays families are growing in size, members and average age. In other words, families are becoming extended, and are no longer nuclear but include grandparents as well. The new family environment, reshaped by science and improved living conditions, has led to a change in the laws of the family, which have been updated and adjusted to follow the most recent developments in society.

Worldwide legislators have introduced new rules to govern grandparents' visiting rights and duty of support towards their grandchildren, so as to protect the two weaker parties (grandparents and grandchildren) in the event of relationship breakdown between parents. The intervention of the legislator has gone even further, requiring grandparents to provide their consent (*rectius*, prior consent) for international adoption. Can such consent be considered invasive or against the best interest of the child? Does it alter the parental free choice between adoption and foster care? In other words, what happens if the parent-grandparent relationship is dreadful or non-existent and it is unlikely that the grandparents will provide their consent?

Differences between adoption and foster care are substantial both in terms of motivations and procedures. However, many cases of transfer from one procedure to the other are registered nowadays, due to the strict and stringent requirements set out by the Hague convention which may operate as a deterrent in the case of international adoption.

## I. - HISTORY

Earthquakes, tsunamis, epidemic diseases and wars have always occurred in human history; however, no attention was ever paid in the past centuries

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to children's conditions during and after any calamitous or devastating event. Beginning with World War II, global attention was for the first time ever catalyzed by shocking images of children living on the streets of the defeated countries in questionable hygienic conditions, with no family, no education and no assistance. With the contribution of the global press and media, through their direct and constant coverage of devastating events, a widespread feeling of affection and solidarity towards the blameless minors deprived of their own future has slowly arisen. Eventually, intercountry adoption, often presented as a way for well-off people to support and sustain orphans in need, has become a worldwide phenomenon, steadily increasing in scope and geographical areas of practice.

In fact, whereas until the 20th century adoption was a customary practice for property transfer in the absence of male heirs (1), it then became a tool operating for the benefit of orphans and childless families. Emblematic was its rise in numbers after the crash and fall of the communist bloc, when the awful and crumbling conditions of overcrowded orphanages with no heating, food or medical supplies, abandoned by the state, became public knowledge. Thanks to the absence of international binding treaties, with the subsequent possibility for governments of the sending and receiving countries to rule independently and sign bilateral agreements on cross-border adoption, many orphans entered western countries to join adoptive families. Such an occurrence came to an abrupt halt once many cases of corruption within the system were discovered (2), and the indefensible situation called for a new law to provide minors with better protection. The lurking risk of child trafficking and child laundering eventually led to detailed and strict regulations, on both the domestic and international stage.

## II. – INTERCOUNTRY ADOPTION

In order to prevent the abduction, sale and traffic of children, and to establish safeguards against the risks of illegal, irregular, premature or ill-prepared adoptions abroad, on May 29<sup>th</sup> 1993 the Hague convention on protection of children and co-operation in respect of intercountry adoption was concluded. Eighty-five States have already ratified or acceded to this convention to date.

(1) Under Roman law (*Codex Iustinianus*), adoption took place mainly in favour of adults to facilitate the transition of property or power. In fact, the code provided two forms of adoption, the so-called *plena* and *minus plena*; the latter was accorded without the need for the actual physical move to the house of the adoptive father, but still gave the adopted the right to inherit.

(2) K. BAGAN-KURLUTA, "Adoption in a Globalized World," *Family Finances*, papers presented at the 13th World Conference of the International Society of Family Law, Vienna, Jan Sramek Verlag, 2009, pp. 217-219.

The Convention has established a comprehensive set of strict rules in order to ensure that adoption takes place in the best interest of the child and with respect for his fundamental rights; it sets out clear procedures and prohibits improper financial gain. It also imposes security, predictability and transparency for all parties to the adoption, in order to fully eliminate situations of abuse and guarantee the development of an integrated multi-national child-care and protection system.

Whilst in theory the Convention operates for the benefit of minors, nonetheless there is a consistent part of western doctrine (especially American (3)) which has deeply criticized the new rules, as they lead to a lengthening of the overall procedure. In fact, the Convention requires ex-ante eligibility qualifications, obligatory consents and post-adoption checks, which may be of impediment to the final purpose, that is taking children out of institutions.

Hence, whereas the press tends to convey the idea that intercountry adoption works as a ready-made panacea which may immediately link a family to homeless children, this is not really the case since the adoptive praxis do not progress as quickly as before the Hague convention entered into force. As a consequence, orphanages remain crowded, and adoption agencies, still overworked, are not able to satisfy the many requests to adopt that they receive each day.

In the end, international adoption turns out not to be the effective tool that the media depict at all. This is especially the case for the 2004 Indian Ocean tsunami, the 2010 Haiti earthquake and the 2011 earthquake and nuclear disaster in Japan: catastrophes leaving thousands of children orphans and unattended, and yet non suitable for intercountry adoption (4).

### III. — ORGANS AND ENTITIES ACTING UNDER THE HAGUE CONVENTION

The Convention provides for a system of "Central authorities" and "Accredited bodies," operating under the exclusive responsibility of the respective contracting States.

Central authorities are designated at the national level, and are supposed "to discharge the duties which are imposed by the Convention" (art. 6): in

(3) E. BARTHOLET, "International Adoption: The Child's Story," 24 *Ga. St. U. L. Rev.*, 2008, p. 333, § IB, III, IV; E. BARTHOLET, "Beyond Biology," 2 *Duke Gender, Law & Policy*, 1995, v. 5, p. 5-14; K. SOHR, "Difficulties Implementing the Hague Convention on the Protection of Children and Co-Operation in Respect of Intercountry Adoption: A Criticism of the Proposed Ortega's Law and an Advocacy for Moderate Adoption Reform in Guatemala," *Pace Int'l L. Rev.*, 2006, v. 13, p. 559.

(4) The non-qualification for adoption is due to the concrete impossibility of finding the natural parents, who may be missing or deceased after the event. In fact, until a certificate from the natural parents is issued (either of abandonment or of death), adoption is not legally practicable.

other words, they must ensure the enforcement of the Convention's rules within domestic borders, imposing penalties in the case of violations. At an international level, all Central authorities are required to cooperate with one another in order to facilitate the exchange of information amongst countries for the purpose of adoption.

Art. 9 and 10 provide central authorities with the possibility of delegating functions to public authorities (5) or other accredited bodies, which must liaise with each other on children and prospective adoptive parents, replying to foreign Central authorities' or public authorities' requests on specific cases, and monitoring the post-adoption phases. The appointment of the bodies is subject to accreditation and periodical renewal, in order to ensure competence, honesty and expertise. In particular, the bodies must be non-profit organizations, governed by persons qualified on a personal and ethical level and with competence in the field. In the event that the accredited body is willing to act in another country, the authorization of the receiving country is also needed. (This is often the case for accredited bodies of receiving countries, placing a local office in the sending country as an assistance post, for the stage when the adoptive parents are ready to travel to the receiving country, in order to ensure compliance with the final steps of the adoption procedure)

The full list of names and references of all accredited bodies is updated by the Permanent bureau of the Hague conference on private international law, and can be consulted online (6).

#### IV. - STANDARD OPERATING PROCEDURE

The Central authority (or accredited body) of the sending country must obtain the written consent of the child's parents or caregivers to give the minor up for adoption, and only after the necessary verification that inter-country adoption is appropriate in regard to the subsidiarity principle on the basis that there is no possibility of domestic adoption, can it declare the adoptability of the child.

Contemporaneously, the Central authority of the receiving country has the duty to check whether prospective adopting parents are legally eligible in accordance with the requirements of the Hague convention and the various national laws, as well as being suitable on a social, economic and psychological level. Amongst the prerequisites set out by the Hague convention,

(5) Public authorities are indicated by each State, from juvenile courts, social services, municipal/parish courts, etc.

(6) [http://www.hcch.net/index\\_en.php?act=conventions.authorities&cid=69](http://www.hcch.net/index_en.php?act=conventions.authorities&cid=69).

the prospective parents must supply the adoptive grandparents' obligatory consent (or death certificate[s]).

Then, the two abovementioned Central authorities collect, preserve and exchange the respective information gathered, and end up with prospective matches. At this stage, whilst the authorities take care of all formalities, contact between the minor and the adopting parents begins, so as to facilitate the integration of the minor in preparation for the time when he will be moved to his new family.

Eventually, the adopting parents travel to the sending country, get to know the child and comply with all the local bureaucracy: they sign the adoption certificate in front of a notary, hand in the certificate to their local embassy or consulate, and once the adoption is certified as being in accordance with the Hague Convention, return home together with the newly adopted child.

The adoption, complying with all the above requirements, is recognized *ex lege* in all member States and gives the child the right to enter national borders (7).

#### V. - HITCHES: REQUIRED CONSENTS TO INTER-COUNTRY ADOPTION

An essential prerequisite for the Hague convention to operate is respect for the subsidiarity principle: the Convention can be applied only in the event that any other domestic solution, such as national adoption or foster care, is not practicable.

Specifically, art. 4 provides the central authority of the State of origin with the possibility of declaring the child adoptable exclusively if either the biological parents have released their consent to adoption, or the institution taking care of the child has signed the official certificate of abandonment. In addition, the minor (if mature enough) must be duly informed, so as to express his overall opinion and personal consent to adoption (the latter only if necessary under domestic laws).

At the same time, the central authority of the receiving country must collect data regarding the adopting parents in order to make sure they

(7) Recommendation No. 17/2006 of the Meeting of the Special Commission on the practical operation of the Hague Convention of 29th May 1993 on Protection of children and co-operation in respect of intercountry adoption, declared that "The Special Commission recommends that the child be accorded automatically the nationality of one of the adoptive parents or of the receiving State, without the need to rely on any action of the adoptive parents. Where this is not possible, the receiving States are encouraged to provide the necessary assistance to ensure the child obtains such citizenship. The policy of Contracting States regarding the nationality of the child should be guided by the overriding importance of avoiding a situation in which an adopted child is stateless."

are suitable to adopt. Such an evaluation involves the meticulous analysis of their health, and economic and psychological conditions, their true desire to become a parent, and lastly, the consent to adoption or the death certificate(s) of the adoptive grandparents must also be obtained.

The procedure *per se* is clear and coherent. However paying attention to the listed requirements individually, when and why problems actually arise can be seen, with the result that the Hague convention is often blamed for slowing down or disrupting the adoption procedure. The stumbling blocks are twofold: the Hague Convention requires the prior provision of official consent to adoption by the biological parents and the adopting grandparents.

As far as natural parents' consent to adoption is concerned, it is immediately evident that it is necessary only in the event that the minor is not an orphan, but abandoned. However, if the minor has been abandoned, it may be extremely complicated to track his parents down, especially in countries (e.g. China, Brazil) where women often give birth at home without any subsequent postnatal registration. Furthermore, biological parents may not want, nor have the means, to travel all the way to an accredited body, missing a working day in order to sign a certificate which makes their unwanted child adoptable. This problem is particularly consistent amongst men, who become biological parents from a non-official relationship, and leave the mother and child alone. In such cases (unfortunately occurring frequently), although the woman can identify the biological father, it may be complex to get in touch with him and make him sign the abandonment certificate, because he has left the region, or may be married to someone else, or in any event he does not wish to reveal his child born of adultery. As a result, the minor cannot be declared adoptable and is placed in residential care.

The second consent, required under the Hague Convention, is that of the adopting grandparents (unless they are deceased, in which case their death certificate[s] must be produced). Tracing grandparents is not complicated; however, it may be hard to get them to provide the necessary consent to adoption, since their relationship with the adoptive parents may be not harmonious. Moreover, inheritance issues may arise, given that the adopted child becomes a legal child of the adoptive parents. In other words, adoption equates with having biological ties for adopted children, with the consequence that both adopted and biological children have a right to support that, in the absence or unavailability of parents, is enforceable against grandparents. At the same time, upon grandparents' death, both adopted and biological children are entitled to inherit (8). In fact, notwithstanding the general provision on freedom of testation existing

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(8) Inheritance rights are subject to the prior death of the parents.



in many countries nowadays, various civil law systems (9) still provide for an inheritance reserve in favour of close relatives to the deceased.

Considering that most international adoptions take place towards western countries, where family members are often in dispute over inheritance and property issues, it is clear that grandparents' consent cannot be taken for granted. The media have reported many cases of contested property claims amongst the deceaseds' relatives, such as Liliane Bettencourt from L'Oreal and Agnelli and Pavarotti in Italy. And many more disputes take place every day before domestic courts within less famous families. Property issues are of central importance in today's economic world, usually handled by attorneys and consultants who tend to view even the consent to adoption as an economically computable affair. The technicalities of the issue, together with the frequent presence of professionals involved in the decision, may work as a deterrent to the provision of consent by grandparents.

As a result, irrespective of whether it is the natural parents' or the adopting grandparents' consent that is missing, the inter-country adoption procedure is disrupted. Whilst children are unable to take any further steps, adopting families have a way out from the above impasse: they may apply for foster care instead, within their respective domestic jurisdictions.

#### VI. — FOSTER CARE: A POSSIBLE REMEDY?

Foster care relies solely upon domestic legislation, as no international convention has been enacted to the present date (10). Under the current legislations, the minor is placed in the private home of a state-certified caregiver, who may be either a single person or a couple, and who does not have any parental responsibility, as any important decision regarding the minor are up to the biological parents or the court.

The placement in foster care is mainly motivated by poverty, protection from individual abuse, or other socio-economic obstacles that prevent biological parents from taking care of the minor. It differs from adoption, since it preserves the parental relationship and contact; it also differs from kinship care, which occurs within the child's extended family or with family friends who are close to the minor.

(9) Italy, Germany, France, Belgium, etc.

(10) The existing inter-state legislations in fact deal with foster care cases crossing borders within the entities (provinces, districts, states or regions) of a federal state or central authority: for example, in Canada and New Zealand cross-border placements for foster care and kinship care may be issued under circumstances provided by the law, in order to facilitate the integration and development of the minor.

Whereas laws generally provide for short term foster, cases in which the term is subject to subsequent extensions are frequent nonetheless. Furthermore, considering that medical knowledge has shown the negative impact that institutionalization has on children (11), especially for those under the age of three or with disabilities, foster care is to be referred to as an alternative solution to orphanages and residential care.

The General Assembly of the United Nations, with its Resolution No. A/RES/64/142 adopted on February 24, 2010, stated under art. 22:

"In accordance with the predominant opinion of experts, alternative care for young children, especially those under the age of 3 years, should be provided in family-based settings. Exceptions to this principle may be warranted in order to prevent the separation of siblings and in cases where the placement is of an emergency nature or is for a predetermined and very limited duration, with planned family reintegration or other appropriate long-term care solution as its outcome."

Family-based foster care is especially requested by the UN Department dealing with minors' issues, UNICEF, which in the name of its local office CEECIS (12) calls for governments to reform the child care system in order to put an end to sending children into institutional care, especially under the age of three or if handicapped. At the same time, UNICEF requires a stricter control on foster care and other forms of care, to ensure transparency for the benefit of the child, who is otherwise in danger of corruption, child laundering or abduction.

The stringent requests made by the United Nations (by means of non-binding recommendations), together with the compelling limits of inter-country adoption as seen above, have resulted in widespread use of foster care as a substitute for longer term forms of care that may not be available for various reasons. The resulting benefits are clear, since foster care permits the immediate placement of a child in a family context, avoiding the negative impact of institutionalization. Furthermore, foster care is applicable also in those cases in which, due to the absence of the requisite consent (of either the natural parents or adopting grandparents), inter-country adoption is not a practicable option.

(11) D.A. FRANK, P.E. KLASS, F. EARLS and L. EISENBERG, "Infants and Young Children in Orphanages: One View From Pediatrics and Child Psychiatry," *Pediatrics*, 1996, v. 4, p. 569-576; R.P. BARTH, *Institutions v. Foster Homes: The Empirical Base for the Second Century of Debate*, Chapel Hill, NC: UNC, School of Social Work, Jordan Institute for Families, 2002.

(12) CEECIS stands for Central, Eastern Europe and the Commonwealth of Independent States. It is an office coordinating and supervising UNICEF's work in 22 countries and entities, and specifically in: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Kazakhstan, Kosovo under UNSCR 1244, Kyrgyzstan, Moldova, Montenegro, Former Yugoslav Republic of Macedonia, Romania, Russian Federation, Serbia, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan.

Table a) Children in residential care, at the end of the year (in 1,000s)

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Czech Republic	19,0	19,2	18,8	18,9	18,9	20,8	21,3	21,8	21,9	22,0	22,6	22,9	22,6	22,7	22,8	23,3	23,5	24,2	23,5	23,4	23,4
Hungary	14,0	12,6	11,0	10,2	10,0	9,4	9,2	8,9	8,3	9,6	8,8	8,4	8,6	8,1	8,3	8,0	7,8	7,4	7,2	7,2	6,9
Poland	62,9	64,8	63,4	63,5	64,4	67,2	77,0	76,5	76,4	77,6	76,9	61,1	61,4	59,5	57,4	56,8	55,8	55,6	53,0	51,8	52,8
Slovakia	9,0	8,6	8,7	8,6	8,7	8,7	9,8	9,3	9,3	8,8	8,8	9,1	9,2	8,5	8,9	9,5	9,0	7,4	7,1	7,1	6,9
Slovenia	1,8	1,8	1,9	2,0	1,6	1,3	1,4	1,4	1,2	1,2	1,6	1,8	1,7	1,7	1,7	1,9	1,6	1,4	1,4	1,3	1,3
Estonia	1,6	1,5	1,4	1,4	1,5	1,5	1,5	1,7	1,7	1,7	1,7	1,7	1,8	1,8	1,5	1,5	1,7	1,6	1,5	1,3	1,3
Latvia	0,9	1,7	1,6	1,8	2,0	2,3	2,9	3,8	3,3	3,7	3,7	3,7	3,6	3,6	3,4	3,1	2,9	2,5	2,6	2,5	2,2
Lithuania	-	17,0	14,2	12,8	12,1	11,0	11,4	11,4	12,1	12,2	12,1	11,5	11,0	10,7	10,8	10,3	10,6	10,4	9,7	9,5	8,7
Bulgaria	-	27,4	27,2	27,0	27,4	26,9	26,6	27,2	24,4	23,5	23,7	18,4	12,8	11,9	10,9	10,3	9,8	8,7	8,2	7,5	6,9
Romania	-	47,4	47,0	48,0	44,9	53,0	49,5	52,0	51,8	44,7	38,8	58,4	51,0	44,1	38,2	33,1	29,1	25,3	25,3	24,6	23,8
Albania	-	-	-	-	-	-	-	-	-	0,7	0,6	0,7	0,7	0,7	0,7	0,6	0,8	0,9	1,0	1,1	0,9
Bosnia and Herzegovina	-	2,9	-	-	-	-	-	-	-	-	1,7	1,8	1,8	1,9	2,1	2,2	2,2	2,3	2,3	2,4	2,4
Croatia	-	6,9	-	4,7	-	5,0	-	5,2	-	4,8	-	-	-	6,2	-	6,1	-	6,2	-	6,3	-
Montenegro	-	-	-	-	-	-	-	-	-	-	-	-	-	0,5	-	0,5	-	0,6	-	0,5	-
Serbia	-	-	-	-	-	-	-	-	-	-	-	-	-	5,1	-	5,1	-	5,7	-	4,8	-
TFTR	1,2	1,3	1,1	1,4	1,1	1,1	1,1	1,1	1,2	1,0	0,9	1,0	0,9	0,9	0,9	0,9	0,9	0,9	0,9	0,8	0,8
Macedonia	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Belarus	82,7	80,9	28,5	28,5	27,6	27,7	28,0	28,4	28,5	29,7	29,8	29,8	29,8	29,8	27,9	26,3	25,5	23,8	22,2	20,8	18,3
Moldova, Republic of Russian Federation	15,6	14,3	12,5	8,7	7,7	8,2	8,0	8,5	8,3	8,2	7,6	12,1	12,0	12,0	11,9	12,5	12,1	11,6	10,2	9,8	8,4
Ukraine	504,6	495,2	447,2	429,7	412,5	416,6	428,2	437,0	430,8	432,8	431,7	428,5	424,7	421,6	408,6	398,2	372,8	361,0	384,4	923,5	845,6
	30,0	29,2	31,5	31,1	31,7	32,4	34,8	35,8	38,8	40,7	42,1	89,1	98,8	99,4	98,2	96,2	92,6	88,8	84,5	81,6	88,8
Armenia	-	4,4	4,2	3,8	3,8	3,6	3,8	4,0	4,8	5,8	5,7	6,0	4,8	4,8	5,2	7,3	8,3	7,6	5,4	5,3	4,9
Azerbaijan	24,4	24,3	22,3	20,3	18,8	18,6	19,2	19,6	20,1	20,1	21,2	22,1	22,3	23,5	23,5	23,1	23,3	17,0	16,8	14,1	11,2
Georgia	20,0	18,1	16,1	13,4	-	8,1	8,7	8,7	8,0	8,4	8,0	8,0	8,0	7,7	8,2	-	-	-	-	-	-
Kazakhstan	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Kyrgyzstan	-	8,4	7,8	17,5	14,4	12,1	12,0	13,0	12,9	13,4	14,3	16,1	14,6	14,6	13,4	85,9	84,1	79,0	78,0	79,5	-
Tajikistan	5,1	4,9	4,6	4,0	3,0	2,5	1,7	2,7	2,9	2,8	2,0	-	-	11,8	12,1	12,5	12,1	11,6	10,4	9,8	10,8
Turkmenistan	0,9	1,0	0,9	0,9	1,0	0,8	1,1	1,0	1,0	1,2	1,0	3,5	3,5	3,4	3,4	3,5	3,4	3,3	-	-	-
Uzbekistan	16,5	30,3	29,2	31,8	30,3	29,0	28,4	30,2	32,1	32,9	34,2	37,0	39,5	38,5	39,2	32,7	33,1	32,0	-	-	-

Data provided by the TransMONEE 2011 Database, UNICEF Regional Office for CEE/CIS, Geneva

Table b) Number of children in infant homes

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Czech Republic	2.792	2.626	2.516	2.334	2.276	2.266	2.285	2.208	2.113	2.136	2.064	1.723	1.665	1.630	1.624	1.570	1.565	1.470	1.407	1.418	1.391
Hungary	2.376	2.147	2.021	1.898	1.893	1.881	1.795	1.755	1.670	1.590	1.461	1.215	1.167	1.128	1.079	1.011	895	794	681	614	482
Poland	4.318	4.400	4.400	4.059	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Slovakia	639	551	537	638	663	703	676	724	-	-	-	-	-	-	-	-	-	-	-	-	-
Slovenia	41	28	26	23	34	28	19	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Estonia	289	286	290	301	305	295	317	338	395	110	-	111	95	100	81	81	93	88	88	-	-
Latvia	-	-	-	-	-	-	-	-	397	508	396	454	428	395	409	391	346	321	352	378	394
Lithuania	948	470	496	491	523	437	479	516	510	508	479	425	456	447	437	464	427	416	391	372	336
Bulgaria	4.030	3.303	3.653	3.632	3.712	3.771	3.578	3.766	3.711	3.593	3.448	3.375	3.563	3.141	2.906	2.882	2.980	2.743	2.715	2.440	2.394
Romania	-	8.558	8.028	7.378	8.245	10.950	8.715	8.950	8.810	-	-	-	2.880	2.246	1.881	907	446	848	542	568	575
Albania	-	-	-	-	-	174	226	228	242	137	154	168	168	154	159	118	124	148	134	163	131
Bosnia and Herzegovina	-	-	-	-	-	-	-	-	-	-	-	328	353	350	343	371	380	163	207	217	397
Croatia	-	144	-	132	-	117	188	167	-	-	-	-	-	-	-	-	-	-	-	-	-
Montenegro	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Serbia	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TFYR Macedonia	65	62	64	74	80	89	107	80	96	84	83	70	51	64	92	120	99	95	106	87	98
Belarus	1.102	1.047	990	973	985	1.037	1.048	1.053	1.165	1.250	1.301	1.300	1.295	1.212	1.207	1.263	1.302	1.265	1.194	1.144	1.113

	1989	1890	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Moldova, Republic of	640	591	585	522	520	537	406	314	318	421	414	355	388	405	378	363	361	388	361	304	288
Russian Federation	19,844	18,506	17,783	17,567	17,749	18,021	18,846	18,488	18,097	19,260	19,288	19,345	19,566	19,537	19,113	19,962	20,821	20,342	18,480	17,781	17,767
Ukraine	-	-	4,181	4,007	4,046	4,205	4,487	4,629	4,620	5,049	5,104	4,969	4,992	5,177	5,261	5,387	5,267	5,011	4,454	3,951	3,704
Armenia	60	54	60	60	55	58	60	65	63	66	65	80	81	72	73	70	74	77	80	65	67
Azerbaijan	248	241	235	191	193	191	166	159	181	181	184	197	191	173	152	144	156	142	105	124	122
Georgia	277	254	205	125	134	99	103	152	124	188	164	187	197	179	160	170	224	222	120	125	120
Kazakhstan	1,886	1,791	1,764	1,576	1,780	1,880	2,048	2,236	2,230	2,548	2,676	2,476	2,488	2,841	2,120	2,120	2,095	2,105	2,194	2,106	-
Kyrgyzstan	-	236	236	235	205	238	223	232	217	217	229	254	234	243	261	259	258	258	238	264	269
Tajikistan	463	439	439	435	287	292	197	162	146	156	165	192	175	188	157	154	174	163	160	201	299
Turkmenistan	280	287	255	230	232	215	239	161	179	201	239	232	202	214	216	220	232	319	-	-	-
Uzbekistan	909	923	868	891	869	847	776	776	763	740	768	766	727	794	743	701	706	732	762	689	-

Data provided by the TransMONET 2011 Database, UNICEF Regional Office for CEE/CIS, Geneva

Table c) Children in care of foster parents or guardians (in 1,000s), at the end of the year

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Czech Republic	5,3	5,3	5,3	5,2	5,3	5,5	5,6	5,8	5,7	5,9	6,0	6,0	6,4	6,6	6,6	6,6	6,9	7,1	7,6	8,2	9,0
Hungary	9,0	8,9	8,6	8,5	8,4	8,3	8,0	7,9	8,0	7,9	7,6	15,2	15,5	16,0	17,4	18,1	18,6	18,6	18,2	19,2	20,3
Poland	33,4	37,2	37,6	33,7	40,8	43,9	46,1	49,4	51,2	52,5	55,8	50,1	47,9	47,3	47,7	48,4	49,7	51,3	52,7	53,4	54,3
Slovakia	2,3	2,3	2,4	2,4	2,4	2,4	2,3	2,3	2,2	2,4	2,6	6,1	6,3	6,4	6,9	7,1	7,3	7,6	8,2	8,3	7,2
Slovenia	2,0	2,6	2,6	2,6	2,5	3,3	3,2	3,5	3,6	3,3	3,3	1,5	1,4	1,4	1,4	1,2	1,2	1,2	1,2	1,2	1,2
Estonia	-	-	-	1,8	2,4	2,1	2,1	3,7	3,7	3,6	3,5	3,2	3,0	2,9	2,9	2,6	2,3	2,0	-	1,3	-
Latvia	-	-	-	-	3,3	4,6	5,5	6,8	6,6	7,7	7,9	8,8	9,2	9,6	12,3	9,2	8,9	8,8	7,2	6,7	6,3
Lithuania	4,6	4,6	4,9	6,2	6,4	5,3	5,9	6,2	6,6	7,0	7,7	7,6	7,7	7,6	7,8	8,0	7,8	7,7	7,6	7,2	6,9
Bulgaria	-	-	-	-	-	-	-	-	-	-	-	-	-	0,9	1,9	2,0	4,1	5,6	6,0	6,1	6,4
Romania	-	-	-	-	-	-	-	-	-	-	-	26,9	37,6	43,1	46,6	60,2	47,7	48,1	46,2	45,1	43,5
Albania	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Bosnia and Herzegovina	-	-	-	-	-	-	-	-	-	-	-	2,5	1,9	5,1	3,2	3,2	3,3	3,8	3,3	2,0	1,4
Croatia	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Montenegro	-	-	-	-	-	-	-	-	-	-	-	0,2	0,1	0,1	0,1	0,1	0,1	0,1	0,1	0,1	0,1
Serbia	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2,7	2,9	3,4	3,9	4,6
TFYR Macedonia	1,1	0,6	0,6	1,4	1,2	1,2	1,2	1,4	1,4	1,3	1,1	1,1	1,1	1,1	1,0	1,0	1,2	1,1	1,1	1,1	1,1

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Belarus	11,4	10,6	10,3	10,4	10,6	6,1	7,1	8,4	9,7	11,5	12,8	12,7	13,4	13,9	14,3	15,0	15,8	16,3	16,9	17,1	16,9
Moldova, Republic of	-	-	5,0	4,0	3,9	3,9	4,0	4,0	4,2	4,3	4,1	4,4	4,9	5,0	5,2	5,6	5,3	6,2	6,3	6,4	7,0
Russian Federation	174,0	170,6	180,3	190,5	201,4	225,5	252,5	278,1	289,5	303,9	312,3	333,4	352,7	366,3	379,6	386,0	390,5	399,7	422,5	434,4	448,9
Ukraine	38,1	38,5	40,2	41,3	42,6	43,6	47,1	50,4	53,7	56,9	59,5	61,7	62,3	65,5	66,6	65,6	64,6	65,3	66,2	67,0	68,1
Armenia	-	-	-	-	-	-	-	-	-	-	-	0,01	0,01	0,01	0,01	0,01	0,01	0,08	0,03	0,02	0,02
Azerbaijan	6,5	6,7	7,2	7,6	7,9	8,2	8,0	8,1	8,4	8,7	8,8	24,1	24,1	24,3	24,0	23,1	21,0	18,4	5,0	5,1	3,9
Georgia	-	-	-	-	-	-	-	0,4	0,8	0,8	0,9	0,9	0,9	1,2	1,4	1,2	1,2	1,8	2,8	3,2	3,5
Kazakhstan	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Kyrgyzstan	-	3,9	4,6	5,1	5,4	6,4	6,7	6,1	6,4	6,0	5,9	6,3	7,0	7,8	8,7	-	-	-	-	30,1-	-
Tajikistan	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5,3	4,9
Turkmenistan	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	7,3	7,9	8,1	7,5	6,9
Uzbekistan	-	-	-	17,2	17,4	18,0	18,4	19,6	20,9	22,5	23,8	25,1	26,0	27,4	27,6	28,3	26,7	25,5-	-	-	-

Data provided by the TransMONET 2011 Database, UNICEF Regional Office for CEE/CIS, Geneva



Table d) Adoptions (absolute number, including intercountry adoptions, during the year)

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	
Czech Republic	546	489	530	475	463	543	628	675	684	499	566	512	545	464	588	552	619	516	583	542	543	
Hungary	382	958	1.016	923	892	914	940	1.030	911	850	928	681	631	598	566	545	597	560	585	612	613	
Poland	3.599	3.629	3.360	3.021	2.810	2.600	2.485	2.529	2.441	2.425	2.344	2.474	2.496	2.454	2.371	2.622	2.488	2.752	2.662	2.588	2.864	
Slovakia	382	395	399	369	449	415	514	522	451	475	579	404	400	438	508	506	539	578	414	345	335	
Slovenia	154	132	141	117	103	132	74	79	57	66	59	51	58	46	48	21	31	38	24	28	49	
Estonia	-	-	-	91	131	119	82	108	95	87	76	87	101	79	67	102	65	-	-	-	-	-
Latvia	689	584	641	615	469	422	387	384	404	373	378	102	156	160	86	173	181	178	141	117	134	
Lithuania	-	-	-	332	115	308	220	229	254	191	135	117	99	147	165	196	196	231	229	209	258	
Bulgaria	2.715	2.550	2.319	2.191	1.994	2.098	2.100	2.081	2.130	2.058	2.239	2.140	2.229	2.152	1.858	1.094	959	908	793	674	746	
Romania	-	-	-	-	-	-	2.595	2.320	1.007	2.357	4.285	4.326	2.795	1.753	1.682	1.673	1.188	1.421	1.294	1.300	1.216	
Albania	-	-	-	-	-	69	86	117	62	78	94	73	88	47	54	67	41	57	39	32	-	
Bosnia and Herzegovina	-	-	-	-	-	-	-	-	-	-	154	177	191	198	201	82	67	87	69	58	-	
Croatia	282	282	107	118	220	309	175	180	157	164	161	119	136	119	144	133	132	-	-	-	-	
Montenegro	-	-	-	-	-	-	-	-	-	-	-	28	17	18	20	12	12	5	11	5	-	
Serbia	-	-	-	-	-	-	-	-	-	-	0	178	220	208	174	133	96	131	147	129	-	
TFYR	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Macedonia	253	280	255	203	188	187	175	207	196	172	186	164	175	151	93	76	104	47	52	72	-	

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Belarus	881	888	808	800	247	868	315	301	242	284	944	582	615	688	829	743	870	870	561	541	611
Moldova,	-	-	-	-	-	848	401	384	375	389	459	147	165	209	161	137	180	157	178	180	182
Republic of																					
Russian																					
Federation	12.929	12.828	12.964	13.942	15.264	16.310	13.523	12.060	14.270	13.178	13.229	13.683	13.187	14.101	15.183	16.432	14.430	14.431	14.066	13.170	12.763
Ukraine	6.475	6.821	6.548	6.461	6.765	7.765	7.587	4.801	5.441	5.479	3.461	4.343	4.871	4.101	3.877	3.573	3.575	2.611	3.454	3.644	3.823
Armenia	588	312	216	184	168	447	521	207	388	318	272	135	163	178	215	150	79	84	126	110	44
Azerbaijan	687	608	526	462	375	521	396	455	411	458	368	257	245	293	312	258	-	-	-	-	-
Georgia	-	-	-	-	-	-	-	106	435	166	133	109	124	160	150	64	222	195	160	48	152
Kazakhstan	-	-	-	-	-	-	-	-	-	-	-	4.362	4.483	4.114	4.715	4.897	4.075	3.461	3.822	3.519	-
Kyrgyzstan	-	1.986	1.662	1.382	1.152	911	949	1.098	848	1.205	883	897	883	819	983	854	924	842	916	971	1.064
Tajikistan	-	-	-	-	-	-	-	-	-	-	-	298	340	415	317	351	392	431	472	455	-
Turkmenistan	-	-	-	-	-	-	9	16	10	27	1	90	101	115	129	188	-	-	-	-	-
Uzbekistan	-	-	-	-	-	-	-	-	-	-	-	2.711	2.780	2.987	2.712	2.771	2.925	2.415	-	-	-

Data provided by the TransMONIEE 2011 Database, UNICEF Regional Office for CEE/CIS, Geneva

Table e) Intercountry adoptions (absolute number)

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009		
Czech Republic	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Hungary	98	132	151	111	138	143	129	132	182	80	147	128	98	112	100	80	88	124	160	140	146	146	
Poland	412	506	523	480	404	274	238	242	205	226	264	217	190	211	222	256	288	344	296	294	260	260	
Slovakia	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Slovenia	-	-	-	-	-	-	-	2	2	1	-	-	1	1	-	-	-	14	24	25	20	20	
Estonia	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Latvia	-	-	-	-	-	-	-	29	37	30	37	27	20	33	15	28	16	20	31	28	-	-	-
Lithuania	-	-	-	16	86	106	144	195	212	202	152	63	110	130	71	150	114	126	94	60	71	-	-
Bulgaria	28	22	90	185	263	295	454	550	569	826	1,010	1,005	854	954	635	270	118	96	85	184	220	220	
Romania	-	-	-	-	-	-	1,057	1,653	2,017	2,576	3,035	1,521	407	279	251	2	-	-	-	-	-	-	-
Albania	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Bosnia and Herzegovina	-	-	-	-	-	-	-	-	31	52	35	47	26	26	26	26	38	25	28	23	-	-	-
Croatia	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Montenegro	-	-	-	-	-	-	-	-	-	-	-	10	4	3	3	5	9	-	-	-	-	-	-
Serbia	-	-	-	-	-	-	-	-	-	-	-	8	2	1	3	10	1	4	2	5	2	2	2
TFYR	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Macedonia	9	4	3	1	3	4	7	13	19	12	4	12	9	10	1	1	-	9	11	16	14	14	
Belarus	-	-	-	-	-	39	54	51	45	25	140	420	447	549	714	586	2	39	22	5	26	-	-

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009			
Moldova,	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
Republic of	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Russia	-	-	-	-	53	63	71	64	76	127	134	9	7	59	83	46	52	95	69	69	90	90	90	
Federation	-	-	-	1,485	2,196	1,497	3,251	5,789	5,647	6,265	6,282	5,777	6,926	7,852	9,419	6,904	6,689	4,536	4,125	3,815	3,815	3,815	3,815	
Ukraine	-	-	198	477	438	417	444	731	1,272	1,118	2,200	2,672	2,341	2,242	2,061	2,156	1,134	1,701	1,817	1,451	1,451	1,451	1,451	
Armenia	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Azerbaijan	-	-	-	-	-	-	-	-	-	-	-	-	49	62	81	53	32	36	67	70	18	18	18	18
Georgia	-	-	-	-	-	-	-	-	-	-	-	4	16	1	0	9	24	18	9	10	10	10	10	10
Kazakhstan	-	-	-	-	-	-	-	-	-	-	-	40	56	122	76	89	17	9	5	1	1	1	1	1
Kyrgyzstan	-	-	-	-	-	-	-	-	-	-	-	658	817	899	1,022	1,015	898	770	777	709	-	-	-	-
Tajikistan	-	-	-	-	-	-	12	3	-	8	-	8	11	7	14	20	22	9	4	1	1	1	1	1
Turkmenistan	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	10	10	2	-	-	-	-	-
Uzbekistan	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Data provided by the TransMONEE 2011 Database, UNICEF Regional Office for CEE/CIS, Geneva

Data collected by UNICEF in the years 2000-2009 in the areas of CEECIS clearly represent the rapid change in numbers within the various forms of care set up for children: it is of immediate note that residential care has decreased over the years, as have placements in children's homes.

Focusing on the Russian Federation, for example, children in residential care went from 504,600 in 1989 to 345,600 in 2009, whilst those placed in children's homes went from 19,344 in 1989 to 17,767 twenty years later. On the contrary, the number of children in foster care gradually rose, passing from 174,000 in 1989 to 448,900 in 2009. During the same period, intercountry and domestic adoption remained fairly stable overall (12,329 in 1989 as compared to 12,753 in 2009), but recorded a growth in intercountry adoption (doubling from 1,485 in the year 1993 to 3,815 in 2009).

Thus, foster care has gradually replaced residential care, while no significant change has occurred in relation to adoption. Reasons for the increase in foster care can be traced back to the economy (since international financial statistics show the growth in gross domestic product per capita in the same period, especially after the fall of the communist bloc (13)) and to the newly-formed social awareness which made it possible for many couples to show solidarity within their own borders in regard to children, mostly due to increased medical knowledge of the negative impact of child institutionalization.

In light of the change referred to above, it may be helpful for the child's best interest to be pursued with the shift towards foster care, by introducing an intercountry form of residential care (*e.g.* allowing the movement, for a fixed/variable term, of minors into residential care abroad). Obviously foster care does not solve problems arising after calamitous events; but what if a tailored tool was introduced falling between intercountry adoption and foster care, to permit the cross-border transfer of children placed in residential care?

#### VII. - A RECEIVING COUNTRY'S PERSPECTIVE: ITALY

The data above are confirmed by looking at numbers in one of the receiving countries with the highest proportion of adoption/live births: Italy (14).

(13) Data are available on the International Monetary Fund warehouse at: <http://elibrary-data.imf.org/FindDataReports.aspx?d=23061&e=169393>

(14) The proportion of adoption/live births in Italy is circa 0,6%.

Considering that foster care was officially recognised within the Italian legal system relatively late, under the Law No. 184/1983, it was nevertheless already in use in practice, as a spontaneous form of child assistance provided by relatives, friends and neighbours. Foster care was originally introduced as a remedy for cases of questionable parental authority or poverty and penury, ordered by a court concluding that the biological family represented a negative environment for the minor. But the wider use of such an instrument was reached after December 31, 2006, with all orphanages being ordered to close by the provisions of Law No. 149/2001. All children were consequently moved from orphanages to foster families or communities (the so-called *casa-famiglia*, which provides for residential care), and foster care became available not only for minors whose parents were declared unsuitable by the court (based on the social welfare evaluation), but also for abandoned minors and orphans considered available for adoption (art. 8 (15)).

It is of course patent that as a consequence of the widespread application of foster care, the number of cases of the latter has risen exponentially. Yet the success of foster care also has other reasons, as a comparison to adoption may show. In fact, entrusting care to foster parents or institutions by order of the court does not need any other consent nor control apart from the psychological and socio-economical assessment of the foster parents or guardians. That is to say, no prior consent by third parties (such as grandparents) is requested, nor does the applicant need to be married (requisite conditions for adoption, as set out by the Hague Convention 1993 and by Italian Law No. 184/1983).

The result is a quicker and easier procedure of wider application, which may lead to a family being expanded by circumventing the many incumbrances set up by the Hague Convention 1993.

Focusing on the years 2003-2010, data collected by the Court of appeal of Turin (16) confirm that foster care is often considered as *ultima ratio*, chosen by adults who cannot fulfill the requirements set out for international adoption.

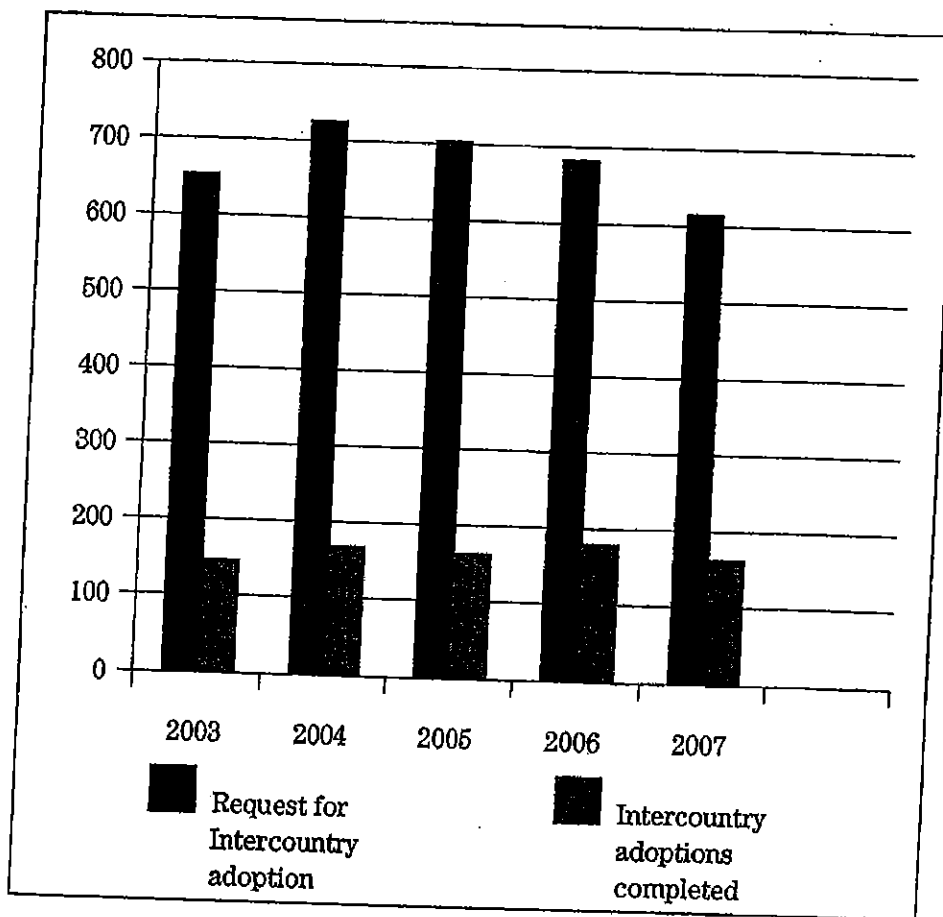
The tables show the actual *status quo* in Turin: the left side shows internationally and domestically adopted children in the years 2003-2010 as opposed

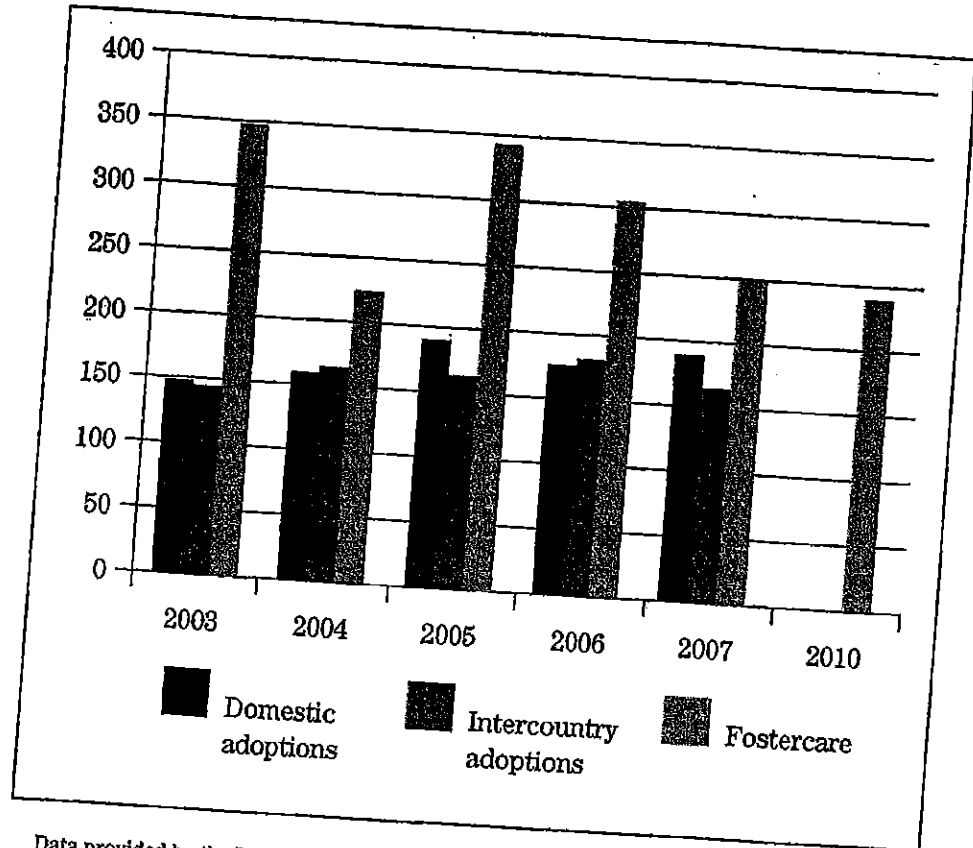
(15) Art. 8 Law No. 149/2001 establishes that minors are suitable for adoption whose abandonment has been ascertained, due to the total lack of moral and material support by parents and relatives, provided that such abandonment is considered to exist also in the event that the minor is placed in foster care or residential care.

(16) Turin was chosen as an illustrative case, considering that it is a cosmopolitan metropolis with 1 million inhabitants located in the North of Italy, noting the legal bases for all adopting agencies operating in Italy.

to foster care placements (which include adoptable and non-adoptable children, daily and permanent placements), and the right side the discrepancy between requests for intercountry adoptions and procedures completed. The statistics differ enormously, since the number of foster care placements is consistently higher than that for adoption; in addition the latter are difficult to finalize due to their many obligatory prior requirements. The general prevalence of foster care over adoption (international and domestic) is also maintained notwithstanding the many cases of in-family adoptions, that is to say adoptions granted in favour of relatives or friends of the deceased natural parents.

Table f) Court of appeal of Turin, Italy





Data provided by the Istat Database on informations released by the Italian Ministry of Justice, National Office for Statistics

What these numbers show is that, despite the fact that so many adults were actually willing to welcome a child, they ended up being foster carers, either because of insufficient number of children available for international adoption, or because the requirements for adoption were too numerous or too selective. Moreover, Italian courts are increasingly recognizing so-called «mild adoption», that is to say foster care *sine die*, occurring as a result of subsequent continuous postponements of the legal termination of the placement (17): this presents a way to circumvent in practice the stringent encumbrances of the laws on foster care as well as the Hague convention.

(17) The foster care order must establish the duration of the child's placement, with a maximum term of 24 months, having regard to the total interventions that must be taken to re-establish the natural family. In the event that the end to the foster care may result detrimental to the minor, the juvenile court postpones such an end.



VIII. - POSSIBLE SCENARIO FOR A REFORM

In conclusion, returning to the initial topic regarding the role of the elderly within adoption, the grandparents' role is not only to give love and affection to the adopted, but most importantly to make the adoption itself possible by means of their obligatory prior consent. Reasons for such involvement of the elderly in the procedure are of course not only related to the best emotional interests of the child, but also have a lot to do with inheritance and succession rights - a minefield that can be found at the heart of many family disputes.

In general terms, foster care has therefore imposed itself as the practical solution outside of legal constraints: in the case of family conflict, foster care may still be practicable, rendering the consent of grandparents moot and irrelevant.

Instead of setting aside the Hague Convention, wouldn't it be preferable to correct and modify some of its provisions in order to exclude the grandparents' consent from the necessary requirements for adoption, and, by doing so, avoid the recurrent drain on foster care? In other words, are adopting grandparents really relevant for the purposes of the Hague convention?

Lastly, would it be practicable to implement a form of intercountry foster care, and by doing so, avoid having to obtain grandparents' consent?



# Les solidarités entre générations Solidarities between Generations

L'ampleur des enjeux humains, économiques et sociaux posés par la question des solidarités entre générations a conduit l'International Society of Family Law (ISFL) à choisir ce thème pour son XV<sup>e</sup> congrès mondial.

Plus de 200 intervenants, venus de 50 pays, ont abordé ces questions sous l'angle juridique, mais aussi philosophique, économique et anthropologique. Cet ouvrage présente une partie de ces communications organisées autour de deux grands thèmes : l'enfant au cœur des solidarités familiales et la prise en charge des aînés par la famille.

Des phénomènes tels que l'allongement de la durée de la vie, l'urbanisation des populations, la difficulté d'entrée sur le marché du travail ou encore l'éclatement des modèles familiaux traditionnels marquent notre monde contemporain et impliquent la disparition d'anciennes solidarités et l'apparition de nouvelles solidarités redessinant les relations entre générations, posant alors le problème du sort des personnes les plus fragiles : les enfants, les malades, les handicapés et, surtout, les personnes âgées.

- Quel est alors le rôle de la famille et des collectivités dans la protection de ces personnes ?
- Quels rapports entre solidarités publiques et solidarités privées ?
- Quels sont les droits et libertés reconnus aux personnes que l'âge, la maladie ou le handicap, placent en situation de dépendances ?

Telles sont les questions au cœur de cet ouvrage.

The importance of the human, economic and social issues caused by the question of generations' solidarities led the International Society of Family Law to choose this theme for its XVth World Congress (Lyon, July 19-23rd 2011). More than 200 speakers from 50 countries studied these questions from the legal angle, but also philosophic, economic and anthropological. This work collects a part of these papers about two great issues: the child, as the center of family solidarities; and the support for elders by family.

Phenomena such as increasing life expectancy, population urbanization, labor-market entry barriers, decline of traditional family patterns, mark in depth our contemporary world and involve old solidarity disappearance and new solidarity emergence, reshaping relations between generations while bringing up the problem of the fate of the most vulnerable: children, the sick, disabled, and especially elderly people.

- What then is the role of families and communities in protecting these people?
- What is the relationship between public and private solidarity?
- What are the rights and freedoms of people placed by age, illness or disability in a dependence situation?

These are the issues addressed by the authors of this book.

✓ Droit international  
Droit européen  
Droit belge  
Droit français  
Droit luxembourgeois

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