

Law 54/2007 of 28 December on Intercountry Adoption.

Office of the Head of State
Spanish Official Journal (BOE) No 312 of 29 December 2007
Reference: BOE-A-2007-22438

CONSOLIDATED TEXT
Last amended: 29 July 2015

JUAN CARLOS I

KING OF SPAIN

All that shall see and hear these presents,
Know ye: That the Spanish parliament has passed this Act and I have duly ratified it.

PREAMBLE

I

The economic and demographic circumstances of certain countries in which many children have been unable to find an environment conducive to their development, along with the drop in the birth rate in Spain, have in recent years resulted in a notable rise in the number of foreign children adopted by Spaniards or Spanish residents. In this context, new needs and demands have arisen in society, as expressed by many public and private institutions, which have made this government aware of the need for the legal framework to be adjusted in order to better suit the current social reality.

The rise in adoptions granted abroad also involves a major legal challenge for legislators, which need to provide the necessary regulatory instruments to allow adoption to take place with the greatest guarantees and respect for the children to be adopted, allowing the child's personality to develop harmoniously in a propitious family environment. All this must take place in a framework of scrupulous legal certainty always benefiting all the participants in intercountry adoption, and especially and primarily the child being adopted. Over the years we have gained sufficient perspective to see the need for an Act to clear up the existing assortment of provisions on the subject and to gather up in a single instrument all the issues of private international law that are necessarily present in any intercountry adoption process.

II

This Act combines the principles and values of our Constitution with the provisions of international instruments in the sphere of adoption which form part of our legal system. In particular it is worth noting the significance in this new Act of the principles contained in the United Nations Convention on the Rights of the Child of 20 November 1989, in the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/1985 of 3 December 1986), and in the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption concluded in The Hague on 29 May 1993, ratified by Spain by an instrument of 30 June 1995.

One benchmark in Spain has been the work done by the Senate Committee on intercountry adoption, whose conclusions, drafted with contributions by authorities and experts in the field, have set the line to be followed in the approach taken to this social phenomenon.

In accordance with the Constitution and the international legal instruments applicable to Spain, this new Act treats intercountry adoption as a means of protecting children unable to find a family in their countries of origin and establishes appropriate and necessary safeguards to ensure that intercountry adoptions are made above all in the children's best interests and with regard for their rights. Moreover it seeks to avoid and prevent the abduction, sale or traffic of children, ensuring at the same time that they suffer no discrimination on grounds of birth, nationality, race, sex, disability or disease, religion, language, culture, opinion or any other personal, family or social circumstances.

It is worth adding that this Act must always be interpreted in accordance with the principle of the best interest of the children, which shall prevail over any other legitimate interests that may be present in intercountry adoption processes.

III

The object of this Act is to provide a systematic, consistent and up-to-date instrument liable to regulate the phenomenon of intercountry adoption in Spain.

Its articles are distributed in three Titles. Under the heading "General provisions", Title I establishes the Act's scope and the roles of the competent Public Entities in the sphere of child protection, with particular reference to specifying the functions to be performed by Collaborating Entities in intercountry adoption.

Thus Chapter I establishes the Act's scope of application and the aim pursued by this law establishing safeguards for adoption, always with regard for the best interests of children, and describes the principles guiding intercountry adoption consistent with the Convention on the Rights of the Child of 20 November 1989, and the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption. The Chapter ends by specifying circumstances that prevent adoption, along the same lines of seeking to ensure that adoption occurs only where sufficient minimum safeguards are present.

Chapter II describes the roles of Public Entities for Child Protection in the adoption procedure and the intermediary functions that may only be carried out by Collaborating Entities accredited by the competent Spanish Public Entity and by the corresponding authority in the children's country of origin.

The intermediary role that is assigned exclusively to these Collaborating Entities has required legislators to draw up a legal framework that combines the full provision of the service entrusted to them with some basic mechanisms for their accreditation and monitoring, to be carried out by the competent Public Entities.

In this context of the accreditation, monitoring and supervision of the Collaborating Entities, another range of issues is addressed, such as the possibility of concluding

cooperation agreements between these entities for special situations, the possibility of establishing a coordination among the competent Public Entities for Child Protection, deciding upon the number of Intercountry Adoption Collaborating Entities to be accredited in specific countries, the events causing the suspension or withdrawal of the accreditation of Collaborating Entities accredited in several autonomous regions, specifying the nature of the relationship of the Collaborating Entities with their representatives in the children's country of origin, and their responsibility for the acts performed by such representatives in their intermediary role.

Chapter III regulates the suitability of adopters, setting out from a definition of the concept, a determination of the questions and aspects to which it must relate and the establishment of a maximum time limit.

This Chapter also imposes a series of post-adoption obligations on adopters and recognises the right of adoptees to know their biological origins. As the legislators are aware of this issue's significance to the suitable development of adopted children's personalities, the exercise of this right is set off against the necessary safeguards to protect the privacy of those concerned. Thus two fundamental provisos are established: on one hand, the legal standing restricted to the person of the adoptee once of legal age, or earlier if represented by his/her parents, and on the other, the provision of the necessary advice and action by the competent public entities in order to facilitate access to the required details.

The Chapter concludes with a provision specifically intended to protect personal data, in accordance with the report submitted by the Spanish Data Protection Agency.

The second part of the Act is intended to regulate the International Private Law provisions relating to intercountry adoption. Thus Title II consists of three distinct parts.

First, it thoroughly regulates the jurisdiction of the Spanish authorities to grant, modify, convert or declare invalid an intercountry adoption. On the basis of the "minimum connection" principle, a Spanish authority must not grant, modify, convert or declare invalid an intercountry adoption if the case is not connected to Spain to at least some extent. Thus we avoid the penetration of exorbitant jurisdictions into Spanish legislation, which might result in the granting of adoptions valid in Spain but inefficient or inexistent in other countries, especially the child's country of origin.

Second, the Act regulates the legislation applicable to the granting of intercountry adoptions by the Spanish authorities, along with conversions, modifications and declarations of invalidity. In order to improve the system, the Chapter on "law applicable to adoption" distinguishes between two scenarios. Where the child to be adopted habitually resides in Spain or is soon to acquire residence, Spanish law is to be applicable to the granting of adoption. But where the child to be adopted does not habitually reside in Spain and is not going to move to Spain to settle in the country, the adoption is to be governed by the law of the country in which he/she will be socially integrated. In both cases the law provides the necessary safeguards and in the second case a wide judicial margin of discretion is allowed so that other national laws may apply, and in order to give an adoption granted in Spain the widest possible international validity.

Third, it contains exhaustive provisions on the possible legal effects in Spain of adoptions granted by competent foreign authorities. These provisions are of particular importance in that the number of adoptions abroad by citizens resident in Spain is currently clearly higher than the number of adoptions granted in Spain. On this point the Act sets out from a consideration of the legal framework consisting of international treaties and conventions and other international legislation applicable in Spain relevant to defining the legal effects in Spain of adoptions granted abroad.

On this basis, the law provides arrangements for the recognition in Spain of adoptions granted by foreign authorities in the absence of applicable international provisions. These

arrangements revolve around the basic idea that adoption will be recognised in Spain only where it was validly granted in the country of origin, and where, moreover, it meets certain requirements concerning legal regularity or the best interests of the child to be adopted. Thus we prevent any adoption that has not been granted regularly in a foreign country from having legal effect in Spain, along with any adoptions granted without the necessary respect for due process, with special reference to the child's best interests.

For these purposes, the Spanish authorities and, in particular, Civil Registrars, must in all events check that the adoption has been granted by a competent foreign authority, that the authority observed its own rules of International Private Law and, accordingly, granted a valid adoption in its country. It should also be checked that an adoption granted in a foreign country has substantially the same effect, according to the law applied to the process, as an adoption regulated by Spanish law, that the adopters have been declared suitable to adopt and, where the child to be adopted is Spanish, that the Public Entity corresponding to the last place of residence in Spain of the child to be adopted has given its consent, and finally that the document filed in Spain containing the instrument granting the adoption vis-à-vis the foreign authority has sufficient guarantees of authenticity.

The Act also includes a provision, to date inexistent in our positive law, on the effects in Spain of simple or non-full adoption legally granted by a foreign authority, along with the possibility of conversion into adoption with full effect, establishing the factors that must be present in each case in order for the competent Spanish authority to grant the conversion.

The Act concludes with a Title III regulating the private law arrangements for international foster placements and other measures to protect children.

IV

The Act ends by amending certain articles of the Civil Code. First, it provides that the content of Title II of the law shall occupy article 9.5 of the Civil Code, which shall now merely refer the reader to the intercountry adoption Act.

Moreover it takes advantage of the evident link between adoption and child protection to reform articles 154, 172, 180 and 268 of the Civil Code. As well as improving the wording of these provisions, it thereby responds to the requirements of the Committee on the Rights of the Child, which has expressed concern at the possibility that the entitlement provided to date for parents and guardians to subject children to moderate punishment may infringe article 19 of the Convention on the Rights of the Child of 20 November 1989.

These reforms shall apply on a supplementary basis to the law of the autonomous regions that have legislated on the subject.

TITLE I General provisions

Chapter I Scope

Article 1. *Subject and scope of this Act*

1. This Act regulates the role of the national government, the Public Entities and the accredited bodies in intercountry adoption, the capacity and requirements to be fulfilled by prospective adoptive parents, and provisions of private international law on adoption and other international measures for the protection of children in events where there is a foreign party.

2. For the purposes of Title I of this Act, “intercountry adoption” means adoption in which a child regarded as adoptable by a competent foreign authority and habitually resident abroad is, or is to be, moved to Spain by adopters habitually resident in Spain, either after adoption in the country of origin or with a view to making an adoption in Spain.

Article 2. Purpose of the Act

1. This Act establishes the legal framework and the basic instruments for ensuring that intercountry adoptions are granted taking into account the best interests of the child.

2. The Act is intended to protect the rights of children who are to be adopted, while also considering those of the prospective adoptive parents and others involved in the intercountry adoption process.

Article 3. Guiding principles

The provisions of this Act, along with other provisions in Spanish legislation on adoption and other international child protection measures, shall respect the guiding principles of the Convention on the Rights of the Child of 20 November 1989, the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption, the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, the Council of Europe Convention on the Adoption of Children done at Strasbourg on 27 November 2008, and Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

In so far as possible, the State shall include the standards and safeguards provided in these instruments in the bilateral agreements or conventions on adoption and international child protection that it signs with States not contracting to or obligated by such instruments.

Article 4. Foreign policy

1. The national government, together with the Public Entities, shall determine the initiation of processes for adoptions with each country of origin of the children, and for suspending or halting them.

2. Applications to adopt children that are nationals of, or habitually resident in, another country shall not be processed in the following circumstances:

a) Where the country in which the child to be adopted is habitually resident is in armed conflict or undergoing a natural disaster.

b) If there is no specific authority in the country to oversee and guarantee the adoption and to send the Spanish authorities a matching proposal with information on the child’s adoptability and all the other information referred in article 5.1(e).

c) Where the country does not have adequate guarantees for adoption and its practices and formalities do not respect the child’s interests or do not comply with the international ethical and legal principles referred to in article 3.

3. The national government, together with the Public Entities, shall determine at any one time which countries are affected by the circumstances described in the previous point for the purposes of deciding whether the processing of adoptions with them should be initiated or suspended.

4. Applications for the adoption of foreign children moved to Spain under humanitarian programmes for temporary placement in connection with holidays, studies or medical treatment may be processed only if those placements have ended and the children have been declared adoptable in the countries of origin.

5. The national government, together with the Public Entities, shall determine the number of intercountry adoption applications to be submitted each year to each country of origin of the children, taking account of the average number of adoptions granted over the last two years and the number of applications pending the matching of a child.

For this purpose, the number of applications processed with each country may not be more than three times the average number of adoptions granted in that period, except where changes in legislation, practice or policy on intercountry adoption in those countries so justify.

In the event that such processing is initiated with a new country, this number shall be set according to the information available on the prospects for adoptions with that country.

The distribution of this maximum number between Spanish autonomous regions and accredited bodies shall be established by agreement with the Public Entities.

No quota shall be established for the processing of adoptions of children with special needs, except where justified by special circumstances.

The provisions of this section shall be carried out according to the criteria and with the procedure to be established by regulation.

6. Prior to determining the initiation, suspension or halting of processes for adoptions with each country of origin of the children, the national government shall gather information on the accredited bodies, if any. It may also gather information on any third countries that have initiated, suspended or halted the processing of adoptions with any one country of origin, and also with the Permanent Bureau of the Hague Conference on Private International Law.

CHAPTER II

Public entities and accredited bodies

Article 5. *Role of the Public Entities*

1. In the sphere of intercountry adoption, the public entities are responsible for:

a) Organising and providing information on legislation, requirements and formalities required in Spain and in the children's countries of origin, ensuring that this information is as full, accurate and up to date as possible, and freely accessible to the families concerned and to the accredited bodies.

b) Giving families the necessary instruction in the course of the whole process so that they may understand and deal with the implications of intercountry adoption, preparing them to suitably exercise their parental responsibilities once the adoption is granted. They may delegate this function to accredited bodies or to other duly licensed institutions or entities.

c) Receiving applications for adoption in all cases, and processing them, either directly or through accredited bodies.

d) Issuing, in all cases, certificates of suitability, once the psychosocial report on the prospective adoptive parents has been drawn up, either directly or through duly licensed institutions or entities, and, where required by the country of origin of the child to be adopted, the monitoring commitment.

e) Receiving the child's matching proposal by the competent authorities of the country of origin with information on the identity, adoptability, social and family environment, medical history and any special needs of the child; along with information on the granting of the consents by the persons, institutions and authorities required according to the laws of the country of origin.

f) Confirming whether the characteristics of the child matched by the competent body in the country of origin suits those indicated in the psychosocial report accompanying the certificate of suitability.

g) In the course of the intercountry adoption process, offering technical support to children and to prospective adoptive parents, with particular attention to those who are to

adopt or have adopted children with special needs or characteristics. During the adopters' stay abroad, assistance may be provided by Spain's Foreign Service.

h) Drawing up any monitoring reports required by the child's country of origin, which may be assigned to accredited bodies or other licensed entities.

i) Providing qualified post-adoption support and intermediary personnel for researching biological origins, so as to attend appropriately to both adoptees and adopters, which functions may be assigned to accredited bodies or other licensed entities.

j) Mandatorily reporting to the national government on the accreditation of bodies, as well as overseeing, inspecting and preparing monitoring guidelines for bodies based within the territorial scope for intermediary activities to be carried out in the territory.

2. When acting in the sphere of intercountry adoption, the Public Entities shall promote measures to achieve the highest degree of coordination and cooperation among them. In particular they shall seek to standardise procedures, periods and costs.

3. The public entities shall provide the national government with statistical information on the processing of intercountry adoption applications.

Article 6. *Intermediation in intercountry adoption*

1. Intermediation in intercountry adoption means any activity intended to facilitate contacts or relationships between prospective adoptive parents and the authorities, organisations, and institutions of the country of origin or residence of an adoptable child, and providing sufficient assistance for the adoption to be carried out.

2. The intermediary role in intercountry adoption may be carried out by the Public Entities directly with the central authorities in children's countries of origin that have ratified the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, provided that in the administrative processing in the country of origin are not involved any natural or legal persons or bodies that are not duly accredited.

The intermediary role in intercountry adoption may be carried out by duly accredited bodies.

No other person or entity may take part in intermediary functions for intercountry adoptions.

However, the national government may, together with the Public Entities, determine with regard to a particular country that intercountry adoption applications shall be processed only through bodies accredited or licensed by the authorities of both States.

3. The functions to be carried out by accredited bodies for intermediation shall be as follows:

a) Informing those interested about intercountry adoption.

b) Advising, instructing and supporting prospective adoptive parents as regards what adoption means and involves, regarding significant cultural aspects and the formalities to be carried out in Spain and in the children's countries of origin.

c) Taking part in the processing of adoption applications with the competent authorities, whether Spanish or foreign.

d) Contributing to the processing and implementation of the corresponding post-adoption measures in order to comply with the post-adoption obligations provided for adopters in the legislation of the adopted child's country of origin, which functions shall be assigned as determined by the Spanish Public Entity where the adopting family resides.

4. Accredited bodies shall act on the terms and with the conditions provided in this Act and in regional legislation.

5. Accredited bodies may make collaboration agreements with each other so as to deal with situations that arise or to carry out their purposes more effectively.

6. In intercountry adoption there may never be any financial gain except as strictly required to cover necessary intermediaries' expenses, as approved by the national government and the Public Entities.

Article 7. *Accreditation, monitoring and control of accredited bodies*

1. Accreditation for intercountry adoption shall be available only to non-profit entities registered in the corresponding register and whose object according to their statutes is child protection, which have the necessary material resources and multidisciplinary teams on Spanish territory to carry out the functions assigned, and which are directed and staffed by persons qualified by their ethical standards, by training or experience to work in the field of intercountry adoption.

2. The national government shall be responsible, on the terms and with the procedure to be established by regulation, and with the advice of the Public Entity of the territory in which they are based, for the accreditation of such bodies and for their control and monitoring as regards the intermediary activities which they are to carry out in the children's country of origin.

The national government shall keep a special national public register of accredited bodies, whose modus operandi is to be provided by regulation.

3. The control, inspection and monitoring of these bodies as regards the activities which they carry out in the territory of each autonomous region shall be the responsibility of the competent Public Entity in each region, in accordance with applicable regional legislation.

The competent Public Entities shall seek to standardise in so far as possible the basic requirements for carrying out this control, inspection and monitoring activity.

4. Accredited bodies shall designate the person who is to act as their representative and that of the families vis-à-vis the authority of the child's country of origin. Professional staff employed by accredited bodies in children's countries of origin shall be regarded as part of the body, which shall thus be liable for the acts of those professionals when carrying out their intermediary functions. These professionals should be assessed by the national government, advised by the Public Entities.

5. In the event that the foreign country for which the authorisation is intended establishes a limited number of accredited bodies, the national government shall, together with the Public Entities and the authorities of that country, decide which bodies should be accredited to act in it.

If any country of origin of adoptable children sets a limit on the number of applications to be processed by each accredited body and it proves that any bodies with an assigned quota have no applications to process in that country, these may, once authorised by the national government, together with the Public Entities and with the consent of the prospective adoptive parents, process applications that were being processed by other accredited bodies.

6. The national government may, together with the Spanish autonomous regions, establish a maximum number of accredited bodies for intermediation in any one country, according to the intercountry adoption needs in a specific country, the adoptions granted or other aspects regarding the foreseeable opportunities for intercountry adoption in the country.

7. The national government may, at its own initiative or at the proposal of the Public Entities in their territorial spheres, suspend or withdraw the accreditation granted to bodies that cease to meet the conditions on the grounds of which it was granted or whose methods are contrary to the law, once the viewpoint of any such body has been heard. This suspension or withdrawal of accreditation may apply generally for all authorised countries or for certain countries only. In such events it may, if appropriate, be decided that the discredited body's adoption applications in progress should be processed to completion.

8. For the monitoring and control of accredited bodies, the necessary coordination shall be put in place between the national government and the Public Entities.

9. Accredited bodies shall provide the national government with statistical information on the processing of intercountry adoption applications.

10. The national government shall exercise the powers provided for in points 2, 4, 5, 6, 7 and 8 of this article, on the terms and with the procedure to be established by regulation

Article 8. *List of prospective adoptive parents and accredited bodies*

1. Prospective adoptive parents may hire the intermediary services of any body that is accredited by the national government.

2. The body and the prospective adoptive parents shall sign a contract exclusively relating to the intermediary functions that the former is to undertake in respect of the processing of the offer to adopt.

The basic model contract should be previously approved by the national government and the Public Entities, in a form to be established by regulation.

3. Solely for the purposes of carrying out the responsibilities established in articles 5.1.j) and 7.2, the national government and the Public Entities shall keep a record of complaints and incidents in intercountry adoption processes, in a form to be established by regulation.

4. Accredited bodies must keep a unique record of adoption procedures showing all the prospective adoptive parents that have signed a contract for the processing of an adoption, regardless of the autonomous region where they reside.

Article 9. *Communications between the Spanish competent authorities and the competent authorities of other States*

Communications between the Spanish central competent authorities and the competent authorities of other States shall be coordinated as provided in the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption, even if the latter are not parties thereto.

CHAPTER III

Capacity and requirements for intercountry adoption

Article 10. *Suitability of adopters*

1. Suitability means the suitable capacity, aptitude and motivation to exercise parental responsibility in view of the needs of the children to be adopted, and for dealing with the particular circumstances, consequences and responsibilities of adoption.

2. For this purpose, the declaration of suitability shall require a psychosocial assessment of the personal, family and social circumstances of the prospective adoptive parents, their ability to establish stable and secure bonds, their upbringing skills and their aptitude for caring for a child according to their particular circumstances, and any other relevant items linked to the particular features of intercountry adoption. Moreover this psychosocial assessment shall involve interviewing any existing children of the prospective adoptive parents, as provided in Article 9 of Organic Law 1/1996 of 15 January on the Legal Protection of Children, partially amending the Civil Code and the Civil Procedure Act.

The Public Entities shall provide the necessary coordination for the purpose of standardising suitability assessment criteria.

3. The declaration of suitability and psychosocial reports in connection therewith shall be valid for up to three years as of their date of issue by the Public Entities, provided that there are no substantial changes in the prospective adoptive parents' personal and family

situation underlying that declaration, subject to the conditions and limitations provided, if applicable, in the regional legislation applicable in each event.

4. The Public Entities are responsible for the declaration of suitability for prospective adoptive parents as from the psychosocial assessment referred in point 2, which shall be subject to the conditions, requirements and limitations established in the corresponding legislation.

5. Prospective adoptive parents may be assessed and, if appropriate, declared suitable simultaneously for national and intercountry adoption, and the processing of their applications shall be compatible in both spheres.

Article 11. *Adopters' pre-adoption and post-adoption obligations*

1. Prospective adoptive parents must attend briefing and preparatory sessions organised by the Public Entities or the accredited body prior to requesting a suitability declaration, on a mandatory basis.

2. The adopters must, within the specified period, give the information, documentation and interviews that the Public Entity, accredited body or authorised entity require for drawing up post-adoption follow-up reports as required by the Public Entity or the competent authority in the country of origin. Any failure by the adopters to cooperate in this phase may give rise to the administrative sanctions provided for in regional legislation and may be regarded as grounds for unsuitability in a subsequent adoption process.

3. Adopters must comply within the specified period with any post-adoption formalities established by the legislation of the adopted child's country of origin, and shall be assisted and advised for the purpose as necessary by the Public Entities and the accredited bodies.

Article 12. *Right to know biological origins*

Once adoptees are of legal age, or via their legal representatives when adoptees are minors, they shall be entitled to access any details of their origins that are held by the Public Entities, without prejudice to any restrictions pursuant to the legislation of the adoptee's country of origin. This right shall be exercised with the advice, assistance and mediation of the specialist services of the Public Entity, the accredited bodies or any other entities authorised for the purpose.

The competent Public Entities shall guarantee the preservation of any information that they have on the child's origins, in particular as regards the identity of his/her progenitors as well as the medical history of the child and his/her family.

Any accredited bodies that have acted as intermediaries in the adoption must inform the Public Entities of what details they possess on the child's origins.

Article 13. *Protection of personal data*

1. Any processing and transfer of data pursuant to the provisions of this Act shall be subject to the provisions of Organic Law 15/1999 of 13 December on the Protection of Personal Data.

2. Data obtained by the Public Entities or the accredited bodies may be processed only for purposes linked to the performance, in each case, of the functions described for each one in articles 5 and 6.3 of this Act.

3. International transfers of data to foreign adoption authorities shall be made only in the events expressly provided for in the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption and other international legislation.

TITLE II
Private international law provisions on intercountry adoption

CHAPTER I
Jurisdiction for the granting of intercountry adoption

Article 14. *International judicial jurisdiction for granting adoption in international cases*

1. Generally speaking, the Spanish courts and tribunals shall have jurisdiction for granting adoption in the following events:

- a) Where the child to be adopted is Spanish or habitually resident in Spain.
- b) Where the adopter is Spanish or habitually resident in Spain.

2. Spanish nationality and habitual residence in Spain shall in all events be taken into account when an application to adopt is filed to the Public Entity.

Article 15. *International judicial jurisdiction for declaring invalidity or converting a non-full adoption into a full adoption in international scenarios*

1. The Spanish courts and tribunals shall have jurisdiction for declaring an adoption invalid in the following events:

- a) Where the adoptee is Spanish or is habitually resident in Spain when the application is made.
- b) Where the adopter is Spanish or is habitually resident in Spain when the application is made.
- c) Where the adoption has been granted by a Spanish authority.

2. If the law applied to the adoption provides for the possibility of simple adoption, the Spanish courts and tribunals shall have jurisdiction to convert a simple adoption into a full adoption in the events referred to in the previous section.

3. For the purposes of this Act's provisions, simple or non-full adoption shall mean adoption granted by a foreign competent authority whose effects are not substantially the same as those provided for adoption in Spanish legislation.

Article 16. *Subject-matter and territorial jurisdiction*

1. The particular court with subject-matter and territorial jurisdiction for granting an intercountry adoption shall be determined according to the principles of non-contentious jurisdiction.

2. If territorial jurisdiction cannot be determined in accordance with the above paragraph, whatever court the adopters may choose shall have such jurisdiction.

Article 17. *Jurisdiction of consuls in granting intercountry adoptions*

1. As long as there is no legal prohibition or objection by the local government, in accordance with applicable international treaties and other international standards, consuls may grant adoptions if the adopter is Spanish, if the child to be adopted is habitually resident in the corresponding consular district and if there is no need for a prior proposal by the Public Entity as provided in events 1, 2 and 4 in article 176.2 of the Civil Code. The adopter's nationality and the habitual residence of the child to be adopted shall be determined when the adoption process is initiated.

2. The processing of and decision on this adoption application shall be subject to legislation in the sphere of non-contentious jurisdiction.

CHAPTER II
Law applicable to adoption

Article 18. *Law applicable to the granting of an adoption*

The granting of an adoption by the competent Spanish authority shall be governed by the provisions of material Spanish law in the following events:

- a) Where the child to be adopted is habitually resident in Spain when the adoption is granted.
- b) Where the child to be adopted has been or is to be moved to Spain for the purpose of becoming habitually resident in Spain.

Article 19. *Capacity of the child to be adopted and consents required*

1. The capacity of the child to be adopted and the consents required from all the subjects involved in the adoption shall be governed by the national law of the child to be adopted and not by substantive Spanish law in the following events:

- a) If the child to be adopted is habitually resident outside Spain when the adoption is granted.
- b) If the child to be adopted does not acquire Spanish nationality, by virtue of the adoption, even if he/she resides in Spain.

2. The national law of the child to be adopted shall be applicable, as provided in the first point of this article, only where the competent Spanish authority deems that this will be conducive to the adoption being valid in the country of the nationality of the child to be adopted.

3. The national law of the child to be adopted shall not be applicable as provided in the first point of this article where the child to be adopted is stateless or of indeterminate nationality.

4. In the case of children whose national law prohibits or does not provide for adoption, the granting of adoption shall be refused unless the child is in a situation of distress and is a ward of the Public Entity.

Article 20. *Consents, hearings and authorisations*

Without prejudice to the provisions of article 18, the Spanish authority competent for granting an adoption may also require the consents, hearings or authorisations specified by national law or the law of the country in which the child to be adopted or the adopter habitually reside, provided that the following circumstances apply:

a) That the requirement for such consents, hearings or authorisations is in the interest of the child to be adopted. The “interest of the child to be adopted” shall be deemed to be present if, in the court’s view, taking foreign law into consideration will be conducive to the adoption being valid in other countries linked to the case, and only in so far as this is so.

b) That the requiring of such consents, hearings or authorisations is requested by the adopter or the prosecution service.

Article 21. *Law applicable to the granting of an adoption*

(Deleted)

Article 22. *Law applicable to the conversion or invalidity of an adoption*

The law applicable to the conversion of a non-full adoption into a full one and to any invalidity of an adoption shall be that applied when it was granted.

Article 23. *Spanish public international policy*

In no event shall a foreign law be applicable where it is manifestly contrary to Spanish public international policy. For this purpose account shall be taken of the child's best interests and the case's substantial links with Spain. Any aspects of an adoption which cannot be governed by foreign law because this is contrary to Spanish public international policy shall be governed by Spanish substantive law.

Article 24. *International cooperation between authorities*

Where the foreign authority that is to grant an adoption, when the adopter is Spanish and resident in Spain, requests information on him/her from the Spanish authorities, the consul may procure it from the authorities of his/her last place of residence in Spain or provide any information held by the consulate, or obtain information by other means.

CHAPTER III

Effects in Spain of an adoption granted by foreign authorities

Article 25. *International standards*

An adoption granted by foreign authorities shall be recognised in Spain in accordance with the provisions of international treaties and conventions and other international standards applicable to Spain, and in particular the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption. These standards shall in all events prevail over the provisions of this Act.

Article 26. *Requirements for the validity in Spain of adoptions granted by foreign authorities in the absence of international standards*

1. In the absence of applicable international treaties and conventions and other international standards with effect for Spain, an adoption granted by foreign authorities shall be recognised in Spain as an adoption if the following requirements are met:

1st. It was granted by a competent foreign authority. The foreign authority shall be regarded as competent if the case has reasonable links with the foreign country whose authorities granted it. They shall in all events be presumed to be competent with reciprocal application of the rules of jurisdiction provided in article 14 of this Act.

2nd. The adoption does not violate public policy.

For this purpose, Spanish public policy shall be deemed to be violated by adoptions not granted with regard for the child's best interest, especially where the necessary consents and hearings have not been provided, or where it is ascertained that the adoptions were not granted with informed and free consent or that they were procured in return for a payment or consideration.

2. Where the adopter or the adoptee is Spanish, the adoption granted by a foreign authority should have the legal effects substantially the same as the effects of adoption as regulated in Spanish law.

The legal name of the institution in the foreign law shall be irrelevant.

In particular, the Spanish authorities shall check that the adoption granted by the foreign authority terminates all substantial legal bonds between the adoptee and his/her previous family, that it gives rise to the same bonds of parentage as for natural parentage, and that it is irrevocable by the adopters.

Where the foreign law allows an adoption granted under it to be revoked by the adopter, a prerequisite shall be that, before bringing the child to Spain, the adopter waives the right to revoke the adoption. Such waiver shall be formalised in a public instrument or by personal appearance before the Civil Registrar.

3. Where the adopter is Spanish and resident in Spain, the competent Spanish Public Entity should declare his/her suitability before the adoption is granted by the foreign competent body. This declaration of suitability shall not be required where, if the adoption had been granted in Spain, it would not have been needed.

4. If the child to be adopted is Spanish when the adoption is granted before the competent foreign authority, the consent of the Public Entity corresponding to the last place of residence in Spain of the child to be adopted shall be required.

5. The document recording the adoption granted before the foreign authority shall meet formal authenticity requirements consisting of legalisation or an apostille and a translation to Spanish as official language. Documents exempt from the requirement of legalisation or translation under other applicable legislation shall be excepted.

Article 27. *Checking the validity of an adoption granted by a foreign authority*

The Spanish public authority from which validation of an adoption granted by a foreign authority is sought, and, in particular, the Registrar at the Civil Registry where the registration is requested for the adoption granted abroad to be recognised in Spain, shall check, incidentally, the validity of that adoption in Spain in accordance with the provisions of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption, by submitting the certificate of conformity in keeping with the provisions of its article 23, and of the non-application of the grounds for non-recognition provided in article 24 of that Convention.

In case of children from countries that are not signatories to the Convention, the Civil Registrar shall make this incidental check by verifying whether the adoption meets the conditions for recognition provided in articles 5.1.e), 5.1.f) and 26.

Article 28. *Requirements for validity in Spain of foreign decisions to convert or invalidate an adoption*

Decisions by a foreign public authority converting or invalidating an adoption shall have legal effects in Spain in accordance with the requirements provided in article 26.

Article 29. *Registration of the adoption in the Civil Registry*

Where the intercountry adoption has been granted abroad and the adopters are habitually resident in Spain, they must request the registration of the child's birth and of the adoption in accordance with the provisions of the Civil Registry Act in order for the adoption to be recognised in Spain.

Article 30. *Simple or non-full adoption legally granted by a foreign authority*

1. A simple or non-full adoption legally granted by a foreign authority shall have effects in Spain, as a simple or non-full adoption, if it conforms with the legislation referred in article 9.4 of the Civil Code.

2. The legislation referred in article 9.4 of the Civil Code shall determine the existence, validity and effects of such adoptions, and the attribution of parental custody.

3. A simple or non-full adoption shall not be liable to registration in the Spanish Civil Registry as an adoption and shall not entail the acquisition of Spanish nationality pursuant to article 19 of the Civil Code.

4. A simple or non-full adoption legally granted by a foreign authority may be converted into an adoption as regulated by Spanish law where the relevant requirements are met through non-contentious judicial proceedings. The law applicable to the conversion shall depend on what law was applicable to its granting.

In order for judicial proceedings to be brought, there shall be no need for a prior proposal by the competent Public Entity.

In all events, for the conversion of a simple or non-full adoption into a full adoption, the competent judge must check that the following conditions are met:

a) That the persons, institutions or authorities whose consent is required for the adoption have been appropriately advised and informed of the consequences of their consent, on the effects of the adoption and, in particular, on the termination of the legal bonds between the child and his/her family of origin.

b) That those persons have expressed their consent freely, as legally provided, and that their consent was given in writing.

c) That those consents were not procured for payment or a consideration of any kind, and that the consents have not been revoked.

d) That the mother's consent, where required, was granted after the child's birth.

e) That, taking into account the child's age and maturity, he/she has been appropriately advised and informed of the effects of the adoption and, where required, of his/her consent.

f) That, taking into account the child's age and maturity, he/she has been heard.

g) That, where the child's consent to the adoption needs to be given, it is checked that such consent was given freely, with the legally established form and formalities, and not for any price of consideration.

Article 31. *International public policy*

In no event may a foreign decision relating to simple or non-full adoption be recognised if it has effects manifestly contrary to Spanish public policy. For this purpose, account shall be taken of the child's best interests.

TITLE III

Other child protection measures

CHAPTER I

Jurisdiction and applicable law

Article 32. *Jurisdiction for granting other child protection measures*

Jurisdiction for the granting of other child protection measures shall be governed by the criteria provided in international treaties and conventions and other international standards applicable to Spain, and in particular by Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, and the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.

Article 33. *Law applicable to other child protection measures*

The law applicable to other child protection measures shall be determined in accordance with international treaties and conventions and other international standards applicable for Spain, and in particular the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children

CHAPTER II
Effects of foreign decisions regarding the protection of children

Article 34. *Legal effects in Spain of foreign decisions regarding child protection measures not resulting in bonds of parentage, rendered by foreign authorities*

1. Child protection measures granted by a foreign authority and which, according to the law under which they were granted, do not result in any bond of parentage, shall be treated as equivalent to family placement or, if applicable, to guardianship, as regulated by Spanish law, if the following requirements are met:

1st. That the substantial effects of the foreign institution are equivalent to those of family placement or, if applicable, those of guardianship, as provided for by Spanish law.

2nd. That the protection measures have been decreed by a competent foreign authority, whether judicial or administrative. The foreign authority that granted the protection measure shall be deemed to be internationally competent if the case in hand has reasonable links with the foreign country whose authorities granted it.

Notwithstanding the above provision, in the event that the foreign protection institution lacks reasonable links of origin, family background or other similar kinds with the country whose authority granted that measure, the foreign authority shall be deemed to lack international jurisdiction.

3rd. That the effects of the foreign protection measure do not infringe Spanish public policy, taking into account the child's best interests.

4th. That the document recording the measure granted by the foreign authority meets formal authenticity requirements consisting of legalisation or an apostille and a translation to Spanish as official language. Documents exempt from the requirement of legalisation or translation under other applicable legislation shall be excepted.

2. The Spanish public authority to which the question of the validity of a protection measures granted by a foreign authority is submitted, and, in particular, the Registrar at the Civil Registry where registration is requested of the protection measure granted abroad for recognition in Spain, shall check, incidentally, the validity of that adoption in Spain in accordance with this article.

Single additional provision. *Public Entities for Child Protection.*
(Repealed)

Single repealing provision. *Organic Law on the Legal Protection of Children.*

Article 25 of Organic Law 1/1996 of 15 January on the Legal Protection of Children, partially amending the Civil Code and the Civil Procedure Act, is hereby repealed.

First final provision. *Amendment of certain articles of the Civil Code*

One. Article 9(5) shall read as follows:

“Intercountry adoption shall be governed by the provisions of the Intercountry Adoption Act. Adoptions granted by foreign authorities shall likewise have effect in accordance with the provisions of the aforesaid Intercountry Adoption Act.”

Two. Article 154 shall read as follows:

“Non-emancipated children shall be under parental custody.

Parental authority shall always be exercised in the children's benefit, in keeping with their personality and with respect for their physical and mental integrity.

This authority includes the following duties and powers:

1st. Caring for them, accompanying them, feeding them, bringing them up and giving them a comprehensive education.

2nd. Representing them and administering their property.

If the children have sufficient capacity for judgment, their views must always be heard before decisions affecting them are taken.

In the exercise of their authority, parents may seek assistance from the authorities.”

Three. Points 3 and 6 are amended and new seventh and eighth points are added to article 172, which shall read as follows:

“3. Taking into care at the request of parents or guardians or as a protective function by operation of law shall take the form of family placement or residential placement. Family placements shall be effected by the person(s) determined by the Public Entity. Residential placements shall be effected by the director of the centre at where the child was taken in.

The parents or guardians of the child may within a period of two months contest the administrative decision concerning the placement if they deem that the form of placement chosen is not in the child’s best interests, or that within the family circle there are other more suitable persons than those designated.

6. Decisions declaring a situation of distress and taking over guardianship by operation of law may be appealed against in the civil courts within the period and on the conditions provided in the Civil Procedure Act, with no need for a prior administrative claim to be brought.

7. For two years as from the notice served of the administrative decision declaring a situation of distress, parents who continue to hold parental custody in suspension, as provided in point 1 of this article, are entitled to request the end of that suspension and a revocation of the declaration of the child’s situation of distress if, owing to a change in the underlying circumstances, they consider that they are in a position to resume their parental custody.

They are likewise entitled during that same period to contest the decisions adopted in respect of the child’s protection.

Once this period has elapsed, their right to request or contest the decisions or measures taken for the child’s protection shall elapse. However, they may inform the public entity and the prosecution service of any change in the circumstances which gave rise to the declaration of a situation of distress.

8. The public entity, on its own motion or at the request of the prosecution service or an interested person or entity, may at any time revoke the declaration of a situation of distress and decide to return the child to his/her family if he/she is not stably integrated in another family, or if this is deemed to be in the child’s best interests. Notice of this decision shall be served to the prosecution service.”

Four. A new point is added to article 180, which shall read as follows:

“5th. Adoptees, once of legal age or earlier if represented by their parents, shall be entitled to know details of their biological origins. The Spanish Public Entities for child protection shall, once they have notified the persons concerned, provide the advice and assistance required by applicants in exercising this right through their specialist services.”

Five. Article 268 shall read as follows:

“Guardians shall carry out their function in keeping with their wards’ personalities, respecting their physical and mental integrity.

Where necessary in the exercise of their guardianship, they may seek assistance from the authorities.”

Second final provision. *Certain articles of Law 1/2000 of 7 January on Civil Procedure are hereby amended.*

One. A new article 141b is added to the Civil Procedure Act, reading as follows:

“141b.

In the cases provided for in the two previous articles, in simple copies, notarial copies and certificates issued by court clerks, in whatever medium, where necessary to protect children’s best interests and in order to preserve their privacy, personal details, pictures, names and surnames, addresses or any other details or circumstances allowing them to be identified directly or indirectly should be omitted.”

Two. A new final paragraph is added to article 164 of the Civil Procedure Act, reading as follows:

“Article 164.

In all events, in the communications and publications referred to in the previous paragraphs, in the child’s best interests and in order to preserve his/her privacy, personal details, pictures, names and surnames, addresses or any other details or circumstances allowing him/her to be identified directly or indirectly should be omitted.”

Three. Article 779 shall read as follows:

“Article 779. Preferential nature of proceedings. Jurisdiction

Proceedings for the contesting of administrative decisions on child protection shall be of a preferential nature.

Jurisdiction to hear them shall rest with the court of first instance where the protecting entity is based or, failing that, or in the events provided for in articles 179 and 180 of the Civil Code, with the court where the adopter resides.”

Four. Article 780(1) shall read as follows:

“1. No prior administrative claim needs to be brought in order to be able to contest administrative decisions regarding child protection before the civil courts.

An administrative decision declaring a child’s situation of distress may be contested within three months of notice thereof being served, and within two months when contesting other administrative decisions adopted in the sphere of child protection.”

Five. The first point of article 781 shall read as follows:

“1st. Parents wishing to have the need for their consent to adoption recognised may submit to the court that is hearing the corresponding proceedings to express it. The proceedings shall be suspended and the court shall specify the period considered necessary for bringing a claim, which may not be more than twenty days. Once a claim has been brought, it shall be processed as provided in article 753 of this Act.”

Third final provision. *Judicial Districts and Institutions Act*

The first point of article 25 of Law 38/1988 of 28 December on Judicial Districts and Institutions shall read as follows:

“In the Ministry of Justice, with the assignment determined by the organisational regulations, there may be up to ten positions held by judges or magistrates, ten by prosecutors, ten by court clerks and two by forensic doctors.”

Fourth final provision. *Civil Registry Act*

Article 63(2) of the Law of 8 June 1957 on the Civil Registry shall read as follows:

“2. The competent authorities for processing and deciding upon applications for nationality by virtue of residence shall, for the sole purpose of deciding upon the application filed by the interested party, procure of its own motion from the competent public authorities any reports that may be necessary in order to ascertain whether the applicants meet the requirements provided in article 22 of the Civil Code, with no need for the interested parties’ consent.”

Fifth final provision. *Title of competence*

1. Articles 5, 6, 7, 8, 10, 11 and the first final provision are enacted by virtue of the State’s exclusive competence in the sphere of civil legislation enshrined in article 149.1.8. of the Spanish Constitution, without prejudice to the preservation, amendment and implementation by regional governments of civil, local or special rights, where applicable, and the legislation enacted by those governments in the exercise of their powers in this field.

2. Article 12 is enacted by virtue of the provisions of article 149.1.1 of the Spanish Constitution. The other articles of this Act are enacted by virtue of the State’s exclusive competence in the sphere of international relations, administration of justice and civil legislation enshrined in article 149.1.3., 5. and 8. of the Spanish Constitution.

Sixth final provision. *Entry into force*

1. This Act shall enter into force on the day after its publication in the Spanish Official Journal (BOE).

2. The government is hereby empowered to adopt the necessary regulations for its implementation.

By virtue whereof,

I command all Spaniards, individuals and authorities, to abide by and to enforce this Act.
Madrid, 28 December 2007.

JUAN CARLOS REX.

The Prime Minister,
JOSÉ LUIS RODRÍGUEZ ZAPATERO

<p>This consolidated text has no legal value. More information at info@boe.es</p>
--